Energy Choice Matters

March 9, 2009

NYSEG, RG&E to End Fixed Price Option at End of 2009

NYSEG and Rochester Gas and Electric will not offer the Fixed Priced Option in 2010, the utilities said in a filing with the New York PSC. The PSC had ordered the companies to make a renewal filing if they intended to continue the fixed product (Matters, 1/21/09).

Noting that the PSC has characterized the fixed-priced utility offering as a transitional mechanism, NYSEG and RG&E will discontinue the FPO as of December 31, 2009. The companies will only offer a variable, market-based supply service to customers starting January 1, 2010.

With the change, NYSEG and RG&E said that costs and collections from customers must be properly aligned, in petitioning to make the supply charge and nonbypassable wires charges (NBC) fully reconcilable on a monthly basis. Full reconciliation would be consistent with tariff mechanisms in place at other New York utilities, NYSEG and RG&E noted.

Any costs incurred related to supply would be reconciled or refunded through subsequent monthly supply charges. In addition to reconciliation of forecast versus actual market energy prices and loads, such costs would include capacity costs, hedging costs, unaccounted for energy, any difference between the cost of real-time and day-ahead costs, the cost of serving actual load shape instead of deemed load shape, and any other commodity cost not recovered through the NBC.

All ancillary service charges and NYPA Transmission Adjustment Charges (NTAC) that are

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Kentucky Legislation Would Bring Small Customer Choice to Larger LDCs

Legislation (HB542) has been introduced into the Kentucky House of Representatives that would require LDCs with at least 30,000 customers to apply at the PSC by December 1, 2009, to offer a retail gas choice program.

The legislation was introduced by Rep. Keith Hall, a Democrat. The Democrats control a 65-35 majority in the House.

Columbia Gas of Kentucky currently has an extended pilot program for small customer gas choice, with IGS Energy and MXenergy among active suppliers.

Under the bill, the PSC would have to act upon an LDC's application for a choice program within 180 days. If the Commission does not rule on the application within the 180 days, the program would be deemed approved by operation of law.

LDCs would be required to purchase the receivables of competitive suppliers, under regulations adopted by the PSC. If bad debt is maintained in LDC base rates, or included in a bad debt tracker paid for by both choice and sales consumers, the rate of the discount for the receivables purchased should be zero. If bad debt is included in the gas cost recovery mechanism, the discount rate for the receivables purchased should be equal to the system rate for bad debt included in the gas cost recovery mechanism, the bill says. LDCs would also have to

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Financial Marketers Say Court Ruling Bars Retroactive RSG Charges

Edison Mission Energy, DC Energy, and other financial marketers say that a recent court decision precludes FERC from ordering retroactive rate increases under Section 206 of the Federal Power Act, which the marketers say should resolve the Revenue Sufficiency Guarantee refund controversy before the Commission (EL07-86).

The marketers are protesting FERC's November decision, which ordered retroactive refunds for RSG charges that were not initially assessed on virtual offers (Matters, 11/22/08).

The financial marketers cited the D.C. Circuit U.S. Court of Appeal's February 27 decision in City of Anaheim, California v. FERC, arguing that the core of both cases is the question of the Commission's authority to order retroactive charges for past under-payments.

According to the marketers, the court found that Section 206(b) of the Federal Power Act, "authorizes only retroactive refunds (rate decreases), not retroactive rate increases." The court noted that a statutory precondition for a Section 206(b) refund is that the payments by customers must be "in excess of" the just and reasonable rate, and that refunds could not apply to parties who "were paying rates to energy generators below the just and reasonable rate."

"Thus, Section 206(b) provides only one type of monetary relief – the Commission may order refunds of excess charges collected by public utilities for providing jurisdictional services. Section 206(b) cannot be used to retroactively increase RSG charges to parties like Movants because they neither collected any RSG charges nor provided any jurisdictional service resulting in such charges," the marketers argued.

The Court, marketers said, also found that the Federal Power Act prohibits retroactive rate increases or surcharges, since Section 206(a) provides that FERC "shall determine the just and reasonable rate ... to be thereafter observed and in force." The Court held that, "[o]n its face, § 206(a) prohibits retroactive adjustment of rates," marketers contended.

Texas SET Proposes Changes to Use Mass Transition to Execute Acquisition Transfers

The ERCOT Texas SET Working Group has submitted Retail Market Guide Revision Request (RMGRR) 073, to provide for a short-term solution to facilitate the transfer of ESI IDs from one Competitive Retailer to another due to an acquisition, by using the current mass transition process.

RMGRR 073 provides a process to quickly transition ESI IDs from one Competitive Retailer to another, instead of customers automatically being transitioned to a POLR in cases of a sudden market exit. Under the process, all ESI IDs served under the losing Competitive Retailer DUNS number must be transitioned to a POLR and/or designated Competitive Retailer. Any Competitive Retailer wishing to acquire ESI IDs through the mass transition process must be able to accept and process the 814_14 transaction from ERCOT.

In conjunction with the process, Texas SET also submitted Protocol Revision Request (PRR) 806 to require REPs to re-register with ERCOT as a Market Participant (MP) if the REP transfers ESI IDs to another Competitive Retailer using the mass transition process. The PRR reflects the use of the current mass transition process as an interim solution for facilitating the transfer of ESI IDs from one Competitive Retailer to another.

Additionally, Texas SET drafted PRR 805, which would add the POLR customer class and AMS Meter Flag to the Database Query Function on the Market Information System (MIS). The new fields will allow Market Participants to identify the POLR customer class of an ESI ID, as well as whether or not the meter is an AMS meter when querying ESI IDs through the look-up function on the Market Information System.

FERC Rejects Limits on MEEA Volumes in CAISO

The California ISO's proposed limits on the quantities of transactions eligible for Market Efficiency Enhancement Agreement pricing are unjustified and fail to comply with a September FERC order, FERC said in an order on a compliance filing regarding the pricing of imports and exports (ER08-1113).

The case stems from the creation of integrated balancing authority areas (IBAAs) to price imports and exports, a concept broadly accepted by FERC in September (Matters, 9/19/08). Under the IBAA model, a single default price is used to price imports and exports, unless market participants execute a Market Efficiency Enhancement Agreement (MEEA) with CAISO, which is intended to give CAISO more information about the resources used in the external areas to appropriately price imported power. MEEA pricing is intended to more accurately reflect the locational price of the imported power.

In its compliance filing, CAISO sought to prohibit an entity which imports and exports between the CAISO and the integrated SMUD-Turlock balancing authority areas within the same hour from receiving MEEA pricing. CAISO also proposed various limits on the volume of imports and exports eligible for MEEA pricing.

However, FERC found such limitations to be inconsistent with its September order, in which it held that an entity may receive a more favorable pricing structure if it is willing to provide the CAISO with information that allows CAISO to verify the location and operation of the resources used in interchange transactions between the CAISO-controlled grid and the SMUD-Turlock IBAA.

"In addition, the Commission required the proposed MEEA to offer a transparent and balanced agreement from which parties may develop an alternative pricing arrangement in a non-discriminatory manner. The CAISO's proposed limitations do not appear to satisfy such balancing," FERC said.

If the MEEA signatory can verify the location and operation of an import or export, then it should receive actual pricing for the interchange transactions, FERC ordered. For example, if the MEEA signatory which imports and exports in the same hour and can verify the location and operation of an import, but not the export, it should be eligible for actual pricing for the import and default pricing for the export. FERC rejected the proposed volume limits as well, finding that they had not been justified.

CAISO Seeks to Delay Simplified Ramping Rules

The California ISO has petitioned FERC to delay the effective date of its "simplified" ramping rules under the Market Redesign and Technology Upgrade, because software being developed to implement the simplified rules won't be ready for the March 31, 2009 MRTU launch (ER09-556).

The simplified ramp rates for dispatching resources were originally proposed in January, and utilize a pair of constraints to limit the "sharing" of a resource's ramping capability between inter-interval Energy schedule changes and Ancillary Service awards, in order to retain the resource's ability to deliver the procured Ancillary Services during the inter-interval ramping period.

While the ramping changes will likely improve the efficiency of the MRTU software, they are not essential to its successful operation, CAISO said.

Furthermore, CAISO said that deferring the implementation of the simplified ramping rules does not pose significant performance issues, as it has made other improvements to the tuning of the software engine to augment its performance, including improving the consistency of Bids and Schedules used in the Short-Term Unit Commitment (STUC) for hours 3, 4, and 5 of the five-hour run of the STUC.

If FERC grants the delay, ramping procedures would revert to provisions filed by CIASO in October, which have been accepted by FERC as just and reasonable. CAISO said that the delay would not affect any other tariff provision.

Briefly:

Weir Investments Seeks to Market as Apollo Power & Light

REP Weir Investments applied at the PUCT to add the trade name Apollo Power & Light to its REP certificate. Apollo Power & Light recently completed its test flight and is focusing on the prepaid market.

Start-up Proton Energy Seeks REP Certificate

Start-up Proton Energy has filed for a REP certificate with the PUCT. Several principals, including Vice President Rafique Hassan, are also principals at Pacific Fuel Distributors, a distributor for Chevron, Texaco, Valero, Fina and Citgo. Proton Energy said it will contract with Energy Services Group for EDI qualification, ongoing transaction processing, and billing services, and will contract with Eagle Energy for QSE qualification and ongoing QSE operations. Proton Energy would meet PUCT financial standards via unused cash resources of at least $100,000.

EPSA Says Md. Re-regulation Bills Unconstitutional

Two proposed re-regulation bills in the Maryland legislature would be unconstitutional, EPSA said in a white paper, but the analysis did not address the latest proposal from Gov. Martin O'Malley for "rational" re-regulation. The white paper, released Friday by EPSA, was authored by former Solicitor General Paul Clement and was prepared before O'Malley's proposal was announced. It focused on Senate Bill No. 795 (the Pipkin-Rosapepe bill) as well as Bill No. 844 (the Middleton Bill), and found both would violate the U.S. Constitution's Commerce Clause because they would require generation output to be sold first to Maryland consumers, before it could be sold out-of-state. That requirement would also violate the Supremacy Clause because the Federal Power Act gives FERC exclusive regulation of wholesale energy sales, Clement said. O'Malley's bill would avoid both of these specific problems by not imposing such a requirement on plants, instead opting to build new cost-of-service generation.

NYISO Submits Tariff Changes to Recognize Long-Standing Forecasting Practices

The New York ISO submitted tariff revisions meant to conform the tariff to its current practices regarding load forecasts. The tariff currently states NYISO is to use LSEs' load forecasts in developing a state load forecast, but in 2000 NYISO determined that its load forecasts were more accurate than individual LSEs' forecasts. Market participants agreed that NYISO should only use its own load forecasts in developing the state forecast, but the tariff was never updated. NYISO asked FERC for a waiver from the discrepancy to the extent one is needed, and said there is no financial ramifications to the market from the discrepancy.

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currently in the NBC would be collected through the supply charge from customers that purchase commodity from the utilities. ESCOs would be responsible for collecting those charges from their customers, and the utilities would no longer reimburse ESCOs for ancillaries or NTAC costs.

NYSEG and RG&E would discontinue the annual fixed NBC, and would set the NBC on a monthly basis. The monthly NBC would include a reconciliation of prior period costs. All customers in a given service class would receive the same NBC, regardless of supplier.

NYSEG would allocate to ESCOs their load-proportional share of unaccounted for energy cost. This practice is already in place at RG&E, and NYSEG is the only utility in New York that continues to absorb the difference in the cost of serving the deemed and actual load shape on behalf of ESCOs.

Additionally, NYSEG would begin to use the New York ISO capacity spot auction to price capacity associated with the demand curve for the purpose of developing the market supply charge, which already occurs at RG&E. NYSEG would also collect capacity charges through the on-peak kWh charges only for service classes with separate on- and off-peak charges, consistent with current practice at RG&E.

NYSEG would eliminate the collection of the East-West basis differential from all customers, and would eliminate the corresponding credit to East variable customers, in order to better reflect cost causation.

At RG&E, the demand-charge component of the NBC would be eliminated, consistent with the current treatment at NYSEG. All NBC dollars would be recovered or returned through a volumetric charge.

RG&E would also begin hedging for its non-demand billed customers when their hedge percentage drops below 60%, as occurs at NYSEG.

NYSEG and RG&E noted that forward market prices have dropped significantly since the fixed NBC was set in October 2008. If spot prices for 2009 reflect those low forward prices, the companies would build up a "significant" NBC undercollection that would subsequently need to be collected in 2010. Based on current prices, the companies estimated the year-end undercollection would reach $77 million at NYSEG and $113 million at RG&E. NYSEG and RG&E are concerned about their ability to finance the forecast undercollections, "given the Companies' cash flow crisis."

NYSEG and RG&E proposed two interim NBC adjustments (on July 1 and October 1), to be used reconcile projections and actual collections.

With the end of the FPO, the companies' Voice Your Choice Campaigns, which provided an enrollment window for the FPO, will cease to exist as currently constituted. During the fall of 2009, the companies will message about their market-based supply service, and will continue messaging about the availability of ESCO supply. NYSEG and RG&E plan to submit an outreach and education plan to Staff by July 1 reflecting changes to the Voice Your Choice programs.

Kentucky *... from 1:*

provide consolidated billing services, with rate-ready billing, for consumers participating in choice programs.

Competitive suppliers would be compelled to provide the PSC with the price of their "standard offer" by the first business day of each month, for public posting.

The legislation would establish a separate certification process for suppliers serving residential and nonmercantile customers, apart from provisions relating to suppliers serving large industrials. Nonmercantile customers are those using 500,000 cubic feet of gas or less annually at a single location.

Suppliers under the choice program would be prohibited from transferring individual residential or nonmercantile consumers to another supplier without the "express consent" of the consumer. However, suppliers could transfer their entire book (or a customer class within a book) to another supplier without express consent, if suppliers provide 30 days notice, the new supplier honors the original contract terms, and the original contract informed customers of the possibility of transfer.

Marketers would be subject to assessments on sales. However, such funds would not be collected until the LDC's base rates are adjusted to remove revenue related to the assessments. LDCs would then collect their assessment through the gas cost adjustment, for competitive neutrality.

Competitive suppliers would have to provide customers with accurate and understandable pricing and terms, and would be required to disclose the conditions under which a consumer may rescind a contract without penalty. Door-to-door marketing would be regulated by the PSC, with suppliers required to seek PSC approval for such solicitations after submitting collateral and training materials. Third-party verification would be required for all door-to-door sales. Otherwise, appropriate confirmation practices for enrollment would include telephonically recorded voice verification, a signature on the consumer contract, or an electronic enrollment that includes a method to verify consumer consent.

Multilevel marketing of residential consumers would not be a permissible acquisition method, wherein such activity requires the solicitor to pay the supplier for the right to market the supplier's product.

The legislation would also require the provision of educational materials regarding choice to residential and nonmercantile consumers.

LDCs would be required to seek to avoid stranded costs by establishing a means to transfer capacity assets currently held on behalf of sales consumers to competitive suppliers. The choice program may be structured to either assign capacity directly to the supplier, or establish pooling fees and corresponding balancing services, or a combination of both, with the intent to eliminate any subsidies between sales customers and choice customers.

LDCs with more than 30,000 customers include Columbia, Atmos Energy, Duke Energy Kentucky, Louisville Gas & Electric and Delta Natural Gas.