Energy Choice Matters

December 22, 2008

PUCO Removes Nonbypassable POLR Charge, Base Generation Deferrals from FirstEnergy ESP

PUCO approved a modified version of the FirstEnergy utilities' Electric Security Plan (ESP) Friday which, among other things, removes a proposed nonbypassable minimum default service charge, and rejects deferral of base generation rate increases. However, past deferrals of fuel and transmission costs will continue to be collected through unavoidable surcharges (Matters, 8/1/08).

Under SB 221, utilities may withdraw their ESP upon modification by PUCO, and submit an application for either a new ESP or market rate offer. FirstEnergy has not indicated if it will accept the modifications.

PUCO ordered that FirstEnergy's proposed generation rates be reduced, since market prices have fallen since the summer. With such reduction, deferrals of generation rate increases are not necessary.

The original proposed base generation rates were 7.5¢/kWh in 2009, 8.0¢ in 2010 and 8.5¢ in 2011. Each of those rates would have been mitigated 10% annually via a deferral.

The Commission noted that FirstEnergy admitted during hearings that its proposed generation rates were not cost-based, but were based solely on the judgment of FirstEnergy's management. Given the significant decline in power prices since FirstEnergy's July application, PUCO ruled that the record supports a reduction in the proposed base generation rates of approximately 10% for 2009, with additional reductions thereafter.

The PUCO-approved base rates are 6.75¢/kWh for 2009, 6.95¢ for 2010 and 7.1¢ for 2011. Rates will not be deferred under PUCO's order, since the $2 billion aggregate cost of the deferrals, including

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KeySpan POR Does Not Include Recourse, Grid Says

The New York PSC should not address the terms of proposed Billing Service Agreements (BSAs) developed by the KeySpan LDCs to implement POR since the BSAs are not a tariffed service, National Grid said in replies to marketers' comments on the BSAs (06-G-1185 et. al.).

To National Grid's knowledge, the Commission has not previously issued any order addressing the substantive terms under which New York's utilities effectuate the purchase of ESCO receivables.

"[T]here is no sound reason why the Commission should address such terms because the BSA is not a tariff service but rather a contract negotiated between the Companies and the participating ESCOs at arms length and National Grid is not proposing to make any profit from providing this service to ESCOs; it is merely seeking to recoup its costs," Grid said.

National Grid requested that to the extent the Commission determines that it may require modification to the BSA, the Commission must address the legal and policy justifications for exercising regulatory authority over the BSA in the first place.

In terms of specific objections to the BSAs, Grid insisted that its proposal did not amount to a POR program with recourse, as argued by the Small Customer Marketer Coalition (Matters, 12/10/08).

Under the KeySpan LDCs' amended filings, the credit & collections (C&C) expense was removed from the POR discount, and moved into a unitized dollar per dekatherm credit & collections charge for each gas adjustment clause (GAC) year (12-months starting Sept. 1st). The charge would initially be set at $0.1045/DTH and would be collected from ESCOs participating in the POR program as well as from bundled sales customers through the Merchant Function Charge.

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Md. PSC Publishes Retail Electric, Gas Rules in Register, Including POR/Proration

The Maryland PSC published revised rules for electric supplier-utility coordination and utility consolidated billing (RM17) in the state register, a step necessary before final PSC approval.

The codes would require utilities to implement POR or proration of partial payments. Comments will be accepted through January 20, 2009.

The PSC also published new gas market rules (RM35) in the register, which call for all suppliers and utilities to use the uniform statewide electronic transaction processes approved by the Commission.

Since all gas enrollments would occur on the first of the month, but suppliers' billing won't occur until the first meter read, a utility shall compensate a retail supplier through a cash exchange, an adjustment of gas usage, or an adjustment of delivery volumes for the portion of the first month during which gas is delivered to a customer of the retail supplier, within 90 days of the first supply of gas to the customer.

The proposed gas rules eliminate the rescission period for all customer classes. The gas rules also include provisions for the utility to choose between POR and proration of payments. Comments on the gas rules are also due January 20 (Matters, 9/23/08).

Utilicast Recommends Limiting Changes to Zonal Market Processes During Nodal Implementation

ERCOT's new Nodal Program budget of $660 million, which includes both direct and indirect costs (including finance charges), is a reasonable "not to exceed" estimate, Utilicast said in a report on market implementation.

To prevent further delay to the proposed December 2010 implementation, Utilicast recommended that no enhancements should be considered for zonal market applications or processes unless assessed as business critical. Only changes that are critical to zonal market operations should be considered, such as changes required because without them the market would fail to clear; the market would be subject to market power; or changes compelled by regulatory requirements. However, given the zonal market will be used for two years longer than anticipated, Utilicast noted there will be pressure for zonal revisions and enhancements which could result in key nodal program resources being diverted to zonal enhancement work.

The scope of the December 2010 release of the Nodal Program should also be locked down with any proposed changes subject to a strict change control process, Utilicast added. At this advanced stage of application development, the project cannot tolerate changes to the nodal market protocols resulting in changes in application requirements. Changes should only be permitted when approved by the ERCOT board and needed to correct fundamental market design issues, mitigation of market power, and regulatory requirements. Other changes should be deferred to future nodal releases, after the go-live date.

Grafting the existing business processes and applications of another RTO onto the nodal market could provide some benefits, but is not recommended due to major differences among markets. For example, unlike many eastern RTOs, ERCOT does not have a capacity market, has a limited ancillary service market, uses average (rather than marginal) losses in LMPs, and provides larger and more complex retail choice services, Utilicast noted.

Briefly:

MEA Says PSC Has Jurisdiction Over Constellation-EDF Deal

The Maryland Energy Administration urged the Maryland PSC to keep open Case 9160, which had been developed to review the now-withdrawn merger of Constellation Energy and MidAmerican Energy Holdings. MEA said the docket (or a new docket) should review whether the PSC has authority to review the Constellation-EDF merger, which Constellation has said does not require PSC approval. MEA believes Md. Code Ann., Pub. Util. Cos. §6-105 gives the PSC jurisdiction over the EDF transaction, since the code holds, "Without prior authorization from the Commission, a person may not acquire, directly or indirectly, the power to exercise any substantial influence over the policies and actions of an electric company, gas and electric company, or gas company, if the person would become an affiliate of the electric company, gas and electric company, or gas company as a result of the acquisition." Although MEA does not state how the EDF nuclear-only transaction would result in EDF's ability to exercise substantial influence over BGE, MEA argued that any claim the PSC lacks jurisdiction amounts to a factual dispute which requires PSC proceedings. The PSC asked Constellation for documents relating to the EDF transaction, as Chairman Douglas Nazarian noted the deal does not fit neatly into the current statutory regulations regarding jurisdiction.

SouthStar Energy Services to Add Aggregation/Brokering to Ohio License

SouthStar Energy Services (d/b/a Ohio Natural Gas) filed an amendment to its Ohio retail gas marketing license to add authority to act as an aggregator and broker in addition to a marketer.

ERCOT Reports Release of Protected Information

ERCOT reported that on December 5, it mistakenly sent an e-mail attachment containing a Market Participant's confidential Generation Resource Asset Registration Form (GRARF) data of a wind generation site to a non-affiliated third-party Market Participant, in violation of ERCOT Protocol § 1.3.1.1 (disclosure of Protected Information). The attachment was included as a result of human error and ERCOT said it has addressed the issue with the originating author. ERCOT identified the error on the same day and contacted the recipient. ERCOT has been assured by the third-party Market Participant that the e-mail attachment was deleted, and the information contained within will not be otherwise used.

AEP Ohio Riders Extended Until ESP Approved

PUCO approved the extension of several current riders at AEP's Columbus Southern Power and Ohio Power utilities to maintain the current Standard Service Offer through the end of the February 2009 billing cycle, since AEP's electric security plan remains pending at the Commission. However, the companies' Green Pricing Rider will be allowed to lapse at the end of the year.

FERC Approves SECA Settlements Over Retail Marketer Objections

FERC accepted two settlements regarding Seams Elimination Cost Adjustment (SECA) payments, denying protests from Integrys Energy Services and Strategic Energy that argued the settlements would negatively affect non-settling parties. The first settlement, known as the PJM Settlement, involves a host of transmission owners in PJM and the Midwest ISO (ER05-6-093, et. al.). The second settlement is between the AEP utilities and several Midwest ISO transmission owners (Matters, 10/3/08). Integrys Energy Services and Strategic argued the settlements could insulate transmission owners from providing refunds to non-settling parties by prohibiting further collection from settling parties to pay such refunds, including refunds which may be due upon an order on the Initial Decision in the case. However, FERC dismissed such claims as speculative.

FERC Sets Otter Tail Complaint for Hearing

FERC has set a complaint from Renewable Energy Systems Americas and Peak Wind Development against Otter Tail Power Company and Minnkota Power Cooperative for hearing, stating the complaint raises issues of material fact and that the record, as it stands, suggests the practices in question may be unduly discriminatory or preferential (EL08-86). The two wind developers have alleged that the Pillsbury Line, being built by Otter Tail and Minnkota, was not regionally planned and was built to accommodate an out-of-queue wind project being developed by Otter Tail and FPL Energy (Matters, 9/1/08). Respondents argued the project is an interconnection facility, and that the wind developers never submitted interconnection requests. Among the questions to be addressed are whether the Pillsbury Line is an interconnection facility or a transmission line; whether Otter Tail violated the requirements of the Commission's open access rules regarding the provision of interconnection service or transmission service; why did Peak Wind and Renewable Americas not submit an interconnection request to Minnkota prior to construction of the Pillsbury Line; and whether the Pillsbury Line is subject to FERC regional planning requirements.

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carrying costs, has the potential to damage Ohio's competitiveness in the global economy.

Generation rate design will continue under the current mechanism, as PUCO declined to implement the removal of demand charges for large customers and the introduction of inverted block rates for residential customers. FirstEnergy has not justified its proposals, PUCO said, noting that the proposed generation rate structures are the same as those pending in FirstEnergy's ongoing distribution rate case. PUCO said it will not determine substantive issues related to the distribution rate case in the ESP proceeding.

PUCO ordered a stakeholder working group to develop a means for transitioning FirstEnergy's generation rate schedules to a more appropriate rate structure which considers the time-varying generation costs of serving different customers and classifications of customers with homogenous loads and/or generation cost profiles, considers customer load factor, incorporates seasonal generation cost differentials, and, where adequate metering is available, provides customers with time-differentiated and dynamic pricing options. As part of the ESP, PUCO authorized FirstEnergy to make periodic, revenue-neutral Rider GEN tariff filings, subject to Commission approval, to implement a revised new rate design on a gradual basis consistent with the collaborative effort.

The Commission rejected FirstEnergy's application to impose a nonbypassable 1¢/kWh default service charge through Rider MDS (Minimum Default Service). In light of the possibility that Rider MDS would impede shopping, FirstEnergy failed to justify the need for the default service charge.

PUCO approved a 1.5¢/kWh standby service charge under Rider SBC that would be charged to shopping customers in order to allow them to return to the Standard Service Offer at the ESP price. Rider SBC will be bypassable for all shopping customers who agree to take market-priced service if they return to the SSO, with such market rates based on the quarterly forward wholesale on-peak and off-peak price multiplied by 120. Rider SBC will be subject to Commission review and reconciliation on a quarterly basis to ensure that it reflects the Companies' actual prudently incurred costs.

PUCO also accepted Staff's recommendation to remove a proposed one-year minimum stay for residential and small commercial customers that return from competitive supply to the SSO.

FirstEnergy's proposal to recover non-distribution uncollectibles (such as generation uncollectibles) via a nonbypassable surcharge (Rider NDU) was rejected, since competitive suppliers have uncollectibles of their own that they must face. Rider NDU must therefore be avoidable for shopping customers. Nonbypassable Rider PUR, to recover incremental uncollectible expenses associated with percentage of income payment plan (PIPP) customers, was approved, though initially will be set at $0/kWh. PUCO will require FirstEnergy to demonstrate that it actively pursues collection of unpaid balances and that its collection mechanisms effectively mitigate the volume of uncollectibles.

Over protests from competitive suppliers, PUCO approved nonbypassable charges to recover deferred incremental transmission/ancillary service (Rider DTC) costs, and deferred fuel costs from the Rate Stabilization Plan (Rider DFC). Rider DTC would commence either Jan. 1, 2009, or the date PUCO rules on FirstEnergy's distribution case, and, as proposed, would expire December 31, 2010. PUCO reduced the fuel costs to be recovered by FirstEnergy by $9 million to $197 million.

FirstEnergy's proposal to waive further regulatory transition charges (RTCs) and extended RTCs for Cleveland Electric Illuminating customers, which would otherwise continue through 2010, was approved. Residential customers will stop receiving transition rate credits under the plan.

Avoidable Rider CCA (Capacity Cost Adjustment) was approved, which accounts for capacity purchases during the summer months in order to meet applicable planning reserve margin requirements. However, since FirstEnergy is required to obtain sufficient annual planning reserves based only upon its firm load and not its interruptible load, Rider CCA can only be applied to firm customers, and not charged to interruptible load.

PUCO ordered that FirstEnergy Solutions' commitment to provide 1,000 MW of new or additional capacity should be removed from the ESP.

The Commission approved Rider FCA to recover the costs of fuel in 2011 above the level of fuel costs incurred in 2010, in light of the significant reductions ordered by the Commission to the proposed base generation rates. FirstEnergy was directed to file a fully documented forecast of fuel costs for 2011 within 90 days of the order.

PUCO rejected the fuel transportation portion of the Fuel Transportation Surcharge, Environmental Control, and New Taxes Rider (Rider FTE), as Staff said no specific fuel transportation forecast or analysis had been provided by FirstEnergy. With regard to the new alternative/renewable-type requirements (other than those required in SB 221), new taxes, and new environmental laws or interpretations of existing laws recovered via Rider FTE, PUCO held that the rider should be funded at $0, and that FirstEnergy may file a request for recovery to the extent that such costs are above the baseline $50 million during the ESP.

The costs of compliance for the renewable energy requirements under SB 221 are included in the modified base generation rates.

The Commission will allow FirstEnergy to continue to offer an optional green tariff, specifying that RECs under the program must meet the "green-e" definition.

The Commission removed Rider RAR from the ESP concerning Reasonable Arrangements (below-tariff rates to retain industrial customers), since Chapter 4901:1-38, O.A.C. addresses Reasonable Arrangements. PUCO declined to grant FirstEnergy's proposal to recover 100% of delta revenues (the difference between the tariffed rate and special contracts) from customers, though there may be justification for raising the ratepayer contribution above the current 50%, which will be determined on a case-by-case basis.

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The credit and collections rate would be further adjusted annually on January 1 to reconcile the difference between the annual rate and actual expenses. SCMC claimed that such reconciliation makes ESCOs liable for the actual revenues received by the LDCs, thereby creating a "with recourse" program.

In Grid's view, a recourse agreement would allow Grid to assess particular ESCOs costs that could not be recouped from their customers after National Grid purchased the ESCO receivables and attempted and failed to collect those receivables from the ESCO customers. "No such rights are created under the BSA," Grid insisted.

Instead, each year the rates associated with credit and collections expense are adjusted upward or downward to reflect the prospective year's Commission-approved forecast of total credit and collections expense plus the impact of the prior year's reconciliation. The rates resulting from the application of this methodology are assessed prospectively and uniformly to all ESCOs (as well as to the LDCs' sales customers through their respective Merchant Function Charges), Grid said. "There is no assessment to any ESCO of specific costs associated with a prior period over or under recovery," Grid stressed.

The end result of the rate methodology is that the LDCs recover no more and no less than their actual credit and collections expense, Grid maintained. "There is no aspect of the operation of the C&C expense ratemaking methodology that allows for retroactive adjustment of the charges paid by ESCOs or creates a recourse obligation on their part," Grid said.

Grid also argued SCMC's concerns about what SCMC considers to be high collections costs should be dismissed since the issue was not brought up in earlier proceedings which culminated with a December 2007 order approving such expenses.