Energy Choice Matters

April 10, 2009

PUCT Will Hear AEP Appeal on ERCOT Congestion Zones, Oklaunion Plant

The PUCT will hold a hearing on AEP Energy Partners' appeal of ERCOT's assignment of AEP's Oklaunion plant to the West Zone, and said that ERCOT's deviation from its normal procedural path causes concern.

Commissioners said more evidence is needed in the record, and will hear the case themselves, rather than referring it to State Office of Administrative Hearings (SOAH). Commissioners agreed there was good cause to waive the alternative dispute resolution process which typically is used before an appeal reaches the Commission.

In setting the congestion zones, Commercially Significant Constraints (CSCs), and Closely Related Elements (CREs) for 2009, ERCOT's Board approved assigning the coal-fired Oklaunion plant to the West Zone, relying on the use of post-contingency shift factors for a clustering analysis. In past years, pre-contingency shift factors have been used for clustering (Matters, 11/20/08).

Moreover, AEP alleged that the contingency analysis which was ultimately adopted was first developed in private by market participants who were able to move their resources from the West into the more lucrative North Zone. By keeping the low-cost Oklaunion plant in the West, the congestion zone designations reduced supply and competition in the major load-serving areas in

Continued Page 5

Ontario Issues Draft Rules for Storage and Transportation Access, Transparency

The Ontario Energy Board yesterday issued a proposed Storage and Transportation Access Rule (STAR) governing the competitive storage market, which is meant to ensure non-discriminatory access to transportation services for storage providers and customers (EB-2008-0052).

Under the proposal, the Board would require consistent, predictable and transparent methods for allocating transportation capacity, including a requirement that new long-term (one year or longer) firm transportation capacity be offered through an open season. Additionally, due to the integrated structure of the natural gas utilities in Ontario, the Board's draft concludes that open seasons are the best means of ensuring that all potential customers have the opportunity to purchase existing long-term transportation capacity in an open and fair manner.

"This is especially important for the C1 and Rate 331 transportation paths which connect the Ontario market to the competitive storage markets in Michigan (and other states in the relevant geographic market) ... The Board believes that interest in these paths is likely to increase over time. As a result, the price and the availability of capacity will begin to play a greater role," the Board said.

The draft contains requirements for the timeline and content of open season notices. Since an open season may not be appropriate in every circumstance, the proposal would allow a natural gas transmitter to apply for a waiver of the open season requirement on a case-by-case basis.

Less formal methods could be used to allocate short-term existing firm and interruptible

Continued Page 6

PUCT Tweaks REP Letter of Credit Payment Priority to Encourage Volunteer POLRs

Though the PUCT deferred a final vote on proposed new REP certification rules at its open meeting yesterday, Commissioners agreed that the language has been "locked down" after yesterday's discussion.

The only major substantive change made yesterday was to the payment priority for the $500,000 letter of credit required of non-investment grade REPs.

In a move meant to assist low-income customers first, as well as encourage REPs to become non-volunteer POLRs, proceeds from the letter of credit will first be transferred to volunteer POLRs assuming any of the failing REP's low-income customers in a mass transition, to satisfy such customers' POLR deposit requirement. Low-income customers will be defined as customers enrolled in the Lite-Up Texas program.

The new priority would spare low-income customers from the burdensome requirement to post an additional deposit upon the switch to POLR service. Granting volunteer POLRs the letter of credit funds for use as deposits may also decrease their bad debt risk from POLR service, which may encourage REPs to become volunteer POLRs rather than non-volunteer POLRs.

The second priority for proceeds from the letter of credit would be to fund the deposits of low-income customers transitioned to non-volunteer POLRs. After that, proceeds would be allocated as under the most recent draft rule, with the funds next used to return deposits to non-low-income customers. Remaining funds would then be applied to any ERCOT charges, then TDU charges, and finally to Commission penalties.

The Commission's proposed new POLR rule, which was also left pending, will need to be revised to add a section delineating the process for transferring the letter of credit proceeds to volunteer POLRs and non-volunteer POLRs.

The Commission also accepted changes with respect to REP financial reporting requirements, allowing additional executive officers (such as a vice president acting as a CFO or chief accounting officer) to affirm financial statements presented to the PUCT, and adjusting the reporting deadlines to align with SEC reporting schedules.

EnerNOC Seeks Md. PSC Review of SMECO Demand Response Authority

EnerNOC filed at the Maryland PSC a request for the Commission to review Southern Maryland Electric Cooperative's assumption of status as a Relevant Electric Retail Regulatory Authority for purposes of determining customer eligibility to participate in PJM demand response programs.

Under FERC Order 719, Relevant Electric Retail Regulatory Authorities may prevent end users from participating in RTO-run demand response programs, though debate continues at FERC whether such authorities may selectively allow some customers to participate, while denying participation to other customers (Matters, 3/16/09).

SMECO’s Board has said it is the Relevant Electric Retail Regulatory Authority for its customers, and has adopted a resolution which only allows specific customers to participate in PJM load response programs upon explicit authorization of the Board on a case-by-case basis.

FERC defines the term Relevant Electric Retail Regulatory Authority as the, "entity that establishes the retail electric prices and any retail competition policies for customers, such as the city council for a municipal utility, the governing board of a cooperative utility, or the state public utility commission." Though SMECO as a cooperative has greater autonomy than Maryland IOUs, it still does fall under the Maryland PSC's jurisdiction for certain issues, including some retail competition policies.

Conn. DPUC Seeks More Info on ISO-NE ICAP Loophole

While the Connecticut DPUC and other ratepayer representatives welcomed ISO New England's tariff changes to close a "loophole"

which has allowed capacity importers to collect payments despite failing to meet obligations as part of the Forward Capacity Market transition period, the DPUC requested that FERC direct ISO-NE to disclose further information related to the $85.8 million paid to market participants who failed to deliver energy all 108 times they were called upon (ER09-873).

The ISO discovered that, with the commencement of the ICAP Transition Period in December 2006 and the payment structure associated with that period, market participants with ICAP Import Contracts typically submitted high-priced (over $660/MWh) supply offers over the Northern New York AC Interface, with most approaching the energy offer cap. Presumably, such higher offers were made in an attempt to avoid dispatch, Connecticut Attorney General Richard Blumenthal noted.

The ISO observed persistent performance problems when it sought to dispatch high-priced energy associated with these ICAP Import Contracts. During the period from January 2005 to January 2009, every market participant that submitted a supply offer in excess of $660/MWh over the Northern New York AC Interface failed to perform when dispatched every time (a total of 108 instances).

Among other problems, the existing penalty structure for failing to deliver energy when requested by the ISO does not recognize the unique characteristics of energy associated with ICAP Import Contracts, and therefore does not provide the appropriate incentive for market participants to deliver energy when requested by the ISO. That is, performance penalties are assessed only when the energy associated with the ICAP Import Contracts fails to be delivered for a threshold number of hours tied to the designated resource's Equivalent Demand Forced Outage Rate, which means that the threshold number of hours is often higher than the total number of hours during which the capacity import is actually dispatched due to the high price of the energy associated with the ICAP Import Contracts.

Rule changes filed by the ISO include requiring that market participants submit energy offers associated with ICAP Import Contracts at prices that are competitive, and instituting performance penalties during the ICAP Transition Period based on the percent of hours that full delivery of requested energy is provided relative to the hours that energy was requested.

While those changes will help ratepayers prospectively, the DPUC sought more information so it can weigh it options for recourse.

"State regulators and consumer advocates, on behalf of state consumers who were required to pay the $85.8 million, are entitled to more information so that they may determine whether it is appropriate to seek further relief, beyond the proposed rule changes, in a separate proceeding," the DPUC said.

Among other things, the DPUC wants the disclosure to reveal the identities of the market participants that received the $85.8 million in payments, including the total amount of the payments received by each, and details about how many of the 108 delivery failures each was responsible for.

Blumenthal added that, "The systemic and long term pattern of these egregious violations also raises serious concerns over the ability and the will of the ISO and Commission to police these energy markets for the protection of ratepayers."

PUCT Deems Exelon Application to Acquire NRG Deficient

The PUCT found Exelon's application to acquire NRG Energy to be deficient because it did not state a firm closing date, which may impact the amount of capacity involved in the transaction. Exelon was given additional time to supplement its application.

PURA § 39.158(a) contemplates the existence of some discernable timeframe for the proposed closing of the transaction, an ALJ noted. Specifically, § 39.158(a) provides that "[t]he approval shall be requested at least 120 days before the date of the proposed closing."

However, Exelon has not provided a firm closing date, and testimony shows that the exchange offer's closing date remains in flux. The initial expiration date of the exchange offer was January 6, 2009, which was extended to February 25, 2009, which was extended to June 26, 2009. SEC filings, the ALJ noted, state that Exelon currently intends to extend the expiration date of its offer beyond June 26, 2009, and that Exelon anticipates that it will be able to complete its offer in the fourth quarter of 2009.

Since installed generation capacity may fluctuate over time, the application's lack of a timeframe for the closing of the transaction hinders accurate calculation of installed generation capacity under PURA § 39.154, which prohibits ownership/control of more than 20% of installed generation capacity in a power region, the ALJ said. As Exelon has calculated that the combined Exelon-NRG installed capacity will be near the limit at 18.37% of capacity in ERCOT, arriving at an accurate calculation will be a significant issue, the ALJ added.

Exelon was directed to amend its application to clarify the timeframe for its proposed closing of the transaction, rather than the expiration date of the stock exchange offer, by April 17, 2009.

NYISO Reports Settlement, Software Errors

The New York ISO informed FERC of four unrelated errors relating to settlements and software, and asked for a waiver of resettling the market for each, due to, among other reasons, the need for market certainty and the relative size of the errors.

To begin, NYISO reported that in September 2008, it discovered that its settlement software had been compensating approximately 45 MW of landfill gas-fired generators for the energy that they produced in real-time in excess of their real-time schedules, and did not subject those generators to under-generation charges when they were operating below their real-time schedules. The software, the ISO explained, had been treating the landfill gas facilities as if they were intermittent resources, which are exempt from under-generation charges.

The total excess payment resulting from the error was $4.5 million over nine years, or 0.005% of total energy market transactions in 2008 alone, NYISO said. Additionally, while the error involved 45 MW, installed capacity in NYISO is 38,170 MW.

Furthermore, NYISO argued that landfill gas facilities should be treated as intermittent resources, since their fuel supply is not controllable, and they cannot follow their real-time energy schedules closely. NYISO is working with stakeholders to add tariff language to treat landfill gas facilities as intermittent resources.

Second, NYISO identified an error in the formula used to calculate payments to Special Case Resources in 2005 and 2006. Special Case Resources are supposed to receive compensation as providers of Installed Capacity, plus a payment paid when they are called upon to reduce load under the NYISO's demand response programs. Under the tariff, Special Case Resources are to be paid the zonal real-time LMP for the duration of their load reduction.

However, the settlement process used by NYISO in 2005 and 2006 calculated the payments at the higher of $500 or real-time LMP, instead of simply paying the LMP. Out of the $6.6 million in energy payments and Bid Production Cost guarantees paid to Special Case Resources in 2005 and 2006, $316,000 was paid as a result of this error.

Third, the ISO discovered an inconsistency between the Services Tariff and NYISO's software with regard to participation in the real-time price-setting process by units scheduled to provide Regulation Service. Attachment B of the Services Tariff directs NYISO to exclude units scheduled to provide Regulation Service from the real-time price setting process by treating them as "fixed" units rather than "flexible" units. However, the NYISO real-time commitment and dispatch software includes units scheduled to provide Regulation Service among other "flexible" resources that the ISO uses in establishing real-time prices.

NYISO said that the Attachment B

mandate to treat such units as fixed is inappropriate for the NYISO market design, and is also inconsistent with other tariff provisions which state the units are flexible. Thus, despite a tariff inconsistency, the software, by treating the units as flexible, has been achieving the desired market result, and the ISO said it is working on changing Attachment B to reflect such market design.

Finally, the ISO reported that beginning with the 2004-05 Winter Capability Period, an incorrect formula was used when computing the Equivalent Demand Forced Outage Rate (EFORd) for two generating units. Had the correct formula been applied, each unit would have had a higher EFORd value. That would have resulted in a lower UCAP value for both units.

Due to the error, the two units sold 37.4 MW of UCAP more than they would have under the correct EFORd methodology, NYISO said. Although NYISO said determining a market impact was difficult due to potential changes in behavior in the capacity market under the correct EFORd calculations, NYISO estimated market overpayments resulting from the EFORd error were about $310,000, using a ICAP price proxy. The capacity involved was in Zone K (Long Island).

Briefly:

Lower Electric, BlueStar File for Summary Judgment in Complaint Case

Lower Electric and BlueStar Energy Services filed motions for summary judgment in BlueStar's complaint against Lower Electric at the Illinois Commerce Commission under the ABC Law. Reiterating previously briefed arguments (Matters, 12/2/08), BlueStar alleged Lower's solicitation of a customer fell under the plain language of the ABC Law's requirement for a written disclosure of remuneration, and that Lower did not satisfy any of the exemptions from the requirement (such as acting as an exclusive agent for one supplier). Lower countered that, absent the ICC's final rule, there is no definition of the entities subject to the ABC Law, and that, under the latest proposal, Lower, in this instance, would not be defined as an agent, broker, or consultant, because it did not have legal authority to contract on behalf of a customer. Although a formal settlement has not been filed publicly, BlueStar and two other respondents to the original complaint, American Energy Solutions and Affiliated Power Purchasers International, have reached an informal resolution, and a motion to dismiss the complaint with respect to those two entities is expected.

Proton Energy Receives REP Certificate

The PUCT granted Proton Energy a REP certificate. Several of Proton's principals, including Vice President Rafique Hassan, are also principals at Pacific Fuel Distributors, a distributor for Chevron, Texaco, Valero, Fina and Citgo (Matters, 3/9/09).

FERC Grants Extension for Form 572

FERC granted gas purchasers an extension of time until July 1, 2009, for submitting the initial filing of Form 572 in compliance with Commission Order No. 704. Several large gas purchasers had said confusion over the new reporting rule has hindered compliance efforts (Matters, 4/9/09).

AEP ... from 1:

the North Congestion Zone, AEP alleged (Matters, 2/5/09).

That's one of the claims that the Commission needs to examine, Commissioner Kenneth Anderson said, noting the allegation creates an appearance that looks less than great for ERCOT, though Anderson stressed the facts could ultimately show nothing improper happened, which is why the Commission needs to hear testimony.

Commissioners also questioned whether, as AEP contends, the assignment of the Oklaunion plant to the West Zone requires it to vary its output. AEP has argued that all other coal-fired units, consistent with Protocol Section 7.2.4, are not considered units that are likely to vary their output.

Chairman Barry Smitherman criticized the procedural course ERCOT used in the case, which included remanding the congestion

zone designations to a joint Wholesale Market Subcommittee-Technical Advisory Committee meeting. That would be like a district court remanding an appeal jointly to SOAH and the PUCT, Smitherman said. Since TAC is a level above WMS in the normal procedural progression, Smitherman suggested the joint meeting with TAC tied WMS's hands in deliberations.

More broadly, Smitherman said deviations from the normal ERCOT process causes problems, pointing to a change in the shadow price cap levels last spring which led to price spikes and drove several REPs out of business. When the shadow price caps were changed in 2004, without incident, the revisions went through WMS, TAC and the ERCOT Board, Smitherman noted. Last spring, the changes were developed at WMS, but were not approved by TAC or voted on by the Board.

Anderson also questioned what relief could be granted to AEP, and whether AEP could be made whole. Smitherman pointed to the Commission's decision relating to Constellation NewEnergy's appeal of Protocol Revision Request 676, in which the Commission rejected the PRR, but made its action prospective only, and did not provide relief for the time the PRR was in effect.

AEP has said the assignment of Oklaunion to the West Zone will cost AEP $35-45 million annually, from lost sales to customers in the North Zone.

Ontario ... *from 1:*

transportation capacity.

Each transportation service offered by transmitters would be required to have a standard form of contract available, which would include a host of terms set by the draft rules. All negotiated (non-standard) transportation services would have to be posted on the transmitter's website and be offered to all potential customers to ensure a level playing field.

Under the proposal, the Board would only allow competitive storage services to be bundled with transportation services if the equivalent transportation services are also offered on a stand-alone basis. That policy would ensure that all potential customers are able to replicate the bundled service using the utility's unbundled transportation services and storage services provided by other competitive storage providers.

Natural gas transmitters (including integrated utilities) would be required to post on their website an index of customers for transportation contracts, and operationally-available transportation capacity. Storage companies and integrated utilities would be required to post on their website an index of customers for storage contracts; storage inventory; and design capacity.

For contracts at least one month in length, the posted index of customers would include information on Receipt/Delivery Points; Maximum Storage Quantity (in GJ); Maximum Daily Withdrawal Quantity (in GJ); Maximum Daily Injection Quantity (in GJ); and the effective and expiration dates of the contract.

The customer index is meant to allow market participants to identify how capacity is allocated and to identify counterparties for secondary market transactions, to assist them in their purchasing decisions.