Energy Choice Matters

December 24, 2008

PSC Maintains Cost-based Choice Delivery Rates at Detroit Edison, Sets Rescission Period at 14 Days

Choice customers at Detroit Edison will continue to be exempt from paying for the residential rate subsidy, while the rescission period was upped to 14 days, under a Michigan PSC order in Detroit Edison's rate case (U-15244).

Although Detroit Edison petitioned to impose a charge to fund the residential subsidy on Choice customers' distribution rates, the PSC rejected the proposal, as it did in Consumers Energy's rate case earlier this year. Choice distribution charges should remain cost based, the Commission held, noting that adding a subsidy charge to retail access rates would be a step backwards.

The PSC moved to deskew the current 20% residential subsidy for full service customers, starting with an immediate residential rate increase attributable to the realignment of 5.4%, which will have the effect of realigning rates by approximately 38.5%. After January 1, 2009, the Commission will continue the rate realignment effort through an annual 1.7% realignment on October 1 of each year, beginning October 1, 2009, and lasting through 2013. The realignment will be spread among all residential customers, as the Commission was not persuaded that seniors, regardless of income, should be exempt from the realignment, as suggested by AARP.

The Commission accepted Staff's recommendation to extend the rescission period at Detroit Edison to 14 days instead of the current three days (Matters, 7/17/08). The current three-day cancellation period is too short, the Commission said, noting that during the 14-day rescission period, competitive suppliers are unlikely to have irrevocably committed to fuel purchases that will harm the

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Md. PSC Staff Would Have Independent Curtailment Providers Act as Resource Bidders Under Gap RFP

Independent curtailment service providers and not the utilities would function as resource bidders under Maryland's reliability gap RFP, under a draft RFP and Model Agreement for Capacity Rights submitted by Staff (Case 9149). While the draft took stakeholder comments into consideration, it is not a consensus document, and the PSC is accepting comments on the draft through January 5.

In November, the PSC ordered the gap RFPs to prevent forecast reliability shortfalls in 2011-12 if certain transmission projects are delayed (Matters, 11/7/08).

Chief among Staff's changes to the Commission's template RFP is that the utility would not function as the curtailment service provider for resources under the RFP. Rather, non-utility curtailment service providers or individual customers will be the resource bidders, and service agreements will be between curtailment service providers and utilities. This approach avoids duplicating many PJM functions, simplifies bid review, and avoids putting utilities in direct competition with curtailment service providers who are already operating or anticipate operating (perhaps as a result of the RFP) in Maryland, Staff said.

Staff's gap RFP and Agreement relies upon PJM's existing project qualification; performance verification; credit and collateral; settlement; data exchange; and enforcement and penalty provisions for demand response resources. By implication, this approach also relies on the curtailment service provider's experience and expertise in aggregating individual commercial and industrial customer demand response resources.

"Because the timeframe is very tight for this process and because the utilities have limited or no

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FirstEnergy EDCs to Implement New Distribution Rates Absent PUCO Order

The FirstEnergy Ohio utilities have informed PUCO that they intend to exercise their right under Section 4909.42 of the Revised Code to implement various new distribution rates and tariffs effective January 15, 2009, absent a PUCO order on the pending case (07-552-EL-AIR).

The rate case was filed June 7, 2007, and, as of December 3, 2008, 545 days had elapsed since the filing of the application. Under the revised code, utilities may implement filed rates after 545 days of PUCO inaction, without the rates being subject to refund.

While the rates mostly impact distribution service, there is some overlap with generation supply, given the nature of the Ohio market.

For example, under FirstEnergy's application, the utilities would collect deferred fuel costs from the Rate Stabilization Plan from all customers via a nonbypassable fuel rider, a mechanism opposed by marketers during the proceeding.

FirstEnergy had also proposed a distribution credit as part of the application, but was silent as to whether the credit is applicable to shopping customers. Although in testimony FirstEnergy agreed the credit should be applicable to all customers, including shoppers, it remains to be seen whether this position would be adopted in implementing the new rates absent a PUCO order affirming such a rate design.

Meanwhile, with respect to FirstEnergy’s withdrawal of its Electric Security Plan and the interim continuation of current rates (Matters, 12/23/08), the Ohio Consumers’ Counsel filed at PUCO to remove regulatory transition charges from the interim 2009 rates at Ohio Edison and Toledo Edison, since FirstEnergy has fully recovered such costs for those two EDCs, OCC said. Cleveland Electric Illuminating regulatory transition charges would remain as they will not be recovered until 2010.

FERC Approves Removal of FCM Gross-Up Margin in ISO-NE

FERC approved ISO New England's proposal to eliminate the reserve margin gross-up that is applied to the capacity value of demand resources in the Forward Capacity Market, because the gross-up can lead to under-procurement of resources in the Forward Capacity Auction (ER09-209).

With the order, ISO-NE will change certain Market Rule I provisions to eliminate the reserve margin gross-up starting with the 2012/2013 capacity commitment period, which is associated with the October 2009 Forward Capacity Auction (Matters, 12/1/08, 11/24/08).

The reserve margin gross-up is the practice of increasing the demand reduction value of demand resources by a reserve-margin factor as part of a demand resource's participation in the Forward Capacity Market. The reserve-margin factor represents the Installed Capacity Requirement (ICR) for the New England region divided by the expected system peak load for the region. At present, the reserve-margin factor is approximately 1.15 or 15% above system peak load. In other words, a reserve margin gross-up of 15% would result in a demand resource with a demand reduction value of 1.00 MW receiving a capacity credit of 1.15 MW. The reserve margin gross-up is intended to reflect the amount of extra system capacity (or reserves) that would not be needed if the system peak load could be reduced with certainty by a perfectly available resource.

However, ISO-NE reported that the system benefit associated with highly (or perfectly) available resources is already reflected in the manner in which New England's capacity needs, or Installed Capacity Requirement, is calculated pursuant to Section 12 of Market Rule I. Thus, application of a reserve margin gross-up to the capacity value of demand resources results in the under-procurement of the Installed Capacity Requirement in the Forward Capacity Auction.

Parties protesting the change, including EnerNOC and Ameresco, failed to provide any evidence that under-procurement would not result from the gross-up, FERC ruled.

While EnerNOC said eliminating the gross-up would be contrary to the Forward Capacity Market settlement, the Commission said it cannot ignore the "significant" concern that the gross-up could under-procure capacity, just because the gross-up was negotiated as part of a complex settlement.

FERC agreed that applying the gross-up only to demand resources ignores other resources with similar availability characteristics, and found that eliminating the gross-up is not discriminatory.

Briefly:

FERC Approves FirstEnergy Waiver for Ohio EDC Sales

FERC accepted market-based rate tariff amendments filed by FirstEnergy Solutions, FirstEnergy Generation Corporation, and other FirstEnergy competitive entities, and approved a waiver allowing the entities to sell energy and capacity to FirstEnergy affiliated utilities in Ohio without prior Commission approval. In doing so, FERC rejected protests from NOPEC and the Ohio Consumers' Counsel, who argued FirstEnergy Ohio utility customers are captive due to the lack of effective choice in the service areas (Matters, 11/14/08). The Commission reiterated its prior finding that the definition of "captive customers" does not include those customers who have retail choice, and that the Commission will not evaluate the success or failure of a state's retail choice program, leaving such matters to the states.

Olin to Relinquish Illinois ARES License

Olin Resources, which holds an Illinois alternative retail electric supplier license to serve its parent Olin (a brass manufacturer), petitioned the ICC to withdraw its license, stating it does not currently serve parent Olin.

PUCT Accepting Comments on Nodal Cost-Benefit Analysis

The PUCT is accepting comments through January 7 on the updated ERCOT nodal market cost-benefit analysis in Project No. 31600 (Matters, 12/19/08). The analysis found that the savings to consumers are estimated to be approximately $5.6 billion over the first ten years of operation of the nodal market, more than twenty times the projected nodal cost.

National Grid Asks for Extension on KeySpan Billing System Report

National Grid asked the New York PSC to extend the deadline for a report on replacing or integrating the KeySpan LDCs' billing systems, as directed by a December 2007 order, until April 1, 2009. National Grid said it is evaluating the use of a global, corporate-wide platform for financial systems, and whether a new customer billing system in the U.S. should be integrated into that global platform. "At this point, it would be premature to have discussions or to prepare a report concerning the future plans for the billing systems of the former KeySpan utilities, as there is some uncertainty as to what the ultimate strategy for the replacement or integration of the billing systems will be," Grid said. The PSC's 2007 order contained a January 1, 2009 due date for the report.

Michigan PSC Adopts Rate Case Standards

The Michigan PSC declined to adopt specific language directing utilities to file cost of service studies for each customer class, and to use a 50/25/25 allocation method, as part of new standard rate case filing requirements (U-15895). Constellation NewEnergy had suggested the requirements, but the PSC said this year's Act 286 (which also capped choice at 10%) addresses the allocation method and cost of service study requirements. While CNE asked that rate case filings include annual sales data in million kilowatt-hours (kWh) for residential, small and large commercial, choice, industrial, and other customers from the period from 2000 to the present, the Commission rejected the suggestion, noting utilities have offered to include in their filings actual sales data for the previous five years, both by volumes and customers, and by customer class/rate schedule. The PSC also declined to adopt CNE's recommendation that Detroit Edison and Consumers Energy standardize pagination, nomenclature and language among their tariffs, as the PSC found that the size of each utility's tariff offerings make it impractical to use the same names and numbers for each tariff.

Rules for Michigan Generation Certificates, IRPs Issued

The Michigan PSC issued rules for utilities to follow when applying for certificates of necessity in building new generation or entering into long-term PPAs. The Commission also issued standards for integrated resource plans to be developed by the utilities. The rules were filed in Case U-15896

Detroit Edison Seeks RECs

Detroit Edison has issued an RFP to purchase

Michigan-based renewable energy credits to help meet state renewable requirements. Michigan law set the RPS at 10% by the year 2015.

Sempra, DCP Midstream Settle Capacity Release Violations with FERC

FERC approved a settlement with Sempra Energy Trading resolving self-reported violations of FERC's shipper-must-have-title requirement, under which Sempra Energy Trading will pay a civil penalty of $400,000 and disgorge $7,959, plus interest, in unjust profits. The violations occurred on two interstate pipelines and involved transportation of approximately 50.6 Bcf of natural gas from September 2004 through October 2007. FERC also approved a settlement to resolve shipper-must-have-title violations by DCP Midstream. DCP Midstream will pay a civil penalty of $360,000 to resolve the violations which involved the transportation of approximately 61.5 Bcf of natural gas from January 2005 through December 2007.

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supplier's bottom line.

Competitive suppliers will also be required to submit all residential contracts and marketing materials for Staff review at least five days prior to their use, though Staff approval is not required. The review will allow Staff and suppliers to be forewarned about areas of concern in the materials and potential sources of complaints, the PSC said.

While the PSC stands ready to provide information on choice to residential customers, it declined marketers' request to institute a new education program at this time, citing Act 286's deletion of the former Section 10r(2) of 2000 PA 141, which addressed the adoption of an education program.

A purchase of receivables program, which may be an "interesting and useful option to explore in the future," is also unwarranted currently, the PSC said, given the low levels of choice sales.

Return to utility service provisions for C&I customers will remain the same, meaning returning customers not electing a Detroit Edison tariff will default to a market rate with no minimum stay. Detroit Ed had petitioned to change the default return to service rate to the current standard rate applicable to full service customers, with a 12-month minimum stay. Customers wishing to leave Detroit Ed again during the minimum stay would have been backbilled for the otherwise applicable market rates.

The Commission agreed that such backbilling would come as a surprise to many customers, and thus customers should default to the market-based rate with no minimum stay upon return to Detroit Edison, with the option of choosing the standard rate with a 12-month minimum stay. Residential customers will not be subject to the December 1 notice provision regarding choice.

The Commission held that Detroit Edison is not able to recover marketing and administration expenses from its optional GreenCurrents tariff from customers who do not participate in the program. The PSC further denied recovery of a total of $1.2 million in marketing and administration expenses from participating customers because Detroit Edison failed to show how administrative, operations, and management costs are segregated from the cost of buying RECs.

Staff's proposal for Detroit Edison to offer long-term, fixed price renewable contracts to customers (instead of the REC program where customers still pay the otherwise applicable Detroit Ed supply rate) was denied, as the Commission noted Act 295 rendered Staff's changes moot, given the Act's new renewable mandates.

Assigning a greater share of Detroit Edison general and intangible (G&I) investments to bypassable supply costs, rather than nonbypassable distribution rates, was rejected. However, the PSC did agree that Detroit Edison's general and intangible study is aging, and ordered the utility to complete a new direct assignment study to functionalize G&I plant for its next rate case. The PSC also declined to assign any costs related to customer accounts, customer service and information, and sales expenses to supply. "These expenses are all related to customer service and customer contact and distribution is where they belong," the PSC said.

However, the Commission did agree a

greater share of administrative and general (A&G) expenses (which contain many solely labor-related costs) should be assessed to supply, rather than distribution. The Commission agreed with Energy Michigan that 56% of A&G costs should be assigned to supply, rather than the approximately 30% proposed by Detroit Edison.

Detroit Edison will be permitted to continue offering special contracts, the PSC held, over objections from Constellation NewEnergy. Discounted economic development riders will also continue, since, "it is essential to make the economic development rider as attractive as possible," given Michigan's economic climate, the PSC said. Constellation NewEnergy had argued the economic development riders violated the new cost-of-service rate requirements in Act 286. New rates for educational institutions will be set in a separate proceeding that will be filed by Detroit Edison in January 2009.

Detroit Edison will create balancing and energy delivery requirements for competitive suppliers that are fully transparent, and will use the same load profiles for competitive supply that it uses for estimating its own residential usage.

The Commission ruled that the Choice Incentive Mechanism should remain despite the 10% cap on retail choice, as volatility in the choice market still exists. The Choice Incentive Mechanism continues to act as an incentive for Detroit Ed to reduce costs in the event that the level of choice sales changes, the PSC said. The Choice Incentive Mechanism will now include a sharing mechanism for declines in sales, with the current rate cap on non-fuel power supply revenue removed, and reconciliations on an annual basis reinstated, beginning January 1, 2009.

The PSC accepted Staff's downward revision to Detroit Edison's projection of Choice sales. Staff proposed to reduce forecast Choice sales by 568.8 GWh and to increase bundled sales by the same amount. The downward adjustment prevents the need to increase Detroit Ed C&I rates by $44.8 million to account for an otherwise projected revenue deficiency.

Detroit Edison shall include testimony in its next general rate case for one or more proposals for rate decoupling. Given the somewhat bundled nature of Detroit Edison rates, and its ownership of generation, decoupling at Detroit Edison may impact retail marketing to a greater extent than in other jurisdictions where it is solely limited to the distribution side of the bill and does not affect generation prices.

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recent experience in constructing portfolios of larger commercial and industrial customer demand response resources, a CSP based approach may yield more resources than an approach that required utilities to market this RFP directly to customers," Staff noted.

While the Commission template incorporated contracting for resources over a five-year period beginning in 2011 with an option for a two-year extension, there was no requirement that resources would need to be available at the start of the term or for the full term. Staff's proposal assumes that concerns about a reliability gap may be greatest in 2011 or 2012. Consequently, Staff's proposal requires resources to be available in 2011 and requires resources to be bid for at least three consecutive years thereafter. As a potential incentive for longer-term projects (for example for new distributed generation), the proposed RFP limits the two-year extension option to projects that bid the full five-year term. "These provisions target the most critical years for a potential reliability gap while retaining the opportunity to 'lock in' new economical demand response resources for up to seven years," Staff said.

The Commission's template provided the option for resources to bid into the RPM auction or to participate in PJM's Interruptible Load for Reliability (ILR) program. Staff's proposal requires the curtailment service provider to bid all resources contracted under the gap RFP into the 2012-2013 RPM auction and every RPM auction thereafter for the term of the agreement. "The requirement to bid into RPM adds significantly greater assurance that the resource will actually be available as contracted, and captures the potential capacity price mitigation and related reliability planning benefits of having additional demand response resources committed in RPM," Staff explained.

Staff's Agreement would employ a contract for differences approach, based on the RPM price. If the RPM price is greater than the RFP price, demand resources would pay the utility revenue above the RFP price. If the RPM price is below the RFP price, the utility will pay the demand resource the difference between the prices.

Staff's proposed RFP requires bidders to bid the same fixed MW level of retail level load reductions for all proposed contract years, to avoid "ramping up" of supply in later years where the gap may be smaller. The decision on how much, if any, capacity each utility will contract for rests entirely with the Commission. It is likely that utilities will want to resolve cost recovery from ratepayers in connection with the PSC's procurement decision, Staff said.

The RFPs must be issued by January 16 in order to have resources be ready for the next RPM auction.

Publication Note:

Energy Choice Matters will continue to publish every weekday during the holidays.