Energy Choice Matters

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Draft Decision Would Deny N.Y. Staff Proposal to Rebundle Retail Access Lost Revenues

New York PSC Staff's proposal to rebundle lost revenues associated with retail access at Central Hudson Gas & Electric should be denied, two ALJs found in a recommended decision in Central Hudson's rate case (08-E-0887/0888).

Lost revenues associated with Central Hudson's natural gas retail access program are currently recovered from ratepayers in two pieces. Fifty percent is collected through the Supply Charge component of the Merchant Function Charge (MFC), which is avoided by retail access customers, and 50% is recovered through the transition adjustment paid by all customers. Staff proposed to replace that system with 100% recovery through the transition charge (Matters, 2/19/09).

Several ESCOs, including the Small Customer Marketer Coalition, objected to the plan, arguing that it contravened Commission precedent which holds that retail access customers should not pay avoidable costs. Staff's proposal, SCMC said, would reduce the level of cost avoided by customers migrating to retail access service, and thus reduce the benefits associated with competitive retail supply.

The ALJs agreed, stating that the current 50/50 split in the collection of retail access lost revenues, "is a reasonable compromise, giving some benefit to ESCO customers without

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Illinois Gov. Signs Natural Gas Market Consumer Protections

Illinois Gov. Pat Quinn signed into law Public Act 95-1051 which institutes several consumer protections for the competitive natural gas market, including a $50 limit on termination fees, and third party verification (TPV) of small customer door-to-door sales (Matters, 1/14/09).

The majority of the Act's provisions apply to residential and small commercial customers, the latter of which are defined as customers who consumed 5,000 or fewer therms of natural gas during the previous year, though multiple meters and meters at different premises may be combined in determining a customer's size.

The law caps early termination fees at $50 for all residential and small commercial contracts, and requires disclosure of such fees to customers.

Furthermore, mass market customers are to be provided an opportunity to terminate their agreement without penalty for up to 10 business days after the date of their first bill. A 10-day rescission period for small customers is also created by the law.

Under the law the ICC is to develop a uniform disclosure to be used by alternative gas suppliers for each of their products. The uniform disclosure shall contain, at a minimum:

(1) The price per therm, for products with a fixed price per therm;

(2) The length of the initial term of the product, or, if applicable, the expiration date of the initial term of the product;

(3) The amount of termination fees, if any;

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FERC Orders More Info on PJM Demand Response Registration Policy

FERC directed PJM to submit more information regarding its proposal to implement Order 719's policies regarding retail end user participation in RTO demand response programs, finding the initial filing to be deficient (ER09-701, Matters, 3/16/09).

Order 719 directs RTOs to accept bids for ancillary services from technically capable demand response resources, on a basis comparable to any other resource, "unless the laws or regulations of the relevant electric retail regulatory authority do not permit a retail customer to participate." FERC's deficiency letter added emphasis to the last phrase: "a retail customer to participate."

PJM filed to implement Order 719 by submitting tariff language that would allow relevant retail regulators to bar all customers, or all customers in a certain rate class, from RTO demand response participation. However, PJM's proposal would not allow retail regulators to authorize independent, conditional, one-off, or customer-by-customer participation in demand response programs. PJM has argued that such case-by-case participation decisions could be discriminatory, and would lead to the anomalous result of the retail authority "regulating" the federal tariff itself.

Municipals and cooperatives, however, have argued such one-off authorizations are explicitly permitted by Order 719, whose language allows retail regulators to bar the participation of "a retail customer," suggesting regulators can prohibit specific end users from participating. Among other reasons, munis and co-ops want the authority to bar some demand response participants while allowing others in order to facilitate the use of only a single demand response aggregator (either the muni itself or a contracted firm) for all of the customers in its territory.

FERC directed PJM to explain its claims that allowing customer-by-customer approval of RTO demand response participation would be inconsistent with Order 719, and would lead to a retail regulator "regulating" PJM's filed rate schedules.

The Commission also requested that PJM provide more detail as to how a retail regulator's case-by-case approval would be discriminatory, or how it would be a barrier to demand response participation.

Michigan IPPs Oppose Detroit Edison Unsolicited Wind Contract

The Michigan Wholesale Power Association (MWPA) moved to dismiss Detroit Edison's ex parte application for approval of a renewable energy contract with Heritage Sustainable Energy, arguing that Edison has failed to justify that the wind contract represents opportunities that could not be found through a competitive solicitation (U-15806-K).

The Heritage contract resulted from an unsolicited proposal, and would cover 14-16 MW. Edison has said that the Heritage contract is projected to commence commercial operation by December 31, 2009, or sooner, and argued that such an early start date may not be available elsewhere in the market. Furthermore, the contract pricing of a flat $116.00/MWh net energy delivered less a $1.00/MWh administration expense charge is lower than what otherwise may be available in the future when demand may increase and the credit markets are more stable, Edison has contended.

Contracts arising from unsolicited proposals may be approved by the PSC if the Commission determines that the unsolicited proposal provides opportunities that may not otherwise be available or commercially practical.

MWPA argued that Edison has not met such a burden, stating Edison's application failed to cite any facts supporting its contentions.

Edison's argument that other producers would not be able to match Heritage's anticipated start date is unsupported, "without any showing of the special significance of such an early date, and without any apparent recognition that other credits, freely substitutable for Renewable Energy Credits under Act 295, are being offered in the market

for years 2009-2010," MWPA said.

MWPA further claimed Edison has not supported its cost assumptions, or that the Heritage price is not available from competing offers.

NYISO Sees $26 Million Annually from Reducing T&D Losses

Capacitor banks meant to reduce transmission and/or distribution system losses in New York could produce $26 million in annual cost savings, resulting in a payback of a little over three years, the New York ISO said in a conservative estimate as part of a study of system losses filed at the PSC (08-E-0751).

NYISO studied various optimization levels of capacitor bank additions, and found that adding 2,323 MVArs of capacitor banks would produce approximately 70.7 GWh of annual energy savings. Such a level of capacitor bank installations would cost between $46 million and $105 million. Using a mid-range cost of approximately $75 million, and the 15% carrying cost used in an ABB report prepared for NYISO, would result in an annual cost of $11.25 million over the useful life of the equipment.

If the mid-range of the estimated annual cost of the capacitor banks is compared to the mid-range of the estimated annual savings ($26 million), the result is a ratio that exceeds two dollars in savings for every dollar of cost, or a payback of a little over three years, NYISO said. Annual savings were estimated to be between $11 million and $41.3 million. Cost savings for increasing available transfer capability or T&D capacity release were not included in the savings estimates.

Briefly:

Md. Committee Kills Re-regulation Bill

The Maryland House Economic Matters Committee has killed a bill approved by the Senate which would have ended mass market retail choice and subjected nearly all new generation to rate regulation under the PSC. Committee members were hesitant to rush the bill through before tonight's end of session, as Gov. Martin O'Malley waited two months before filing his preferred re-regulation legislation. Although Maryland has a history of energy-related special sessions, none has been threatened this year. While the bill's defeat preserves small customer retail choice for at least another year, the Commission has repeatedly said it already has the authority to order the construction of ratebased generation if a need arises, and could impose a nonbypassable surcharge if desired.

DPUC Issues Scope of Long-Term Contracts Docket

The Connecticut DPUC said its newly re-opened docket on Standard Service long-term contracting (06-01-08RE03) will be used to 1) further define the approval process of such contracts; 2) if necessary, establish parameters to guide selection; and 3) to consider any proposed contracts that may result from the electric distribution companies' long-term bilateral contract procurement efforts (Matters, 4/9/09).

NextEra Remains Top Wind Generator

NextEra Energy Resources remains atop the list of U.S. wind project owners, though its market share slipped in 2008 as total industry growth outpaced its additions, the American Wind Energy Association said in its annual rankings. NextEra added about 1,200 MW in 2008 for a market-leading capacity of 6,290 MW, roughly 25% of the total installed capacity in the U.S. However, NextEra's market share decreased from about 30% a year ago as total U.S. wind capacity grew from 16,800 MW to 25,300 MW. The three companies that make up the next 25% of wind capacity are Iberdrola Renewables, MidAmerican Energy (including PacifiCorp), and Horizon-Energia de Portugal. Texas remains the top wind state at 7,118 MW, after adding nearly 2,700 MW in 2008. Iowa outpaced California for second place, at 2,791 MW. California (2,517 MW), Minnesota (1,754 MW) and Washington (1,447 MW) round out the top five.

Calgary Tweaks Enmax Contract for More Renewables

The City of Calgary, Alberta, and Enmax Energy have amended their long-term electricity agreement to include 100% renewable energy starting in 2012, up from the original 2007 target of 75%.

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absolving them completely from responsibility for funding any POLR-related costs."

Staff's proposed ratio of attributing 100% of all supply costs to the POLR function conflicts with Commission precedent that holds revenue responsibility should be shared between full service and migrated customers, the ALJs noted.

"The shift proposed by Staff is of trivial benefit to sales customers, but is potentially harmful to ESCOs. It should be rejected," the ALJs said.

A similar Staff proposal for lost electric retail access revenues should also be denied, the ALJs concluded. While Staff argued that rebundling the recovery of retail access lost revenues with base delivery rates is necessary to avoid unintended impacts on a revenue decoupling mechanism, the ALJs were not persuaded, and found no justification for Staff's rebundling proposal.

The ALJs accepted Staff's proposal to expand Mandatory Hourly Pricing (MHP) to customers as small as 500 kW. Currently, MHP is mandatory for customers 1,000 kW and above. There are 118 customers with demands within the 500 to 1,000 kW range, of which 75 buy their commodity supply from Central Hudson.

Under Staff's proposal endorsed by the ALJs, Central Hudson would submit, within 60 days of a Commission order in the rate case, an implementation plan for MHP expansion that would be subject to public comment and Commission approval. The plan would include proposals for recovery of metering costs through an incremental charge to the affected customers, and for recovery of the costs incurred by Central Hudson to provide the customers with free energy management software. If the expansion plan is approved, customers would be provided with the required interval meters, and then would be given a year to become familiar with their load shapes, aided by an extensive outreach and education program and energy management software provided by Central Hudson. The final switch to hourly pricing would occur in early 2011.

While recommending Staff's plan, the ALJs did cite their, "serious qualms," about imposing incremental costs for metering and energy management equipment on the 118 new hourly pricing customers, given today's difficult economic times. The ALJs noted such cost concerns could be raised in response to the implementation plan.

The ALJs also endorsed most of Staff's recommendations regarding costs to promote or educate customers about retail access. While Central Hudson had proposed to continue an allowance in rates of $351,000 for its Competition Education Campaign Fund, Staff argued such expenditures are contrary to the PSC's Retail Access order which limits ratepayer funding to educational, not promotional, activities. Only about $183,000 of the current Competition Education Campaign Fund has been spent, with the rest, thus far, deferred for ratepayer benefit.

The ALJs agreed that dedicated funding for the Competition Education Campaign Fund should be discontinued, since the PSC has concluded that continued ratepayer funding for programs aimed at promoting retail market activity is no longer warranted. Recommending a Staff proposal, the ALJs said activities related strictly to retail access education should fall under Informational & Institutional Advertising expenses, for which the ALJs recommended a slight increase in funding to cover the transfer of retail access education initiatives to the program.

Of the amounts already collected but deferred from the Competition Education Campaign Fund, the ALJs agreed with Staff that $107,000 should be used to fund three programs: an E-Bid System (a successor to Market Match), enhanced mailing functions, and web site enhancements.

While SCMC argued remaining deferred funds should be used to expand Central

Hudson's ESCO Referral Program to cover new service customers, the ALJs declined to set a specific funding amount for such an endeavor at this time, stating the outcome of a statewide working group on the subject may impact Commission policy. The ALJs did find that Central Hudson's Retail Access Collaborative should continue with an initial meeting scheduled within 30 days after an order in the rate case, to consider proposals for funding retail access initiatives consistent with the Commission's current policy, including ESCO Referral Program improvement and expansion. A report from the collaborative should be submitted to the Commission within six months. Any balance in the Competition Education Campaign Fund deferral not required for collaborative proposals should then be deferred for general customer benefit, without earmark for retail access, the ALJs said.

Central Hudson should also be required to continue to provide a utility officer as a point of contact for ESCOs, the ALJs noted, as continuation of such an ombudsman function is expressly called for in the PSC's Retail Access order.

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(4) The amount of administrative fees, other fees, or recurring charges, if any, to be listed separately for each and every fee or charge;

(5) For products with a variable price per therm, the terms of such variability, including, but not limited to, any index that is used to calculate the price and any additional charges, costs and fees; and

(6) For products where a customer's charges are a fixed amount per billing period regardless of the market price for natural gas or the customer's natural gas consumption during the billing period, the billing period covered.

The ICC is to post the information from the disclosures online for customers to compare offers. The ICC's website is to be updated monthly, and retain 12 months of disclosures, so customers can compare historic prices from suppliers.

Mass market customers may only be enrolled through a letter of agency (similar to the LOA required for electric suppliers), TPV, automated verification, a recorded call to the supplier initiated by the customer, or through an internet authorization procedure.

TPVs must disclose the price of the service to be provided and the material terms and conditions of the service being offered, including whether any early termination fees apply.

Furthermore, TPVs must include, "the **names** of the providers affected by the change," in service (emphasis supplied). Although LOAs contain a similar requirement, the statutory language is different and not as explicit. LOAs must only contain language confirming, "the decision to change the natural gas provider from the current provider to the prospective alternative gas supplier," without the explicit requirement that the current provider be named.

When a small customer is solicited in person by the alternative gas supplier's sales agent, the alternative gas supplier may only obtain the customer's authorization for a switch using a TPV.

Alternative gas suppliers must be in compliance with the new enrollment and verification procedures within 90 days after the effective date of the Act.

Mass market suppliers must notify the ICC of material changes to their original certification within 30 days of such changes. Among other things, material changes include, "[a]ny significant change in ownership (an ownership interest of 5% or more)," as well as any change in the alternative gas supplier's name or logo, including any change in the supplier's legal name, fictitious names, or assumed business names.

Suppliers serving small customers must maintain a customer call center whose average answer time for calls placed shall not exceed 60 seconds where a representative or automated system is ready to render assistance and/or accept information to process calls. The abandon rate for calls placed to the call center shall not exceed 10%. Suppliers must report call center statistics to the ICC.

Mass market suppliers must also file a copy of their bill formats, standard customer contract, and customer complaint and resolution procedures with the Commission.

Customer contracts cannot be assigned to another marketer unless several conditions are met, including the maintenance of the original rates and terms, and the provision of 30 days written notice to the customer.

Supply agreements cannot obligate mass market customers to the terms of the agreement if the customer moves out of state, to a utility area not offering a transportation program, or to a location at which the customer does not require gas. Suppliers are not precluded from collecting a debt arising from service before the customer moves.

The law directs the ICC to develop a customer education effort focusing on customer rights, legal obligations of suppliers, and how to compare offers. A working group composed of utilities, alternative gas suppliers, the Attorney General, the Citizens Utility Board, and the Commission will develop the plan.