Energy Choice Matters
February 4, 2009

Integrys Marketer Files FERC Complaint Against New Brunswick Power Generation Over NMISA MBRs

Integrys Energy Services filed a complaint against New Brunswick Power Generation Corp. at FERC, claiming that New Brunswick Power Generation has not shown that it lacks market power in the Maritimes Control Area, the relevant market for entities participating in the Northern Maine Independent System Administrator (NMISA). The Integrys marketer, which competes with New Brunswick Power Generation to serve Maine Standard Offer customers and owns former utility generation in NMISA, alleged that it is harmed by New Brunswick Power Generation's market power.

FERC granted New Brunswick Power Generation market-based rate authority in October. However, Integrys Energy Services said New Brunswick Power Generation's application only included the pivotal supplier screen and market share screen for the ISO New England market, and not the Maritimes Control Area, where the NMISA resides.

New Brunswick Power Generation won via competitive RFP the right to serve residential and small and medium commercial Standard Offer retail customers at Maine Public Service, starting March 1. However, Integrys Energy Services claimed that because New Brunswick Power Generation failed to provide market power screens regarding the Maritimes market, New Brunswick Power Generation does not possess market-based rate authority for the NMISA region. By obligating itself to commence electric sales in the NMISA market on March 1, 2009, Integrys Energy Services alleged that New Brunswick Power Generation has violated its market-based rate tariff.

Integrys Energy Services argued that until New Brunswick Power Generation, which owns

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REP Financial Standards Shouldn't Be Tied to Years in Market, PUCT Staff Agrees

PUCT Staff justified establishing different methods of financial qualifications for REPs based on their credit ratings or tangible net worth, rejecting calls to eliminate a proposed waiver of liquid capital reserves for investment-grade companies, in a memo summarizing stakeholder comments to date and a preliminary Staff response (35767).

As proposed by Staff, REPs would be required to possess $3 million in liquid capital for certification, unless they have investment grade credit ratings, or $100 million in tangible net worth. Staff argued that proposed standards waiving the $3 million reserve requirement for creditworthy REPs are similar to the standards for creditworthiness that REPs will face in conducting commercial transactions with ERCOT and wholesale suppliers, where credit is extended to creditworthy REPs without collateral or with minimal collateral.

Staff did agree, however, with several REPs that objected to an original proposal to lower the $3 million requirement based upon the REP's length of operations in the market, or lack of sanctions (Matters, 12/9/08). Several REPs had argued the proposal would favor incumbent market participants over new entrants, even though a REP's length of time in the market does not lower its risk of default. Staff was persuaded that access to capital is not demonstrated by years of service or market experience, and recommended that the liquid capital requirement not include conditions based on years of service or sanctions. Staff also disagreed with suggestions that the liquid capital requirement should be based on a REP's scale of business, because REPs are already subject to ERCOT credit

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BHE to File Plan to Fill Unserved Large C&I Load, Procurement Fails to Attract Final Bids

A recent procurement for large commercial Standard Offer supplies at Bangor Hydro-Electric did not produce any final bids, prompting the Maine PUC to direct BHE to file a plan to provide standard offer service for the class, which has few customers taking the Standard Offer.

PUC Chair Sharon Reishus said that the characteristics of electricity use by the class, as well as current economic and financial conditions, may have deterred bidders.

The PUC also accepted offers and announced rates for other BHE and Central Maine Power commercial classes.

For CMP, the new medium commercial class Standard Offer prices will be on average about 7 cents per kilowatt hour (kWh), down from 12.3 cents per kWh. CMP large commercial customer rates will be about 8.6 cents/kWh, down from the previous rate of 12.9 cents/kWh.

For BHE medium non-residential customers, the new Standard Offer prices will be about 6.8 cents/kWh, down from 12.2 cents/kWh.

Rates for all of those classes take effect March 1, and last six months.

FERC Dismisses Maine Complaint on Reactive Service Capacity Cost Component

FERC denied a complaint from the Maine PUC in which the PUC alleged the combination of Forward Capacity Market transition payments and the capacity cost (CC) component of ISO New England's reactive power and voltage control service tariff resulted in double recovery of capital costs by generators.

The PUC had sought to replace the current capacity cost component of the reactive services tariff with its own capacity cost Rate Deadband proposal.

However, FERC ruled that double recovery of capital costs does not occur from capacity payments under the Forward Capacity Market settlement agreement (both during the transition and from the Forward Capacity Auctions) and capability payments for reactive service. The Commission affirmed its prior finding that the transition payments do not compensate resources for their reactive power capabilities since they are below the cost of new entry, and that reactive service is a unique service whose compensation is not covered by capacity payments, whether transition payments or auction revenues.

FERC said the PUC failed to carry its burden in showing the current rates are unjust and unreasonable, or that its capacity cost Rate Deadband proposal is a just and reasonable alternative.

Mich. PSC Denies ABATE Rehearing on Transportation Customer Efficiency Charge

The Michigan PSC denied a rehearing request from the Association Of Businesses Advocating Tariff Equity (ABATE), which had sought to eliminate an energy optimization surcharge imposed on all gas customers, including transportation-only gas customers (U-15800, Matters, 1/7/09).

ABATE had argued that statutory language exempts a primary or secondary electric customer implementing self-directed efficiency programs from any charges the customer would otherwise incur under the relevant sections of Act 295 of 2008, including charges for gas energy optimization programs. Transportation-only customers do not take commodity from the utility, and thus would not be able to use or benefit from utility conservation programs, ABATE said.

However, the PSC affirmed its earlier ruling that the statutory language is meant to only exempt electric customers from electric optimization program charges, and does not extend relief to gas customers.

"Natural gas transportation customers are not explicitly excluded from the cost recovery charges and there is no indication that the Legislature intended to create a distinction between natural gas customers that purchase natural gas commodity and those that purchase natural gas transportation only," the PSC said.

Briefly:

PUCO Staff Drafts FirstEnergy ESP With Nonbypassable Generation Components

PUCO Staff suggested a series of deferrals for various fuel and purchased power costs as part of a proposed electric security plan for FirstEnergy circulated to parties. The 2006-2007 deferred fuel recovery should be approved at a level of $197 million, collected via a nonbypassable surcharge beginning January 1, 2011 for a period of 25 years. Cleveland Electric Illuminating fuel and purchased power from January through June 2009 would be deferred until June 2011, with a nonbypassable recovery of 10 years. Generation rates would continue at current levels through May 31, 2009.

For supplies starting June 1, 2009 through May 31, 2011, Staff recommended a Competitive Bid Process (CBP) to be conducted on a slice of system, full requirements basis using a descending clock auction and no load cap. No minimum default service charge or standby charge would be included. There would be no shopping credit caps, nor rate stabilization charges starting June 1, 2009, with no minimum stay for mass market customers. The Commission “may” phase-in the resulting generation rate increase in accordance with 4928.144, Ohio Revised Code. Rate design would be as proposed by FirstEnergy in its MRO application, modified to mitigate the impact on certain classes such as schools and some industrials. Any revenue shortfall resulting from the application of the above rate design modifications shall be recovered from all customers as a nonbypassable generation rider.

PJM Files Tariff to Implement Weekly Settlement

PJM filed tariff revisions at FERC to, among other things, institute weekly settlement for approximately 95% of transaction activity, with monthly billing retained for certain services difficult to measure on a weekly basis. Under the proposal, payment for weekly invoices shall be made by noon on the third business day following the issuance of the bill. PJM's exposure will be cut from about 60 days to 20 days for most transactions under weekly billing. Measurement of Peak Market Activity for purposes of credit would be changed from two months of activity to three weeks, due to the settlement change. Due to weekly settlement, PJM also proposed to cut the unsecured credit limit to $50 million from $150 million. PJM also sought to eliminate unsecured credit allowances for the Financial Transmission Rights market, effective April 6, in time for the first 2009-10 auction.

Pa. PUC Approves Penn Power Procurement

The Pennsylvania PUC certified that the process used to determine default service rates for Penn Power residential and commercial customers was transparent and non-discriminatory, and reflected market-based prices. The competitive bidding process procured supply for commercial customers from June 1, 2009 through May 31, 2010 and for residential customer from June 1, 2009 through May 31, 2011. Suppliers winning residential load included Sempra Energy Trading, Constellation Energy Commodities Group, and FPL Energy Power Marketing, at an average bid of $74.80/MWh, conducted over four phases, one in April, May, October and January. Winning commercial suppliers were Sempra Energy Trading, American Electric Power Supply, and DTE Energy Trading at an average bid of $67.58/MWh, with supplies procured in two phases, one in mid-October and the other in mid-January.

BHE Seeks Clarification on Maine PUC ISO-NE Order

Bangor Hydro-Electric sought clarification from the Maine PUC regarding its recent order in its investigation of continued participation in ISO New England. BHE asked whether the order is considered "final," or is rather a non-appealable, interlocutory order, which BHE believes it is. Should the order be considered final, BHE would need to seek appellate review now to protect its ability to raise legal arguments regarding the order in the future.

Michigan PSC Approves Consumers GCR

The Michigan PSC approved a base gas cost recovery (GCR) factor of $8.1651 per thousand cubic feet from April 2008 to March 2009 at Consumers Energy. The PSC authorized Consumers to adjust its gas cost recovery factors quarterly, with symmetry, during the remaining months of the GCR plan year, contingent upon NYMEX futures prices increasing to a level above that which was incorporated in the calculation of the authorized GCR ceiling prices.

Michigan PSC Rolls Detroit Edison School Rates into Rate Case

The Michigan PSC deferred consideration of Detroit Edison's cost-based school rates (Matters, 2/3/09) to Edison's ongoing rate case (U-15768). In its order, the Commission also said that Edison's proposed forms of relief (interim surcharges or a regulatory asset) for the revenue deficiency that cost-based school rates would create are "extraordinary" measures. "Faced with the task of guesstimating either the amount of the possible surcharges or the amount of the regulatory asset, neither of which can be forecast with any precision due to their dependence on actual consumption data that is influenced by unpredictable factors such as weather," the Commission opted to take up the issues in the pending rate case, where such data or forecasts would be available.

Constellation Inks Agreement with Macquarie for Sale of Downstream Gas Unit, Macquarie and CNE also Pursue Supply Deal

Constellation Energy has reached a definitive agreement to sell its Houston-based downstream natural gas unit to Macquarie Group. Terms were not disclosed. The divestiture is yet another move by Constellation to reduce risk and liquidity needs. The agreement is expected to close in the second quarter of 2009. The downstream unit averages over 10 billion cubic feet per day and has approximately 130 employees. It will be integrated into Macquarie Group's existing North American gas trading business, which averages circa 3 billion cubic feet per day. In a related transaction, Constellation Energy and Macquarie Cook Energy announced that they have signed a letter of intent under which Macquarie Cook Energy would supply natural gas to retail gas supplier Constellation NewEnergy.

PSEG Power Margins Up on Higher Output, Contracted Pricing

PSEG Power, which includes PSEG's Northeast merchant units, reported operating earnings of $207 million for the fourth quarter of 2008, slightly up from $205 million a year ago. Full year operating earnings were $1.05 billion, up from $949 million a year ago, on record output and higher contracted pricing. Gross margin for 2008 improved 10% to $55 per megawatt-hour, with executives forecasting a further improvement in Power's gross margin of 3-5% during 2009. Gross margin in 2009 is to be aided by an increase in generation (from having a full year of certain uprates), and the roll-off of an under-market contract, executives said. PSEG Energy Holdings, which includes Texas merchant generation, reported an operating loss for the fourth quarter of $23 million, reversing operating earnings of $10 million for the fourth quarter of 2007. Fourth quarter results were hurt by mark-to-market losses and higher operating and maintenance expenses associated with the Texas assets. PSEG Energy Holdings' full year 2008 operating earnings were $101 million versus $123 million a year ago. Parent Public Service Enterprise Group reported fourth quarter net income of $234 million, versus $225 million a year ago.

Perryman Group Study Pegs ERCOT Generation Investment at $36.5 Billion

Wholesale competition in the ERCOT market has produced 41,000 MW of additional generation capacity over the past 10 years, an investment of some $36.5 billion (in 2008 dollars), a new study from the Perryman Group found. The total gains in business activity linked to such investment was $136.4 billion in spending, $66.1 billion in output, and 854,742 person-years of employment, the Perryman Group said. Another $5.8 billion has been spent on transmission infrastructure since 1999, encompassing almost $20.0 billion in total spending, the study said. Unlike previous Perryman Group studies, impacts from retail competition were not addressed. The Perryman Group did state, however, that, "despite the increase in gas prices, the lowest competitive rates in Texas have risen considerably less than the national average for residential customers, and wholesale prices in Texas have exhibited more favorable trends for customers than observed in most other parts of the country." Specific data was not cited.

Mich. PSC OKs Hike in Detroit Edison Securitization Charge

The Michigan PSC authorized Detroit Edison to increase its bond principal and interest securitization surcharge from 3.71 mills per kWh to 4.73 mills per kWh, and to increase its tax surcharge from 1.38 mills per kWh to 1.94 mills per kWh. The increases are effective from March 1 through Feb. 28, 2010, and are necessitated by lower than expected megawatt-hour sales during the prior period and a decrease in the forecasted megawatt-hour sales for the upcoming period.

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"significant" generation in the Maritimes Control Area, shows it does not possess market power in the Maritimes Control Area, it should be prohibited from chagrining market-based rates in the NMISA region. New Brunswick Power Generation and its affiliates own 16 plants with an aggregate capacity of nearly 3,900 MW in the Maritimes Control Area, Integrys Energy Services said.

"NBP Generation has affected adversely the entire SOS auction process for the Maine Public Service Company territory," Integrys Energy Services claimed. The Integrys marketer won the right to serve the load of the large commercial class at MPS.

Integrys Energy Services also cautioned that procedures for customers seeking to use the MEPCO Reservation of New Brunswick Transmission's tariff require a potential customer to disclose to its competitor New Brunswick Power Generation a viable business plan and other financial and competitive details. Such an arrangement cannot meet Commission open access requirements, Integrys Energy Services said. The MEPCO Reservation is 188 MW of transmission representing the only capacity on the New Brunswick-to-Maine Electric Power Company line not subject to firm contracts with a party not affiliated with New Brunswick Transmission.

The Integrys marketer attempted to resolve its concerns via FERC's enforcement hotline, but was told its arguments amounted to a collateral attack on New Brunswick Power Generation's market-based rate authority.

REP Credit ... from 1

requirements and to counterparty credit requirements relating to bilateral wholesale power arrangements that are based on load.

Based on these conclusions, Staff recommended that the Commission adopt an initial liquid capital level of $3 million for market entry, which is an amount that Staff believes is sufficient to fund and support the REP until the REP has sufficient revenue to fund its operations and growth internally. After the REP reports revenue from the sale of electricity in excess of an amount determined by the Commission (for which Staff did not provide a suggestion), the REP's liquid capital requirement would be reduced to $1 million. When combined with the REP's ability to generate revenue, the $1 million liquid capital requirement should be sufficient to provide the liquidity needed to meet changes in market conditions, Staff said.

Additionally, Staff recommended that the Commission allow a REP to fall below the $1 million ongoing reserve requirement upon notice by affidavit to the Commission. However, the REP would be prohibited from contracting for new customers and would be removed from the Power to Choose website under such circumstances until the deficiency is cured. The provision, though, would at least provide REPs an opportunity to correct the deficiency, perhaps six months, before being forced to begin an orderly exit from the market, Staff noted.

The Commission should consider whether liquid capital available from credit arrangements with a wholesale supplier could be used to satisfy the ongoing reserve requirement, Staff said. If such an approach is deemed viable, Staff recommended that the requirement be demonstrated by a guaranty agreement or letter of credit from the wholesale supplier for not less than the required $1 million.

Staff was also unpersuaded to change its proposal which would establish different customer deposit protection measures for investment grade REPs, by allowing such REPs to keep deposits in a restricted cash account, rather than an escrow account. Investment grade REPs have greater access to capital and a lower probability of default, Staff argued.

Other REPs would be required to hold customer deposits in an escrow account, which

Staff considers a cost-effective approach. The use of an escrow account may add costs, but the decision to collect customer deposits is voluntary, Staff pointed out.

TDUs should not be allowed to collect deposits from REPs aside from the current provisions allowing deposits when a REP defaults on payments, Staff added.

Staff recommended retaining its proposal to require REPs to file quarterly financial reports with the Commission. All REPs should be preparing financial statements now, as a best practice, and should have no difficulty in providing financial statements to the Commission, Staff said.

"The prospect, raised in the comments, that some REPs do not prepare financial statements to assess the health of their business and to support management decisions is alarming," Staff noted. Staff found it difficult to conceive that investors in a business operating in the retail electric sector would dispense with frequent reporting on the results of the REP's business operations and financial condition, and characterized financial reporting as a prudent cost of doing business.