Energy Choice Matters
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# NYISO Says NYSEG's Requested Market Rebilling Could Harm ESCOs

FERC should deny a request from NYSEG to rebill the New York ISO market to the tune of $20 million due to decades-long metering errors because, among other reasons, rebilling could negatively harm ESCOs, NYISO said in comments at FERC.

The metering errors, discovered only recently, have resulted in a "windfall" of $20 million to National Grid in the same amount, NYSEG has said, and involve interchange points between NYSEG's and National Grid's transmission facilities (Matters, 12/31/08). About 85% of the measurement errors and nearly 70% of the overbilling are attributable to NYSEG errors; the balance are due to National Grid (NiMo) errors.

NYSEG sought a FERC order directing NYISO to rebill the incorrect amounts, as the errors were discovered beyond the normal time limits for invoice adjustments in the NYISO tariff.

NYISO told FERC it is, "concerned that Commission action could inadvertently harm the energy service companies ('ESCOs') in National Grid's service territory."

"These ESCOs were not involved in any way with the metering errors underlying NYSEG's petition; however, depending upon the disposition of NYSEG's petition, they might be required to bear unexpected costs related to invoices finalized years ago," the ISO explained.

National Grid reported that the amounts in dispute attributable to ESCOs or other LSEs in its service area range from 30% to 90% during various hours during the 10-year period at issue.

Furthermore, over the 10 years at issue, certain ESCOs have ceased operating in National Grid's service territory and others have begun. Several ESCOs might, therefore, be apportioned costs that

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# PUCO Says FirstEnergy FERC Affiliate Waiver Inappropriate Under New Circumstances

FERC's approval of a waiver which allows FirstEnergy Solutions and other merchant affiliates to sell energy and capacity to FirstEnergy affiliated utilities in Ohio without prior FERC approval has created a "regulatory gap which effectively allows the FirstEnergy Affiliates to evade state or federal regulatory scrutiny," NOPEC said in a rehearing request at the federal commission (ER09-134).

FERC granted the waiver since the FirstEnergy Ohio utilities have no captive customers, due to the existence of retail choice. NOPEC and consumer groups had challenged that premise, given the lack of competitive offers for mass market customers in the territories, but FERC said it would not judge the efficacy of state retail choice policies (Matters, 12/24/08).

However, a new wrinkle has been added to the case after the FirstEnergy Ohio utilities withdrew their electric security plan, and obtained interim default service supply needs through an RFP conducted outside of PUCO's prior review. The changed circumstance led PUCO, which originally supported a limited waiver, to join in rehearing requests opposing FERC's approval of the affiliate transaction waiver.

PUCO said it originally supported a limited waiver to allow FirstEnergy to quickly obtain needed supplies under its approved electric security plan. Despite the waiver, Ohio customers remained protected against affiliate abuse because rates were set by PUCO in the electric security plan, PUCO said.

However, since FirstEnergy has opted to withdraw the plan, PUCO's ability to protect customers

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## Direct Says More Info Needed on NU, Nstar Quebec Line

FERC should require Nstar and Northeast Utilities to provide more information regarding a proposed participant-funded transmission line which would access cheap hydropower from Quebec, in order for the line's impact on competition to be evaluated, Direct Energy Services said in a filing at FERC (EL09-20).

Nstar and Northeast Utilities would construct the 1,200-MW line to support a long-term PPA with H. Q. Energy Services. The utilities, "intend that the power sold under the PPA will be made broadly available to load in New England, which would include customers of investor-owned and publicly-owned distribution utilities." The mechanism by which power would be made available to load is still under consideration, the utilities said in their initial FERC filing (Matters, 12/16/08).

The uncertainty regarding how the energy and capacity procured and transmitted over the proposed transmission line will ultimately be sold raises potential competitive impacts in the ISO New England footprint, Direct told FERC. "Petitioners should be required to supplement their filing to provide detailed information addressing this concern," Direct said.

Furthermore, the utilities have asked FERC to exempt them from the general requirements of Order No. 890, but Direct argued the request has not been fully justified. "Given the potentially anticompetitive outcome of the proposed transaction," the utilities should explain why they cannot comply with Order 890, Direct said.

## Pa. PUC Approves UGI Default Service Rate Design

The Pennsylvania PUC adopted a settlement which sets UGI Utilities' rate design for default service and approves its alternative energy portfolio compliance plan, as Chairman James Cawley argued more costs should be moved from distribution to generation rates. The rate design and portfolio standards were bifurcated from an earlier proceeding which approved UGI's procurement method of default service supplies.

While the types of costs allocated to default service in the approved settlement are, "a step in the right direction," Cawley noted that such costs include only incremental default service costs not already included in base delivery rates. While appreciating the need not to double collect such costs from customers prior to the effectiveness of rates from the next base rate case, Cawley urged that a more rigorous examination of costs should be undertaken to include all default service costs in default service rates, not just new incremental costs, as part of UGI's next rate case.

For example, bad debt expense associated with default service was not assigned to default service customers in the rate design proceeding. "Unless utilities purchased all uncollectible amounts of all customers (regardless of shopping status), this is clearly inequitable in the long run," Cawley said, stressing that such inequities must be corrected in the next base rate case proceeding.

Under the settlement approved by the PUC, UGI's Price-To-Compare will include base transmission rates set forth in UGI's tariff. The price to compare will now include the Electric Energy Charge (EEC), an over/under collection component (Electric Cost Adjustment or ECA), an alternative energy cost charge (AECC), and the applicable base transmission rate. The settlement also removes the $5.00 charge for processing switching requests (which began with the third switch).

In response to earlier questions from Cawley, UGI said in its rate design filing that it currently publishes the required Peak Load Contribution data for customers that have not elected to restrict the release of such information. Competitive suppliers that have signed a confidentiality agreement with UGI are given a password to access a website with the data, and the data is updated quarterly.

Cawley interpreted UGI's explanation as a commitment by UGI that it will provide the requisite Peak Load Contribution information. Cawley expects that UGI will provide Peak Load Contribution data in the customer list information, similar to Duquesne Light Company's use of the post-rate cap customer eligibility list. As for customers who choose to restrict their information on this list, Cawley expects that UGI will provide such information in the statewide, standard EDI historical data 867HU transaction.

UGI will procure alternative energy resources using an RFP process which generally splits procurement evenly between the fall and spring immediately prior to June 1 of the delivery year. However, to stimulate the development of Tier 1 solar photovoltaic and other Tier 1 sources, UGI reserved the right to solicit contracts of up to ten years in length through an RFP process for the following requirements for residential customers: (1) Tier 1 - 3,000 MWh annually; and (2) Solar - 50 MWh for the 2011 reporting year and increasing by 50 MWh each reporting year thereafter through May 2014.

## Exelon Earnings Grow on Merchant Margins

Exelon quarterly earnings increased 26% for the fourth quarter of 2008 from higher energy margins at its merchant generation unit, largely due to increased nuclear output and lower purchased power costs. Net income on a GAAP basis was $707 million, up from $562 million a year ago.

Adjusted quarterly earnings were $709 million, up from $677 million a year ago, and exclude mark-to-market gains of $93 million in hedging activities along with several charges related to various settlements. Full-year 2008 consolidated earnings were $2.737 billion on a GAAP basis, flat compared to earnings of $2.736 billion a year ago.

Exelon Generation, which includes merchant production, wholesale marketing and competitive retail sales, posted quarterly earnings of $553 million, up from $343 million last year. Fourth quarter 2008 net income included (all after tax) mark-to-market gains of $93 million from economic hedging activities before the elimination of intercompany transactions, a charge of $23 million for the costs associated with the 2007 Illinois electric rate settlement, income of $21 million associated with the resolution of tax matters related to a previous investment in Sithe Energies, and unrealized losses of $68 million related to nuclear decommissioning trust fund investments.

Generation's average realized margin on all electric sales, including sales to affiliates and excluding trading activity, was $38.28/MWh in the fourth quarter of 2008, up from $35.70/MWh in the fourth quarter of 2007. Generation also benefited from higher forward power prices during the summer by locking in a portion of sales for the next few years

Generation's "market and retail" average realized revenue dipped to $54.18/MWh for the fourth quarter, from $54.81/MWh a year ago. Quarterly market and retail volumes dipped to 28,128 GWh from 30,395 GWh a year ago.

Exelon CEO John Rowe credited Generation's management for sticking with its hedging strategy despite $14/MMBtu gas prices earlier this year, which is benefiting Exelon now that gas has dipped under $5.

Rowe also touted Exelon's hostile bid for NRG Energy, stating the merger would create, "the kind of generation company that the market needs with the kind of national presence that the market needs and the kind of balance sheets that the market needs." Rowe added that the NRG play represents Exelon's approach in searching for future growth -- "hard-headed [and] indeed cold-blooded."

Rowe downplayed any possible regulatory battles should Illinois Lieutenant Governor Pat Quinn rise to the governorship. Although Quinn is a very "pro-regulation" kind of political figure, Rowe noted that current market prices mean ComEd will not likely have a significant increase in supply rates, and that market results will be more favorable than rates under an integrated regulated structure.

## *Briefly:*

### Gexa Receives Pa. Electric License

The Pennsylvania PUC approved Gexa Energy's application to be licensed as an electric generation supplier. Gexa intends to serve commercial, industrial and governmental customers. Commissioner Robert Powelson stated that it is "essential" that Pennsylvania attract new suppliers in order to meet growing energy demand and ensure a, "successful, thriving and competitive marketplace." Gexa's market entry represents, "a prime example that we hope will continue to be followed by other companies contemplating entrance into the Pennsylvania marketplace," Powelson said.

### TCS Energy to be Led by Brian Young

Start-up REP TCS Energy, which applied for a

REP certificate last week (Matters, 1/15/09), will be led by Brian Young, amendments to the REP's application show. Young has served as vice president of prepaid marketer Young Energy, which sold its book to dPi Energy in the spring, but maintained its REP certificate. Young also previously worked for a Texas competitive local exchange carrier. Steven Malkiewicz, who founded market consultant St. Clair Energy, will serve as COO and a supply, risk management and operational consultant for TCS Energy. Malkiewicz has helped establish, finance and build several REPs in Texas and other markets.

**DaCott Energy Management Expands to ERCOT**

Consultant DaCott Energy Management is expanding into the ERCOT market, to be led by former Gexa senior management veterans Michael Gilbert and Kris Culpepper. DaCott specializes in risk management, market analysis, financial analysis, strategic planning and implementation, and asset operation and optimization. Gilbert most recently served as senior director, commercial sales at Gexa, while Culpepper was director, commercial sales, at Gexa.

**ERCOT Reports Reserve Fund Status**

ERCOT has received an additional distribution of $86.9 million from The Reserve's U.S. Government Fund, it reported yesterday. About 5% - or $10 million - of ERCOT's original investment with the money-market investment management company is still outstanding. ERCOT expects to receive approximately $3 million of the remaining funds in March or April, but cautioned that all remaining funds are subject to litigation and expected to take longer to resolve.

**NRG Expects Lower Earnings**

NRG Energy said yesterday it expects lower 2008 earnings before interest, taxes, depreciation and amortization of $2.29 billion, down from a previous projection of $2.4 billion. NRG blamed the reduced results on several factors, including the impact of incorrectly increasing guidance for the non-cash effects of energy option revenues.

**Maine PUC Sets ISO-NE Case Conference**

The Maine PUC set a case conference regarding the "reform option" in docket 2008-156, the PUC's investigation of participation in ISO New England, for February 4. Under the reform option, Central Maine Power and Bangor Hydro-Electric are to pursue changes to ISO-NE transmission cost allocation policy, among other things (Matters, 1/9/09).

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are not in any way attributable to them, NYISO cautioned.

Additionally, NYISO customers rely on the financial certainty afforded by finalized metering data, NYISO reported. The NYISO tariffs establish specific time periods for reviewing and challenging metering data, and NYISO argued that customers are obligated to thoroughly review their metering data during these time periods, after which time such data is finalized.

"A Commission order requiring the NYISO to re-bill NYISO customers approximately $21 million for certain charges that were previously finalized over a one hundred month period dating back nearly ten years to the NYISO's inception would upset the long-settled financial expectations of these NYISO customers and would be clearly inconsistent with the intent of the NYISO's settlement provisions to provide customers with financial certainty," NYISO said.

National Grid agreed that allowing the rebilling would make the NYISO rules for the finality of customer invoices, "meaningless."

Both NYISO and National Grid contrasted NYSEG's petition with a rebilling granted by FERC in 2008 due to errors discovered by National Grid (Matters, 7/1/08). In Grid's case, the errors were introduced late in the billing process, during a time customers were only reviewing invoices to check that a previous, separate error had been corrected. Thus, the late introduction of the Grid error, the shortened timeframe for review, and the fact customers' attention was focused on specific, corrected data, qualified the scenario as an "extraordinary circumstance" under which rebilling should have been permitted, NYISO and Grid said.

But an order by the Commission requiring the NYISO to rebill NYSEG and National Grid for erroneous billing charges that resulted from their own metering errors that persisted for years, "will only act as a disincentive to the NYISO's on-going efforts to promote necessary metering improvements by indicating to Transmission Owners that they will not suffer financial consequences for failing to properly maintain and support their metering infrastructure," NYISO added.

NYISO has identified instrument transformers at 153 locations and meters and communication infrastructure at 139 locations that still do not meet the minimum standards established in the Revenue Metering Requirements Manual.

"The problematic state of the wholesale metering infrastructure in New York at this time creates significant delays in the finalization of settlements for NYISO customers, which results in market inefficiencies and unnecessary increases in customer costs," NYISO said. Holding transmission owners responsible for errors after the dispute period for invoices has expired will encourage transmission owners to upgrade their metering equipment and to diligently review invoices, NYISO noted.

Due to a pattern of metering errors in the market, the New York Municipal Power Agency (NYMPA) and the Municipal Electric Utilities Association of New York requested that FERC direct the NYISO to work with transmission owners and market participants to develop a quality assurance program to make the reporting of meter data transparent and reliable.

"NYISO should no longer blindly rely on the New York Transmission Owners' ('NYTOs') ability to provide accurate billing information," the munis said, noting market participants cannot verify metering data because they have neither access to nor authority over the meters.

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has been limited. While under the electric security plan, utility purchases from FirstEnergy merchant affiliates would have required prior PUCO approval, such approval has not happened under the utilities' procurement for interim supply needs through March 31, 2009. Not only did the utilities make purchases without the prior approval of PUCO, "it appears that the transaction or transactions occurred outside of any sort of market which might act as a check on self-dealing," PUCO told FERC. As FirstEnergy will be obtaining power going forward through competitive bidding, normal FERC rules and review should apply, PUCO said.

Under the waiver, the FirstEnergy utilities are able to enter into affiliate transactions without prior review of the PUCO, NOPEC noted. "The existence of this regulatory gap creates a serious risk that, with no federal or state oversight, affiliate transactions become the vehicle for the FirstEnergy Utilities to 'transfer benefits to [their] affiliate[s] and [their] stockholders to the detriment of the captive customers,'" NOPEC claimed.