Energy Choice Matters

March 10, 2009

Md. PSC Staff Favor Adoption of RM 17, 35 as Published, Counter Termination Claims

Maryland PSC Staff recommended that the Commission adopt the latest published versions of RM 17 (electric utility-supplier billing regulations) and RM 35 (gas market rules) in their entirety without modification, rejecting renewed protests regarding Purchase of Receivables and pro-rated billing from Baltimore Gas and Electric and the Office of People's Counsel. The Commission is holding a rulemaking session on the proposals today.

Both rules would require utilities to either pro-rate partial payments equally between delivery and commodity charges, or implement a POR program, at the utility's discretion (Matters, 12/22/08).

Among the latest objections to pro-rated billing is that it would lead to increased service terminations, since less funds would be applied to the distribution portion of bills to prevent disconnections. Essentially, pro rata opponents believe that payment of the customer delivery charge alone should be sufficient to keep a customer on service.

However, Staff noted that there is no evidence that the utilities make a distinction between the customer charge and the commodity charge when a customer is on standard offer service for purposes of determining disconnection. If this were the case, then no customer would be terminated who was current on the distribution portion of the bill, Staff noted.

Furthermore, Staff argued utilities are already engaged in transactions that are akin to purchasing the receivables of SOS providers when they purchase electricity at wholesale and

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National Grid Says Objections to Capacity Release Petition Would Mean Less Choice

Denying National Grid's petition to treat the asset managers of small retail gas marketers as if the managers were themselves marketers for the purposes of capacity release exemptions, "would do nothing more than unreasonably deprive certain retail customers of access to their current marketers solely because such marketers would be smaller in size or unsophisticated as to the workings of interstate pipeline markets," Grid said in answering an objection raised by the New York State Energy Marketers Coalition (NYSEMC).

In Grid's original proposal (RM08-1), it sought clarification that an LDC releasing interstate pipeline capacity as part of a state-approved retail access program may release such capacity directly to a marketer's asset manager, without being subject to bidding and tying requirements, as long as such asset manager has an obligation to supply gas to the marketer that is equivalent to the marketer's obligation to supply gas to the releasing LDC (Matters, 12/25/08).

NYSEMC opposed the request, cautioning FERC that the arrangement would allow entities that otherwise fail to meet pipeline credit criteria to nonetheless transact at retail, by allowing the asset manager to stand-in for the marketer for purposes of meeting the upstream credit requirements (Matters, 2/23/09). NYSEMC said granting the petition would increase the risks stemming from defaults, create a "gap" in responsibilities, and unlevel the playing field among

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Energy Michigan Says Proposed Net Metering Credits Would Inhibit Product Choice

Proposed new net metering rules in Michigan would discourage alternative electric suppliers from offering anything but an indexed product, to avoid the risk of losses under payments made for excess customer generation, Energy Michigan said in comments at the PSC (U-15787).

Under the PSC's draft, net metered customers with systems in excess of 20 kW would be paid for generation under one of the following options, as determined by the PSC:

(a) The monthly average real-time locational marginal price for energy at the commercial pricing node within the electric provider's distribution service territory, or for a net metering customer on a time-based rate schedule, the monthly average real-time locational marginal price for energy at the commercial pricing node within the electric provider’s distribution service territory during the time-of-use pricing period, or

(b) The electric provider or alternative electric supplier’s power supply component of the full retail rate during the billing period or time-of-use pricing period.

Energy Michigan said use of the monthly average real-time locational marginal price would not accurately represent the value of the power being supplied, since customers may deliver net power during peak when the real-time LMP is higher, to the detriment of the customer; or customers may deliver net power during off peak when the real time LMP is lower, to the detriment of the supplier.

Use of the power supply component of the full retail rate is equally problematic, Energy Michigan explained, since the option either presupposes or mandates that a customer’s supply is based on an index. Customers, however, may contract for a fixed rate from their competitive supplier.

In such a case, if the fixed energy price is higher than the applicable retail LMP, the customer receives a windfall excess credit, and the supplier suffers a loss by paying the customer more than the supplier receives from the ISO. If the fixed energy price is lower than the retail LMP, the reverse is true.

"As reflected from the above example, the language as drafted discourages [suppliers] from offering anything other than an index-based product for fear of losses," Energy Michigan cautioned, noting customers benefit from the current product diversity offered. Energy Michigan recommended that the credit should be based on real-time LMPs to avoid these problems.

Energy Michigan also said the proposed methodology of a simple credit per kWh does not permit a supplier to recover its charges or costs associated with the contracted supply that is reduced via net metering, i.e., energy, capacity, ancillary services such as Revenue Sufficiency Guarantee costs, or administrative costs. It urged the PSC to adjust the credit calculation to reduce the credit in accordance with the costs that the supplier does not avoid from the customer’s generation system.

Customers with distributed generation below 20 kW would be paid the "the full retail rate" for excess generation, and Energy Michigan sought clarification that for competitive suppliers, the "full retail rate" is only the power supply component of the bill, not power supply and distribution. Energy Michigan noted a supplier's full rate only includes commodity charges, and that marketers may not lawfully supply distribution service. Competitive suppliers can not be required to reimburse for distribution under 2008 PA 295 § 177(4), Energy Michigan said.

Furthermore, the rules would require suppliers to grant credits to net metering customers on current contracts, "which would seem to require modification to an existing power supply contract which contains no such requirement," Energy Michigan noted. Energy Michigan argued that the requirement to credit excess generation should only apply to new or extended contracts.

D.C. Affiliate Rules Would Confuse Customers, Pepco Energy Services Says

Marketing disclaimers that would be required of utility affiliates under a District of Columbia NOPR would confuse customers while creating an unlevel playing field, Pepco Energy Services (PES) said in comments on the NOPR (FC 1009, Matters, 2/10/09).

Among other things, the proposed rules issued by the D. C. PSC would require advertising materials used by an affiliate claiming an association with an energy utility to include a disclaimer that:

(a) The affiliate supplier is not the same company as the energy utility, whose name or logo may be at least partially used;

(b) The prices and services of the affiliate supplier are not set by the Commission; and

(c) The customer is not required to buy energy or other products and services from the affiliate supplier in order to receive the same quality service from the energy utility.

Such a disclaimer on affiliate collateral materials would be confusing to customers, Pepco Energy Services said, because the three statements apply equally to all competitive suppliers, but only two (Pepco Energy Services and Washington Gas Energy Services) would be required to include them.

That could lead customers to conclude that the statements are not true for other competitive offers, and that, in fact, other competitive offers may be set by the PSC, Pepco Energy Services said. Thus, the disclaimer could falsely suggest that another competitive offer which does not bear the disclaimer is a more attractive option, because the lack of a disclaimer suggests the customer has greater recourse at the Commission if the customer is unhappy with the price or service it is receiving, Pepco Energy Services argued.

"Far from being misleading, PES' name also conveys information that consumers may consider valuable in choosing an electricity supplier. For example, it very justifiably may convey to a potential customer that PES is a market participant with a long-term commitment to the region, a marketer whose actions factor in corporate objectives such as the protection of its reputation and that of its affiliated utility, and the maintenance of [a] positive relationship with District stakeholders, and not simply its bottom line," Pepco Energy Services said.

The rules are also an unconstitutional restriction on free speech and amount to a taking without fair compensation in violation of the Fifth and Fourteenth Amendments to the U. S. Constitution, Pepco Energy Services contended.

While a state may regulate commercial speech, there are specific tests that must be shown to support any such restriction, Pepco Energy Services said, such as a showing that affiliate abuses are occurring in the District of Columbia or that competition is being stifled by the exercise of market power by utilities with unregulated affiliates. The PSC has made no such showing, and, in fact, did not justify the need for the NOPR anyplace in the document, Pepco Energy Services noted. No specific bad acts of abuse have even been alleged, let alone proven, the marketer added.

If the PSC insists on a disclaimer, Pepco Energy Services recommended that ads simply state that the affiliate is not the same company as the regulated utility. Such an approach is used in Maryland, and would more efficiently address any concerns, Pepco Energy Services argued.

The Office of People's Counsel supported most of the NOPR's provisions, though OPC argued joint sales calls between utilities and affiliates should be offered to all competitors. The NOPR would prohibit the utility or affiliate from initiating joint sales calls, but would allow them at a customer's request. OPC recommended the PSC should require the utility to offer joint sales calls to other competitors as well, and notify non-affiliates of the availability of such calls.

OPC also believes utilities and affiliates should be prohibited from sharing telecommunications and computer systems.

FERC Orders CAISO to Narrow "Market Disruption" Definition

FERC ordered the California ISO to narrow the definition of "market disruptions," finding that the CAISO's definition in a compliance filing was overly broad and would allow CAISO to undertake actions in situations other than those related to reliability or system emergencies (ER06-615-023).

Under its Market Redesign and Technology Upgrade, CAISO had proposed to define a market disruption as, "[a]n action or event that causes a failure of the normal operation of any of the CAISO Markets." Under market disruptions, CAISO could remove bids and self-schedules that caused the disruption.

However, FERC found that the proposed definition strayed from earlier guidance, in which FERC said market disruptions should only be defined as situations which threaten reliability, or result in a system emergency, as outlined in sections 7.6 and 7.7 of the MRTU tariff. FERC directed CAISO to narrow the definition of a market disruption consistent with such limits.

Furthermore, FERC said that the MRTU tariff should include objective measures of the bid and self-schedule outcomes that would warrant removal of an MRTU-compliant bid or self-schedule.

The Commission concluded that developing such objective measures would ensure consistency when the CAISO uses its authority to remove bids or self-schedules that have previously caused a market disruption, and would provide additional transparency to market participants.

CAISO must also revise the MRTU tariff to include procedures for notifying market participants when their bid or self-schedule causes a market disruption, when their bid or self-schedule is removed, and whether the CAISO will remove all or part of their bid or self-schedule, FERC ordered. "[T]he procedures for removal of otherwise MRTU-compliant bids or self-schedules significantly affect rates, terms and conditions of service, and therefore belong in the MRTU tariff," FERC said.

In addition, because removal of bids or self-schedules may impact market participant compensation, the MRTU tariff should include additional detail as to how compensation will be determined for a bidder or self-scheduler whose bids or self-schedules are removed by the CAISO as a result of causing a previous market disruption, FERC held. "As an example, the Commission believes that it is important for the CAISO to clarify whether a resource whose day-ahead self-schedule is removed from the day-ahead market can submit a self-schedule in the real-time market and, if so, how that resource will be compensated," the Commission said.

Briefly:

FirstEnergy Ohio EDCs Prepare SSO Auction

The FirstEnergy Ohio utilities are preparing a competitive bidding process to procure Standard Service Offer supplies from June 1, 2009 through May 31, 2011, should PUCO approve a stipulation establishing an electric security plan relying on such competitive procurement. As previously reported, the procurement would use a descending-clock format, and would be managed by CRA International. FirstEnergy's bidder website (http://www.firstenergy-auction.com/2009/Auction) has not been activated yet.

Kelliher to Step Down March 13

Joseph Kelliher will resign from FERC effective March 13. Kelliher, a Republican, had relinquished the chairmanship upon President Barack Obama's inauguration, and had said he planned to resign in the near future.

Luminant Warns of Price Spikes from New CREs

Warning of possible price spikes, Luminant urged TAC members to oppose ERCOT's application to add two new North to Houston Closely Related Elements (CREs), the Peters-Flewellen 138kV and Hockley-Tomball 138kV lines (Matters, 3/5/09). In an email to TAC members, Luminant said there is a "non-trivial risk" that implementation of the proposed CREs could cause significant price increases in the South and Houston zones. The market, Luminant said, should have greater assurances that adding the Flewellen-Peters and Hockley-Tomball lines as CREs does not create a significant risk, which could be similar to spikes seen in last May and June.

CAPP-Backed Legislation Filed

The Cities Aggregation Power Project found sponsors for legislation which would, among other things, allow for municipal opt-out aggregation, impose a 20% market share cap on individual ERCOT zones, and scuttle the nodal market. The tenets of the bills have been previously touted by CAPP (Matters, 2/10/09), and similar measures have failed in the past. In the Republican-controlled Senate, freshman Democrat Wendy Davis, Fort Worth, is shepherding the bills. In the House, Rep. Jim Keffer, R-Eastland, is sponsoring the legislation. The bills are HB 2780/SB 1481 (muni aggregation), HB 2781/ SB 1482 (prohibition on locational marginal pricing), and HB 2782 (zonal market power limit).

LPB Signs Contract for Dallas Community College

LPB Energy Management said it has executed a three-year, 200 million kilowatt-hour electric supply contract on behalf of the Dallas County Community College District.

RM 17/35 ... from 1:

pass through the cost at retail. Although the utilities' purchase of the commodity up front is an important distinction, the credit risk remains with the utility and not the wholesale provider, Staff said.

While POR may shift the risk of collection in the direction of the utility, it is not clear that either POR or pro rata sharing would significantly change the utility's uncollectible rate, Staff said. The same customer group will be purchasing the same commodity, and Staff said there is no reason to believe that the payment habits of this customer cohort will change. "This is especially true if the purchased receivables become utility charges for termination purposes because the receivables would be rolled into the utility's collection processes," Staff noted.

While BGE claimed suppliers would be less diligent about screening customer credit and ensuring billing accuracy under a guaranteed POR program, Staff dismissed such arguments since retail suppliers are interested in establishing a solid business with a good reputation. Should either credit practices, billing methods, or pricing become a systemic problem with any one supplier, the Commission may take appropriate action against that specific supplier, staff said.

Staff also dismissed Columbia Gas' proposal to limit consolidated billing to only those accounts for which it is currently offered (Matters, 1/21/09). Staff said Columbia's position appeared to represent suspension of utility consolidated billing, which would be discriminatory, Staff said.

Should the electric and gas rules be adopted, Staff recommended they should become effective and implemented as soon as possible.

Capacity Release ... from 1:

marketers, some of whom would still be posting collateral with pipelines.

However, Grid said such concerns were "self-serving," and argued it was unclear how allowing smaller marketers to enter into contractual relationships with creditworthy wholesale suppliers in order to serve retail markets would raise the risk of defaults.

Grid reiterated that the wholesale arrangements are needed so small marketers can avoid having to post "scarce and unnecessary" credit on pipelines in order to obtain releases of capacity that would be subsequently re-released to the marketers' asset managers.

Grid speculated that if its petition is not granted, smaller competitors would be driven out of the market by credit costs, to the detriment of retail customers.

"The availability of a range of choices is essential to well-functioning markets. National Grid wishes to create such markets for its customers," the LDC said.

"While NYSEMC may prefer to cut the legs out from under smaller marketers seeking to participate in retail supply markets, National Grid would prefer to extend a helping hand to such entities in these challenging economic times," Grid added.