Energy Choice Matters

May 19, 2009

N.Y. PSC Approves Adjustment to NYSEG/RG&E Nonbypassable Charges

The New York PSC will allow NYSEG and Rochester Gas & Electric to make an interim adjustment to their nonbypassable charges prior to the scheduled reconciliation in 2010, as the Commission said reduced cash flow could hinder safe and reliable operations. Moreover, with the currently low commodity prices, allowing the adjustment to be done now instead of 2010 will help avoid rate shock (09-E-0228).

The nonbypassable charges recover various legacy electric supply costs, including payments to qualifying facilities and costs to operate retained hydro units. Due to the steep decline in market pricing since the fall of 2008, when the nonbypassable charges were developed, NYSEG and RG&E are substantially under-collecting anticipated revenue from the charges (Matters, 5/13/09).

NYSEG's most recent calculations show that it accrued $32 million in under-collections through the end of March 2009, and expects a total of $100 million at the end of 2009. RG&E accrued $27 million in under-collections through the end of March 2009, and expects a total of $121 million at the end of 2009.

"Without expedited adjustments to enhance recovery of those costs, the utilities would confront unanticipated difficulties in executing their responsibilities to manage their cash flows, causing them to consume capital resources better devoted to spending on safe and reliable service," the PSC said.

"Moreover, unless provisions to recover the under-collected costs are made now, NYSEG and RG&E ratepayers face the prospect of much larger commodity price increases in 2010," which could produce rate shock, the PSC said.

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Conn. OCC Seeks Ruling on Billing Statute to Limit Collection of Billing Errors

The Connecticut Office of Consumer Counsel petitioned the DPUC for declaratory relief regarding the interpretation of Conn. Gen. Stat. § 16-259a, which OCC believes limits the amount of time which a utility or competitive supplier may re-bill customers for corrected charges from previous billing errors.

In two recent decisions, including its decision regarding Connecticut Light and Power's billing problems (Matters, 8/7/08), the DPUC held that the statute limits the time in which a utility or supplier may discover a billing error to 12 months. However, if the error is discovered in that timeframe and the customer is notified, there is no limit on how long the utility or supplier may continue to re-bill the customers for the corrected charges.

The DPUC noted such an interpretation is consistent with the requirement that utilities and competitive suppliers must offer payment plans to customers when re-billing inaccurate charges, which spread payments out over a period of time and limit the re-billing amount per bill. Otherwise, the requirement for payments of re-billed charges to be spread out could result in under-collection by utilities or suppliers, if the time limit for customers' liability for the re-billed charges ends before the extended payment plan.

Essentially, the DPUC held that the statute imposes a 12-month limit for the utility or supplier to discover a billing error, but does not limit for how long the utility or supplier may recoup the error.

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PULP Argues Actual ESCO Data Should be Used in 18-a Assessment

Using New York PSC Staff's proposed method to estimate ESCO revenues for the purpose of the revised Section 18-a assessment, "may significantly underestimate ESCO intrastate revenues," and should not be used, the Public Utility Law Project (PULP) said in comments on the Staff proposal (09-M-0311).

Staff has recommended that utilities multiply the known amount of electricity or gas delivered to ESCO customers by the utility's commodity supply price for purposes of estimating ESCO revenues to be charged under the assessment (Matters, 4/29/09).

However, PULP argued that, "ESCO end user prices often greatly exceed utility prices (usually after a limited 'trial' period)," and said that the distribution utility's commodity supply price may be 20-30¢ lower per therm than the actual ESCO end user rate.

"By proposing to estimate ESCO revenues as if there are no differences between ESCO revenue per kilowatt hour (or therm) and utility revenue per kilowatt hour (or therm), a portion of the revenues of the high-charging ESCOs would not be subject to the Temporary Assessment," PULP said.

PULP also disputed that a proxy is required because ESCO sale data is unavailable. PULP argued that utilities performing consolidated billing for ESCOs have the requisite rate and usage data, and also said ESCO sales data is also reported by ESCOs to the Energy Information Administration (EIA).

"It should not be a burden for these ESCOs to share commodity price and sales revenues with the Commission in order for the agency to more accurately estimate the Temporary Assessment when this information is already made available by them to EIA on a monthly basis," PULP said.

"The Commission should require ESCOs to submit the data already prepared and provided to the distribution utilities and/or EIA to the Commission, at least until the time the Commission develops its own data request forms on ESCO prices and revenues for calculating ESCO revenue for the Temporary Assessment," PULP requested.

Staff's proposed estimation methodology was supported, either wholly or in principle, by Central Hudson Gas & Electric, Consolidated Edison/Orange and Rockland, Constellation NewEnergy, the National Energy Marketers Association, National Grid, and NYSEG/Rochester Gas & Electric. ConEd recommended that a distinction be made between firm and interruptible gas supply rates in the estimation, while Grid noted some customers on specific rate classes (such as economic development) are excused from incremental surcharges.

Universal Seeks Rehearing of Mich. Settlement Decision Over Reporting Change

Universal Gas & Electric petitioned the Michigan PSC for rehearing of the Commission's order adopting a settlement agreement between Staff and Universal concerning Universal's marketing, because the Commission departed from the stipulation in holding that Universal shall continue to file compliance reports in a public docket.

The settlement, which resolved a Staff complaint against Universal, called for case U-15509, Staff's original investigation docket which later housed quarterly Universal marketing reports, to be closed. Universal would continue to submit regular reports directly to Staff for a period of two years.

However, as only noted in Matters, the PSC ordered that the case remain open to house semi-annual marketing reports required for two years under the settlement, and to address other implementation matters.

Although under the settlement any party has the right to withdraw the stipulation after modification by the Commission, Universal said it was not exercising that right.

Instead, it asked the Commission to close case U-15509 now that it has fulfilled all its compliance obligations under the settlement, aside from the ongoing marketing reports. Universal noted that the Commission's original February 2008 order instituting case U-15509 only called for reports for a period of one year, which has expired.

Keeping case U-15509 open, even for

ministerial functions, essentially maintains an open investigatory regulatory matter for two years, which Universal must disclose in various investor filings. The disclosure of such an open docket has the potential to negatively impact both Universal's stock value and ability to raise capital, Universal said. That consideration is why Universal sought in the settlement agreement, accepted by Staff, to close case U-15509 and make reports directly to Staff.

Submitting the reports directly to Staff will not hinder the Commission's or Staff's ability to seek appropriate resolution of any problems that the reports may reveal, Universal noted, and Staff could always open a new docket if needed.

Dayton Says Reliability Costs Appropriately Recovered in Transmission Rider

Dayton Power and Light countered arguments from industrials that its proposed transmission rider impermissibly collects generation charges (Matters, 5/7/09).

Industrial Energy Users-Ohio objected to several Reliability Pricing Model (RPM) charges included in the Transmission Cost Recovery Rider (such as locational reliability charges and capacity resource deficiency charges and credits) since such costs relate to generation service.

However, DP&L contended that since such charges bolster transmission system reliability, they are appropriately recovered through the transmission rider. Although the costs may be paid for the operation of generation, such generation is specifically procured to support the reliability of the transmission system, DP&L argued.

DP&L further dismissed IEU-Ohio's argument that certain reliability costs are already recovered in current generation rates. The industrials had noted that standard service includes all competitive retail electric services necessary to maintain essential electric service to consumers, "including a firm supply of electric generation service."

However, DP&L noted that the current generation rates were set prior to the start of RPM and thus do not include RPM-related costs.

Dayton also withdrew its request to include Alliance RTO start-up costs in the transmission rider, as part of an offered compromise for approval of remaining costs.

Suppliers, Utilities Oppose Ohio Deliverability Requirement for MISO, PJM RECs

Competitive suppliers, utilities, and industrials opposed various limits on the location and vintage of RECs to be used for compliance with new Ohio alternative energy standards in rehearing requests.

Among other things, PUCO's April order held that half of the energy used to meet new alternative energy mandates must be sourced from in-state. Additionally, all energy from outside Ohio must be shown to be deliverable into Ohio through a power flow or analogous study (Matters, 4/16/09).

The FirstEnergy utilities said that the General Assembly, in R.C. § 4928.65, established only one clear and narrow geographic limitation on RECs -- requiring that for hydropower RECs, such RECs may only qualify if the facility is located within Ohio or a bordering state.

"When the General Assembly lists criteria to be applied or considered, the intent is that other criteria shall not be applied or considered," the FirstEnergy utilities said, arguing PUCO cannot impose either a mandate for in-state RECs, or a deliverability analysis.

The FirstEnergy utilities alternatively said that a power flow analysis for RECs sourced from PJM or the Midwest ISO is superfluous, given the nature of RTO operations. PUCO should find any REC sourced from the two RTOs to be deliverable into Ohio without the need for a burdensome and redundant analysis, the FirstEnergy companies said.

Constellation NewEnergy, Direct Energy Services, and Integrys Energy Services (competitive suppliers) agreed that RECs from PJM and MISO should, by definition, be considered deliverable into Ohio. Without the change, LSEs and PUCO Staff could potentially be required to compile and review hundreds of power flow studies per LSE.

PUCO's rules also limit the use of RECs to only those created after July 31, 2008. The FirstEnergy companies argued that R.C. §

4928.65 contains only one temporal limit on RECs -- that they must be used within five years of their acquisition. The Commission's additional requirement barring RECs created before July 31, 2008, is impermissible under statute, the FirstEnergy utilities said. Industrial Energy Users-Ohio agreed that it would be unreasonable for PUCO to include an additional limitation not in statute.

IEU-Ohio also opposed the Commission's mandate that RECs must retain their bundled environmental attributes (though RECs may be unbundled from their underlying energy). IEU-Ohio argued that such policy is not contained in statute, and also contended that since statute does not associate any environmental attributes with a REC, there is no such thing as a fully aggregated REC in Ohio. Requiring the use of fully aggregated RECs with all environmental attributes may raise compliance costs, industrials said.

While recognizing that PUCO's final rules attempted to allay their concerns, the competitive suppliers still warned that the published rules still place existing suppliers at competitive disadvantage compared to new entrants. Under the rules, existing suppliers have their alternative energy compliance baseline set using their average sales for the past three years. However, new entrants must only provide a reasonable projection of sales for purposes of setting their alternative energy benchmark.

Although requiring an estimate from new entrants mitigates some concerns (a draft would have required zero compliance from new entrants), the competitive suppliers said existing retailers will still be at a disadvantage because they will be serving customers on existing contracts which do not include any cost of compliance in their rates. Competitive suppliers suggested that all existing contracts should be exempted from counting towards a supplier's baseline.

The competitive suppliers also called PUCO's requirement for 10-year alternative energy compliance plans unworkable for competitive suppliers, given their migrating customer load. Due to their volatile loads, "any information provided by a [supplier] beyond the known standard service offer provisions in the utility service territory is questionable at best as the variable of the price to beat is unknown ... [and] offers no meaningful information to the Commission."

Competitive suppliers suggested a compliance horizon of one year. The FirstEnergy utilities likewise called a 10-year planning horizon futile and speculative.

The competitive suppliers again argued that the cost cap for alternative energy requirements must recognize the unique nature of competitive sales which include individual customer rate designs, by allowing suppliers to benchmark their compliance costs to public market data, such as Energy Information Administration data.

Utilities should also be required to use competitive procurement to meet the alterative energy resource mandate, competitive suppliers said.

Briefly:

German Telecom Entrepreneur to Enter ERCOT Retail Market

Abacus Resources Energy applied for a REP certificate at the PUCT. Abacus President Omer Varol owns and runs Callax Telecom Holding GmbH, which is a multi-million dollar German telecom, advertising, mobile telephone, and electric provider. John Landry will serve as Senior Vice President at Abacus. Landry was mostly recently COO at Glacial Energy, and was previously at Catalyst Natural Gas and NewEnergy Associates. Abacus would meet currently applicably financial standards via unused cash resources of at least $100,000.

Reliant Offers Bill Credits for Late Move-Ins

Reliant Energy has introduced a new product aimed at relocating residential customers called Movers Promise, which offers customers up to a $200 bill credit if their electricity is not turned on as scheduled. Single-family homeowners will receive up to $200 in credit if electricity is not turned on by the end of the agreed-upon service day. Apartment dwellers may receive up to $50 in bill credits. Reliant will also execute requests on a priority connection basis, free of charge. Reliant said the promise does not apply to weather emergencies that cause the TDSP to redirect crews for service restoration. For a priority move-in, customers must complete their enrollment request by 2 p.m. a minimum of one business day prior to the requested date of service.

Commerce Energy Asks for Waiver of Mich. Net Metering Requirement

Commerce Energy asked the Michigan PSC for a waiver of a new mandate that requires all competitive suppliers to submit a net metering program plan consistent with new Commission rules by June 30. Commerce said it currently serves about 450 small commercial customers in Detroit Edison's service territory, and none of Commerce's customers has expressed interest in the net metering program. Commerce asked for a waiver based upon its current and expected customer mix, and said that should any new customer contract with Commerce for whom the net metering standards would apply, Commerce will file a proposed net metering application. New Commission rules compel suppliers to offer nondiscriminatory rates and terms to net metering customers, and to purchase surplus generation. The Commission also prescribes the rate to be paid for surplus generation (Matters, 3/19/09).

D.C. Orders Five Suppliers to File Delinquent Service Quality Reports

The District of Columbia Public Service Commission ordered Horizon Power and Light, Integrys Energy Services, Liberty Power, Pepco Energy Services and Washington Gas Energy Services to file their quarterly service quality reports which have not been timely filed. The PSC said the five suppliers have not submitted reports for the quarter ending December 31, 2008. The Commission also directed the suppliers to file their reports for the quarter ending March 31, 2009 if they have not already done so (WGES filed its Q109 report earlier in May). The PSC also ordered distribution utility Pepco to conform its reports to specific criteria, including explanations of failed measures, and the filing of aggregate quarterly scores for monthly statistics.

DPUC Draft Would Accept Levco License Relinquishment

The Connecticut Department of Public Utility Control would accept Levco Tech's relinquishment of its electric aggregator license under a draft decision, as Levco wishes to continue marketing for electric suppliers (Matters, 4/1/09). The DPUC has clarified that aggregators must be the exclusive agents of customers, and cannot act as an agent on behalf of any supplier (Matters, 3/12/09).

MISO, IMM Ask FERC to Reconsider Mitigation in Voluntary Capacity Auction

The Midwest ISO and Independent Market Monitor sought rehearing of FERC's April order which directed MISO to include specific provisions for market monitoring of the voluntary capacity auction in its tariff, potentially including automatic mitigation (ER08-394, Matters, 4/17/09). MISO and the IMM called FERC's order "premature" as, "[t]here has not even been a showing of potential market power in the [auction]." MISO noted that the first auction on April 24, 2009, cleared at a price of $0.05 per kW-month and provided no indication of competitive concerns. Furthermore, MISO argued that FERC has found that the exercise of market power is unlikely, given ample supplies. The ISO said there is, "significant dangers associated with imposing mitigation in the absence of market power." If mitigation were imposed, the willingness of market participants to invest in new resources could be negatively impacted, MISO said.

PUCT Opens Docket to Update Reporting Requirements in Light of New Certification Rule

The PUCT has opened docket 37007 to adjust Subst. R. 25.491, Record Retention and Requirements, to reflect newly adopted deadlines for REP reports as part of the new certification rules.

CPower Wins Mass. State Contract

CPower has been awarded an exclusive statewide contract by the Massachusetts Division of Capital Asset Management to provide demand response and permanent peak reduction services to state facilities. CPower will renew its existing demand response capacity of 25 MW in the region and contribute an additional 25 MW of capacity, through the ISO New England 30 Minute Real Time Demand Response and 30 Minute Real Time Emergency

Generation programs. CPower will also offer On Peak Hours Demand Resources projects, a permanent peak reduction program for state agencies introduced by ISO New England which provides payments for energy efficiency, distributed generation and load management projects based on a project's permanent peak demand reduction value.

FirstEnergy Solutions Lists Additional Aggregations

FirstEnergy Solutions said its newest signed governmental aggregators are Akron, Ashland, Crestline, East Palestine, Fairfield Township, Fairlawn, Girard, Norton, Rittman, Streetsboro, Struthers, Summit County, Westlake and Youngstown. As previously reported, the additions push FirstEnergy Solutions' total governmental aggregation contracts to 38, covering 385,000 residential and small commercial customers (Matters, 5/15/09).

CAISO Sees Adequate Summer Supplies

The California ISO said it expects nearly 1,500 MW of new generating capacity to come online by July, which, combined with a 3% drop in forecast peak demand, means the ISO forecasts adequate summer supplies and a less than one percent possibility that conditions would merit severe electrical emergencies. The new generation includes nine power plants, including two wind farms with a combined capacity of 153 MW as well as a 2 MW photovoltaic solar plant. An estimated 22 MW of existing generation is scheduled to retire.

NYSEG/RG&E ... from 1

NYSEG and RG&E proposed two interim adjustments for the remainder of 2009, one on July 1 and a second on October 1.

However, the PSC ruled that an initial adjustment shall be made on June 1. The accelerated adjustment, to account for both current under-collections and forecast under-collections going forward, will benefit customers by allowing them to pay off any balance over a longer period of time (reducing the monthly cost), and by ensuring as much of the balance as possible is paid off while low commodity prices mitigate the higher nonbypassable charges.

Furthermore, NYSEG and RG&E shall re-examine their collections from the nonbypassable charges monthly, and compare them against updated market price forecasts. Rather than adjusting the charges in October as the utilities proposed, an adjustment shall be triggered if the effect of an under- or over-collection exceeds $7.5 million for NYSEG or $10.0 million for RG&E. The adjustment shall then be implemented in the following month, to prevent the accrual of additional ratepayer debits to the utility, or to promptly flow through to ratepayers any benefits that changing circumstances might yield, the Commission ordered.

While the drop in commodity prices for customers on variable pricing will more than offset the higher nonbypassable charges and result in a bill lower than 2008 levels, customers on the utilities' fixed price option do not have the benefit of lower commodity prices. Absent mitigation, the higher nonbypassable charges would increase fixed price customer bills by 14%.

Accordingly, the Commission ordered that Asset Sale Gain Account credits owed to customers shall be used to mitigate the nonbypassable charge increase for customers on the fixed price option. The PSC said using Asset Sale Gain Account credits will not impose an unreasonable burden on other customers or significantly impact the utilities' cash flows. Additionally, a substantial portion of the amounts accumulated in the Asset Sale Gain Account is likely attributable to the sharing of over-earnings that the utilities realized from the rates they charged to fixed price option customers.

Conn. OCC ... from 1

However, OCC argued such an interpretation is inconsistent with statute. OCC contended that § 16-259a holds that a utility may not, "bill or otherwise hold the customer financially liable for more than one year after the customer receives such service," for any billing error. The DPUC's interpretation essentially ignores the word "otherwise" by prohibiting the billing of errors discovered after 12 months, but allowing previously discovered errors to be charged beyond 12 months, OCC said.

OCC also cited legislative history and six past DPUC decisions to support its case.

The DPUC's interpretation has caused customers unnecessary difficulty, OCC noted, including with respect to competitive suppliers. The DPUC has informed competitive suppliers that invoices issued after 10 days of the scheduled bill date must be treated as inaccurate bills, subject to re-billing payment plans. However, OCC observed that suppliers sometimes lack data to bill customers in a timely fashion, due to utility problems. To avoid issuing an "inaccurate" bill by waiting for correct data from the utility, suppliers are issuing estimated bills to provide bills by the scheduled date. Since suppliers use different estimation methods than utilities, customers receive divergent information on their supply and delivery bills, which OCC said is confusing and inhibits decisions on energy usage.