Energy Choice Matters

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FERC Reverses on RSG Refunds, but Affirms Allocation to Virtual Suppliers Going Forward

Because FERC's November 10, 2008 decision has, "caused difficulties and market uncertainty well in excess of the financial impact the Commission anticipated," FERC granted rehearing requests relating to the refund of Midwest ISO Revenue Sufficiency Guarantee charges from the period of August 10, 2007 to November 10, 2008. While FERC ordered a halt to the refunds, it also affirmed its November decision adopting the "interim" and "indicative" cost allocation methodologies for assessing RSG charges, both of which apply the charges to virtual supply offers regardless of whether energy is actually withdrawn in the transaction (EL07-86, Matters, 11/12/08).

FERC's November order held that the new RSG cost allocation methodology should apply to transactions dating back to the refund effective date of a complaint originally filed by certain LSEs on August 10, 2007. The November order thus required marketers engaging in virtual transactions since August 10, 2007 to pay RSG charges that were initially not assessed. The collection of such charges, as well as increased credit requirements associated with their invoicing, led over a dozen financial marketers to default on their MISO agreements, due to their total potential exposure exceeding their posted credit.

On rehearing, FERC said it was convinced by arguments from a host of financial marketers, including Integrys Energy Services, DC Energy and E.ON, that the Commission should exercise its discretion to not apply the new RSG charges on prior virtual supply offers. The RSG charges will only be imposed on virtual supply offers going forward from November 10, 2008.

FERC directed the Midwest ISO to cease the ongoing refund process, and to reconcile the

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Smitherman Says TDUs Should be Allowed to Estimate More Reads for Switching Purposes

Citing cost concerns, PUCT Chairman Barry Smitherman said in a memo that greater use of estimated meter reads should be used in the proposed accelerated retail switching timeline (36536).

Under Staff's proposal (Matters, 5/4/09), estimates of meter reads for the purpose of a switch would be limited to 20% of such reads per month and 5% per year, starting January 1, 2010. Smitherman noted that TDUs have said using estimates would only require a one-time cost to set up the estimating process, while the recurring costs for actually performing the meter reads would be 8 to 10 times higher.

Smitherman argued estimates can be accurate under normal circumstances, especially considering that the estimates for switch requests would be for a period of less than one month. Oncor claims that its estimated meter read process is accurate to within 5% of actual usage. Smitherman noted the draft new POLR rule contains a provision to true-up estimates outside of a certain range, and said similar language may be appropriate in the expedited switching rule. The rollout of advanced meters will also limit the time in which estimates are used, Smitherman added.

TDUs should also be given a larger window in which to use the standard on-cycle meter read as the basis for the switch, the Chairman noted. The draft switch process would allow for three days in which the switch request is processed by the receiving REP and ERCOT. The TDU would then have

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Nelson Says Customers Should Have 60 Days to Switch off POLR Service Without Out-of-Cycle Fee

Customers involved in a mass transition should be allowed to switch off POLR service using an out-of-cycle meter read at no charge to the customer for 60 days after their transition to POLR service, PUCT Commissioner Donna Nelson said in comments on the latest Staff proposal for adoption, ahead of today's open meeting (35769).

The current draft calls for ERCOT to "flag" POLR customers in its database so that such customers' switch requests are processed via out-of-cycle meter reads, at no charge to the customer, for the first 30 days following the mass transition.

However, Nelson said that the provision is inconsistent with the rule's proposal to require non-volunteer POLRs to transition customers from an MCPE-based rate to a monthly market rate after 60 days of POLR service. The 30-day flag period would mean customers who elect to switch providers after 30 days, but before the 60-day expiration of the MCPE-based rate, would have to pay for an out-of-cycle meter read to switch to an alternate provider, or wait for a normal switch while paying the MCPE-based rate in the interim, Nelson said. Nelson recommended extending the flag period, and attendant waiver of the out-of-cycle meter read fee, to 60 days.

Staff also proposed one additional change which would permit existing volunteer and non-volunteer POLRs to place customers on a market-based rate (instead of an MCPE-based rate) while the market transitions to the new rule. The change will allow current POLRs to serve customers on non-MCPE rates in the event a mass transition occurs before the new rule takes effect.

PUCO Clarifies Supplier Requirement to Submit REC Plans

PUCO denied several rehearing requests regarding its November order updating rules for competitive retail electric service, and maintained that suppliers seeking to use RECs for alternative energy compliance must submit an action plan for Staff review and approval (06-653-EL-ORD, Matters, 11/6/09).

Originally, the Ohio rules required that suppliers, "shall submit to staff for its review and approval a proposal for incorporating the use of renewable energy credits (RECs) within its annual and quarterly environmental disclosures." The language implied suppliers had an obligation to use RECs in such disclosures.

PUCO clarified that suppliers instead must report for Staff review a proposal for incorporating the use of "any" renewable energy credits within their environmental disclosures, clarifying that the rule is not intended to require that the provider must use RECs as part of alternative energy resource requirements. However, to the extent that the supplier will use RECs for compliance with Section 4928.64, Revised Code, PUCO maintained that the supplier must have a Staff-approved plan to do so, so that its environmental disclosure data reflects any RECs it might purchase or sell.

The Commission affirmed that competitive suppliers must report their number of customers and megawatt-hour sales quarterly, denying requests to make the filing annual. PUCO reasoned that most of the burden in providing the report is in capturing and maintaining the monthly data that would be required, whether reported annually or quarterly.

"More importantly, quarterly reporting provides bidders in competitive procurements with more information to gauge migration risk and thereby assists bidders to make price appropriate bids," PUCO said. However, the reports would be confidential, and though PUCO could provide aggregate data on migration levels from the reports to wholesale bidders, ostensibly bidders could receive the same information from utility-reported aggregate migration statistics.

The Commission denied requests on rehearing to implement a Purchase of Receivables program, stating that the revised partial payment allocation order (which places past due competitive supply charges first) should alleviate marketer bad debt. PUCO also declined to include a standard which would have made uncollectibles related to the utility standard service offer fully bypassable, stating such matters should be addressed in individual tariff cases.

A petition from NOPEC to include in the rule a provision exempting governmental aggregators form any minimum stay for standard service customers was also denied, as PUCO said the matter should be addressed in individual utility tariff proceedings. PUCO also maintained that governmental aggregations must provide an opt-out period every three years, and said such a provision does not preclude aggregators from executing longer-term supply arrangements.

PUCO also tweaked the requirement that utilities notify new customers that they may obtain a list of competitive suppliers actively seeking new customers. The list will now only include suppliers actively seeking residential customers in the service area.

Industrials Oppose Dayton Transmission Rider for Including Generation Charges

Industrial customers protested Dayton Power and Light's application at PUCO for a Transmission Cost Recovery Rider, arguing that the rider includes certain generation costs (Matters, 3/31/09).

As only reported in Matters, DP&L is seeking to recover, among other things, RPM Auction Charges and Peak Hour Period Availability Charges through the rider.

"DP&L has employed considerable artistic license in attempting to define cost components that it believes are transmission-related," Industrial Energy Users-Ohio said.

IEU-Ohio argued that locational reliability charges, capacity resource deficiency charges and credits, RPM auction revenues, generation resource rating test charges and credits, and peak hour availability charges and credits -- all of which DP&L considers transmission costs -- are actually generation costs. While DP&L likened such costs to reactive power and other ancillary costs, IEU-Ohio contended that RPM costs are clearly incurred for generation service.

Moreover, Commission rules prohibit the transmission rider from recovering costs that are already being collected in other rates or riders, IEU-Ohio noted. Industrials pointed out that the approved Stipulation implementing DP&L's rate stabilization plan calls for standard service to include all competitive retail electric services necessary to maintain essential electric service to consumers, "including a firm supply of electric generation service." Thus, RPM related charges are already covered by standard service rates, industrials said.

NFG Warns Negative Experience from Door-to-Door Sales Would Hurt Retail Market

National Fuel Gas Distribution insisted that there is nothing unreasonable about its proposed Pennsylvania voluntary Purchase of Receivables program which would prohibit door-to-door sales to customers included in the POR program (Matters, 4/6/09).

In response to various criticisms from marketers regarding the prohibition, NFG said that it is not proposing to completely prohibit door-to-door sales in its territory, and that the restriction would only apply to suppliers participating in the POR program, since such suppliers will gain from NFG's, "billing service, name, and reputation."

However, NFG also proposed that the POR plan would be mandatory for any suppliers wishing to serve residential, small commercial/public authority, or small volume industrial customers consuming less than 1,000 mcf annually. Thus, suppliers wishing to give up POR and instead conduct dual billing in order to continue door-to-door sales would not have that option, and door-to-door sales to small customers would be completely prohibited.

NFG reiterated the problems it has seen with door-to-door sales in New York, and said it is "reluctant" to be associated with door-to-door sales practices and the "inevitable" customer dissatisfaction that results from them.

While a statewide initiative addressing greater consumer protections may be appropriate, NFG said door-to-door sales should be prohibited in the interim, rather than allowing them to continue until further protections are developed. NFG warned that if door-to-door sales are allowed and result in anything resembling the New York experience, "customer choice will indeed suffer a setback."

NFG also countered the Office of Consumer Advocate's claim that its proposed Merchant

Function Charge represents an impermissible automatic surcharge for uncollectibles. The MFC does not compare uncollectible expenses to revenues recovered, and merely applies the same fixed percentage to discount purchased receivables and to the price to compare, NFG said.

OPC Wants Discovery Reinstated in Exelon-NRG Review

Texas' Office of Public Utility Counsel asked that a suspension of discovery in Exelon's application at the PUCT for approval of its hostile acquisition of NRG Energy be lifted, due to the fact that it is now uncertain when or if an NRG shareholder's meeting will be called.

OPC referenced NRG CEO David Crane's recent statement that Delaware law does not place an affirmative obligation on company boards to hold a shareholder's meeting within 13 months of the previous meeting, though shareholders may file action to compel such a meeting (Matters, 5/1/09).

Discovery in the case had originally been suspended in anticipation of a shareholder's meeting in May or early June, whose results may provide more concrete facts concerning the merger. However, Crane's statement now means it is uncertain when a shareholder's meeting will be held, OPC noted.

Accordingly, it is not known if the meeting will be held before the current deadline for filing testimony in the merger review. A requirement to file testimony without having the benefit of discovery would violate the basic due process rights of the parties, OPC said in asking that discovery be immediately reinstated. Discovery must be conducted to compile meaningful testimony regarding the market share of the combined NRG-Exelon installed capacity, OPC said.

FERC Audit Faults NYISO Market Monitoring Structure

The New York ISO has not provided adequate assurance that its internal Marketing Monitoring Unit (MMU) has sufficient independence from the market design function of NYISO, and the ISO continues to lag in notifying stakeholders promptly regarding tariff-related problems, a FERC audit found (PA08-3).

The FERC report found that NYISO's internal MMU is not sufficiently independent of its Market Structures unit, which includes a number of functions related to market design and product development. Several provisions of the NYISO Market Monitoring Plan require the MMU to be responsive to NYISO's CEO, and the audit also revealed that the head of the MMU was reporting to the NYISO Vice President of Market Structures.

"The Report also notes that the VP of Market Structures evaluates the performance of and awards bonuses to the head of the MMU, creating the possibility that the head of the MMU could be biased toward actions requested by Market Structures, even if they might be disadvantageous to the MMU," FERC said.

FERC directed NYISO to consider organizational structure changes for its internal market monitoring function, in light of the audit findings and the requirements of Order No. 719. NYISO intends to submit its Order 719 compliance filing by May 15.

The audit also found continuing problems relating to timely formal notification to FERC and market participants of tariff-related problems.

"The Commission is especially troubled by NYISO's failure in this regard because ... this is not the first time that the Commission has addressed this issue with NYISO," FERC said.

NYISO must conduct a formal review of the processes used to identify formal tariff compliance problems and vet such problems with stakeholders, in order to make stakeholders aware of such problems in a timely fashion.

ISO-NE Responds to Conn. Complaint on Capacity Imports

ISO New England submitted its formal response to complaints from Connecticut consumer advocates regarding delivery of capacity imports (EL09-48 et. al), reiterating the ISO's previous public statement that its initial determination that high-priced capacity imports failed to deliver in 108 hours was based on erroneous data (Matters, 4/23/09).

ISO-NE told FERC that the capacity

importers in question were, in fact, not asked to deliver energy during the 108 hours involved, and accordingly did not fail to deliver energy.

Additionally, at the prices offered, the energy from the capacity imports was never needed for economic or reliability reasons during the 108 hours in question, the ISO said. The highest actual, real-time LMP at the Roseton Node during these hours was $284.43/MWh, never approaching the high-priced offers ($660+/MWh) of the capacity importers.

The ISO also said that the high-priced energy offers did not result in inefficient dispatch. ISO-NE reported that there were "significant" energy imports from New York throughout the ICAP Transition Period, indicating that the high-priced energy supply offers associated with capacity imports did not impede energy dispatch between New York and New England.

ISO-NE said it would not address the complainants' arguments regarding the motives of the capacity importers for their pricing strategies, as such analysis requiring subjective judgment is the purview of the Commission, not the ISO.

Briefly:

Ohio Approves Transfer of EnergyWindow Certificate, Reiterates Prior Approval Needed

PUCO approved the E Source Companies' application to transfer the electric and natural gas aggregation certificates of EnergyWindow to E Source, as E Source acquired EnergyWindow in July 2008. However, the Ohio Commission stressed that administrative rules require Commission approval prior to the transfer of a certificate, stating it was unclear whether Energy Window attempted to transfer its certificates prior to the receipt of approval. "E Source is cautioned that transfer approval should have been obtained in advance," PUCO said.

Bounce Energy Offering Indexed Product

Bounce Energy said it is offering a "Summer Shield" plan which is meant to offer customers an opportunity to both mitigate price spikes while still being able to take advantage of potentially lower prices. Essentially, the plan is an index on the previous month's rate, of which there are several variations in the ERCOT market. Under Bounce's plan the monthly price will not increase more than 10% in any month, and there is no floor on how low the price may drop. Typical of most Bounce offers, Summer Shield includes enrollment bonuses such as free ID protection service, a $50 bill credit with auto bill pay, and a loyalty program. Bounce also updated its product focused on customers moving to new residences, offering a $50 gift certificate to Macy's or Home Depot for enrollments in addition to the bonuses also offered on the summer shield product.

GSE Opens N.Y., Pa. Offices

Broker GSE Consulting said it has opened new offices in Pittsburgh and New York City, and has expanded its electricity and natural gas procurement services to 23 states and Canada. GSE also said Scott Martin, former VP of commercial sales at Green Mountain Energy, recently joined GSE as executive vice president of sales and demand side management to oversee the Dallas and Ft. Worth offices, as well as the company's new national energy related services, including national demand response program consulting, carbon consulting, renewable energy project development consulting services, and energy audit and efficiency services.

ICC Seeks RTO Input on Smart Grid

The Illinois Commerce Commission said it is seeking input from the Midwest ISO and PJM to aid in its statewide smart grid collaborative.

N.Y. PSC Sets AMI Conference

The New York PSC set for June 1 a technical conference to examine the key aspects of a benefit-cost analysis for advanced metering infrastructure (Matters, 4/15/09).

RSG Charges ... *from 1*

amounts paid and the amounts collected therein so that each participant is returned to the financial position it was in before the refund process began.

The Commission said that although virtual suppliers had been on notice since August 10, 2007 that the RSG cost allocation might change, it was "unreasonable" to expect market participants to adjust their economic decisions to correctly accommodate the eventual rate change. FERC agreed that it would not have been possible for market participants to accurately predict the significant increase in costs resulting from FERC's November 10, 2008 order.

FERC noted that the allocation of RSG costs to virtual offers is a function of a wide range of factors, including the overall level of RSG costs and the megawatts of deviations compared to the megawatts of virtual supply offers, all of which change every day depending on market conditions. "The interaction of such factors is difficult to predict in any event, but it is particularly hard to do so when a market participant also must understand, and account for, other market participants' expectations of an ongoing Commission proceeding and how those other participants alter their behavior in response," FERC said. However, FERC used the same reasoning (that RSG cost composition is complex) in denying rehearing requests for a more precise cost allocation formula that would more narrowly assign RSG costs to virtual suppliers coincident to their actions which cause RSG costs to be incurred.

FERC also justified its decision to forego refunds due to the complex nature of the refund process, and the "needless" litigation which will likely result from the process.

However, while handing financial marketers a victory on the refund issue, FERC preserved its main cost allocation finding in the November 10, 2008 order, and affirmed that virtual supply offers should be assessed RSG charges both under the interim and indicative cost allocation proposals. The interim cost mechanism, currently in effect as tariff changes to implement the more complex indicative proposal are refined, simply removes the previous requirement which assigned RSG charges only to a transaction which "actually withdraws energy."

"[T]he cost causation evidence in this proceeding does not support allocating Revenue Sufficiency Guarantee costs only to market participants that withdraw energy, while exempting market participants who make virtual supply offers but do not withdraw energy," FERC said, relying principally on the determination of the Revenue Sufficiency Guarantee Task Force Study which made no differentiation in cost assignment.

That study has been widely contested by financial marketers as having no cost causation support.

FERC conceded that, "there is no objective basis on which to determine a uniform level, or static percentage, of Revenue Sufficiency Guarantee costs that should be allocated to virtual offers." Furthermore, "[t]here is also no objective way to determine what allocation share would precisely recover Revenue Sufficiency Guarantee costs - that is, what share would ensure that Revenue Sufficiency Guarantee costs are neither over- nor under-allocated."

FERC used such findings to justify its decision not to attempt to analyze the precise degree to which virtual offers contribute to RSG costs. "Such an analysis would unduly delay resolution of this lengthy proceeding," FERC said.

"Ultimately, therefore, the question becomes whether the proposed allocation of Revenue Sufficiency Guarantee costs to virtual supply offers falls within the just and reasonable range. Since data that would support a hypothetical, ideal allocation is not available, analysis of this issue necessarily requires the experience and knowledge of system operators and analysts as well as modeling and statistical techniques. Relying on their knowledge and expertise, the Revenue Sufficiency Guarantee Task Force and the Independent Market Monitor confirm that virtual offers can cause Revenue Sufficiency Guarantee costs," FERC held.

In short, FERC conceded it cannot make a definitive determination of the most accurate allocation of Revenue Sufficiency Guarantee costs, and can only ensure that the proposed rates fall within, "the zone of reasonableness."

DC Energy had said during the case that it could not obtain needed data from MISO to perform a meaningful cost causation analysis. However, FERC dismissed such concerns, as it said it did not have any basis to conclude that DC Energy's analysis would result in a different cost allocation. Furthermore, "such an attempt to develop a more precise cost allocation is not needed since the Interim Rate and the Indicative Rate appropriately identify the factors that can cause Revenue Sufficiency Guarantee costs and the resulting cost allocations are in the zone of reasonableness," FERC reasoned.

The Commission rejected various proposals to allow marketers to net virtual positions, stating such mechanisms, including one proffered by the Independent Market Monitor, fail to recognize the locational nature of the market. The netting, FERC said, would exempt at least some virtual offers from an allocation of RSG costs even in hours in which they may cause unit commitment and RSG costs.

FERC also denied rehearing requests to include all load (rather than only load deviations) in the RSG denominator as a factor that would be assigned RSG costs, since load was not identified as a significant driver of RSG costs.

"Considering how large load is in comparison to the other factors that can cause Revenue Sufficiency Guarantee costs, the result is that most of the costs would be allocated to load even though load has not been shown to be a cause of Revenue Sufficiency Guarantee costs," FERC said.

FERC's decision reversing its refund order rendered financial marketers' motion for a stay of the order moot with respect to refunds. Regarding a stay of FERC's order directing RSG charges to be imposed on virtual supply offers going forward from November 10, 2008, FERC denied such requests, stating marketers did not show that they would suffer irreparable injury absent a stay. Since market participants knew the interim cost allocation methodology would be in effect starting November 10, 2008, any financial harm that a market participant may have incurred after November 10, 2008 was the result of a business decision by that market participant, FERC said.

Meter Reads ... *from 1*

four business days to read the meter for the switch. Smitherman said the four business days should be expanded to include the three business days in which the switch was processed before the request is received by the TDU, if an actual on-cycle meter read occurred during this period, to reduce costs from an additional read or estimate.

Smitherman intends to provide revised language for the May 21 open meeting for discussion and final adoption.

Staff also made a clarification to its proposal for adoption regarding information contained on the modified ERCOT postcard. As only noted in Matters, Staff proposed keeping the ERCOT postcard and listing the customer's new and old REP, but removing specific instructions on how to cancel the switch. However, Staff's accompanying draft language retained the requirement that the postcard contain both a cancellation date by which any cancellation request would have to be submitted, and a statement that the switch will be processed absent the customer notifying ERCOT of the cancellation. Staff's revised language strikes those two provisions, so that the postcard only lists the names and phone numbers of the existing and new REP.