

Energy Choice

Matters

May 29, 2009

Duke Energy Ohio Says SSO Auction Not in Customers' Best Interest

An auction to procure gas supply for the Standard Service Offer would not be in customers' best interest at this time, Duke Energy Ohio said in a report to PUCO, stating that the current procurement system, "works to provide customers with a stable and fair price while giving them the opportunity to purchase gas from another supplier if they so choose."

The report stems from a collaborative required by a stipulation in Duke's 2008 rate case (Matters, 5/29/08). Currently, Dominion East Ohio and Vectren Energy Delivery use an auction to procure supply for non-shopping customers, while Columbia Gas of Ohio has a pending request to institute an SSO auction.

A white paper by several market participants cited several benefits from an auction, but Duke dismissed each point.

While the white paper said the economies of scale from a regional supply and capacity network would provide customer benefits under an auction approach, Duke said it already captures such benefits by using an Asset Management Arrangement (AMA). The asset manager combines the interstate pipeline transportation, storage, and supply contracts released from Duke with other contracts that it holds, either its own or through other AMAs, to extract value from the same economy of scale referred to in the white paper, Duke said, stating an auction is not needed to realize such benefits.

While auction supporters also pointed to cost savings under an auction resulting from the end of

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REPs Recommend Procedures to Adjust Estimated Meter Reads for Expedited Switches

A coalition of retailers has suggested more prescriptive language regarding adjustments to estimated meter reads used to expedite the retail switching timeline in ERCOT. The comments were filed jointly by the Alliance for Retail Markets, Texas Energy Association for Marketers, TXU Energy, Reliant Energy, First Choice Power, CPL Retail and WTU Retail (36536, Matters, 5/28/09).

The latest proposal for adoption holds that estimated reads shall be adjusted upon the mutual agreement of the TDU and one of the involved REPs that the estimate was not reasonable.

The retailers' proposal strikes such language, and instead holds that estimates shall be adjusted under two scenarios:

1) The losing REP's billed usage is greater than the total kilowatt-hours used by the customer in the TDU monthly meter read cycle during which the estimate was made;

2) If a customer disputes the estimated usage to either the gaining or losing REP, either REP may request that the TDU review the estimate. In reviewing the estimate, the TDU shall promptly calculate the average actual kWh usage per day for the time period from the actual meter reading occurring prior to the estimated reading to the actual meter reading occurring after the estimated reading. The TDU shall determine whether the usage per day for the estimated period is at least 25% greater than, or 25% less than, the average actual kWh usage per day. If so, the TDU shall promptly adjust the estimated meter read. The TDU may adjust an estimate that does not meet this

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Texas HB 1822 Amended to Include Fixed-Rate Expiration Notice

Texas HB 1822, originally drafted to require common terminology in REP and other utility bills, was amended on the Senate floor to impose a notice of fixed-price contract expiration which differs from recently revised rules at the PUCT.

Under an amendment offered by Sen. Wendy Davis, D-Ft. Worth, REPs would be required to send residential customers a written notice of the upcoming expiration of a fixed-rate contract, at least 30 days before the expiration date, but no more than 60 days before expiration.

The new PUCT rules require written notice of contract expiration at least 14 days prior to the date of contract expiration but no more than 45 days in advance of expiration. The extended time period in amended HB 1822 would presumably mitigate one of the benefits of the expedited switching timeline imminent in the ERCOT market, as REPs may include a larger risk premium in renewal offers if pricing is required to be sent 30 days ahead of expiration, rather than 14.

Amended HB 1822 would also require all REP bills for fixed rate products to include the expiration date of the fixed rate product. PUCT rules only require an approximate expiration date, reflecting the fluid nature of meter reading schedules, on only the last three bills prior to expiration (and only if the REP chooses the option of sending the expiration notice with the bill).

HB 1822 was also amended to remove a provision requiring REPs to use the common set of billing terms to be developed by the PUCT in their contracts (and not just bills), as was required under the committee substitute. However, the bill was again expanded to cover all customers, not only residential and small commercial customers.

As the bill now differs from its House counterpart, it must either be approved again by the House, or reconciled in committee, to advance.

HB 1243

The Senate struck a provision of HB 1243

relating to the pricing of surplus distributed renewable generation in adopting several amendments and passing the bill yesterday (Matters, 5/25/09).

The major tenets related to REPs' obligation to purchase excess distributed generation remain in tact; REPs must either purchase such generation at a fair market value to be set by the PUCT, or the local market clearing price.

However, the committee substitute also imposed price floors (5¢/kWh for solar, 4¢ for all other sources) for REP surplus renewable generation purchases until the PUCT develops fair market value. An adopted floor amendment struck those interim price floors.

Amendments also tacked other renewable programs onto the bill, including a solar incentive/rebate program to be funded by a nonbypassable surcharge (similar to provisions in SB 545, see Matters, 5/22/09), and a program for distributed natural gas generation which calls for negotiation among REPs and customer-generators to determine the pricing for surplus gas generation. Additionally, Sen. Troy Fraser's electric cooperative reform measures were added to the bill, which now must either be re-approved by the House, or reconciled in committee.

WGL, Md. PSC Staff, OPC File Interim Hedging Joint Proposal

Washington Gas Light, Maryland PSC Staff and the Office of People's Counsel have submitted a joint proposal that would govern WGL's hedging activities through the 2010-11 winter heating season (Case 9193). The transitional hedging program would expire at the earlier of October 31, 2010, or upon the issuance of a generic order from the PSC governing LDC hedging.

WGL's transitional program would be limited to fixed-price purchases and the use of financial instruments that achieve a similar result. The use of price caps, options, and collars, which have previously been authorized at WGL, would not be permitted under the joint proposal.

Quantities of gas to be hedged would be as follows:

- Winter 2009-10: 25% of expected winter purchases
- Summer 2010: 40% of expected injection

volume

- Winter 2010-11: 25% of expected winter purchases

The summer storage hedges procured during the spring under Case 9174 would constitute the entire volumes to be hedged for the 2009 summer period.

Winter hedged purchases would be permitted up until October 27 or 28 (depending on year), while summer 2010 hedges would be permitted through April 28, 2010.

Hedging would begin at any time the price of the NYMEX strip for that season is at or below a trigger price. If market prices exceed the trigger price, WGL would cease hedging until favorable conditions return.

The joint proposal defers to the Commission to set the trigger price for each season.

Pa. PUC Approves Met-Ed/Penelec Transmission Rider Despite Criticism

The Pennsylvania PUC approved updated Transmission Service Charges (TSC) for Met-Ed and Penelec, but not without criticism of the automatic adjustment mechanisms in use at the FirstEnergy utilities.

In a 3-1 decision, the Commission approved a system average Transmission Service Charge rate of 26.332 mills/kWh at Met-Ed, and a rate of 6.531 mills/kWh at Penelec, both inclusive of Gross Receipts Tax and to be effective June 1, 2009. The Met-Ed rate reflects the deferral of \$57.5 million until the 2010 annual TSC filing, but still represents a nearly 50% increase versus the 2008 rate.

In Met-Ed's 2008 TSC filing, the PUC also approved the deferral of portions of the originally requested \$265 million increase to transmission rates, which, absent the deferral, would have increased the annual bill for an average residential customer by \$177.93.

The 2008 TSC rates of both Met-Ed and Penelec are subject to a pending complaint from the Office of Consumer Advocate and Office of Small Business Advocate, and the 2008 rates are subject to refund pending the outcome of those complaints regarding whether net congestion/risk management costs are recoverable through the TSC rates. The

outcome may also affect the 2009 TSC rates.

The status of the outstanding complaints is one reason why Vice Chairman Tyrone Christy dissented from the PUC's approval, stating, "given the magnitude of the congestions [sic] costs, neither the 2008 nor the 2009 TSC rates should have been permitted to go into effect until the reasonableness and lawfulness of the congestion charges were thoroughly examined in an on-the record proceeding." Christy noted at Met-Ed congestion charges comprise \$127.2 million of the total \$250.7 million in projected transmission costs.

Chairman James Cawley, though ultimately voting to approve the riders, said that it, "appears my worst fears are coming true," with respect to incentives created by the TSC mechanism.

Cawley dissented from the PUC's 2007 decision establishing the TSC rider, arguing, "[a]utomatic pass through of congestion costs through the TSC Rider also removes a strong incentive for the Companies to effectively manage congestion costs through such tools as Financial Transmission Rights ('FTRs'), hedges, and physical energy purchases from local generation."

"By approving the inclusion of congestion-related costs into the TSC Rider, we are creating a potentially perverse incentive for the Companies to minimize their purchase costs for energy from generators, while maximizing their congestion costs," Cawley said in his 2007 dissent.

Cawley added that, "Going forward, this is a good lesson to remember when reviewing supply portfolio programs for default service. City-gate supply products and other congestion hedging mechanisms are critically needed to protect customers from ill-conceived tariffs that do not provide the proper incentives to mitigate congestion costs."

Commissioner Wayne Gardner, who abstained from the vote, highlighted the costs of the deferrals at Met-Ed. In its 2009 filing, Met-Ed projected a TSC of \$382.6 million for 2009-2010. That figure is the sum of \$250.7 million for PJM transmission expenses, \$18.6 million to pay part of a 10-year amortization of a deferral made in 2006, \$55.2 million for undercollected transmission costs for the period ended March

31, 2008, and an additional \$57.9 million for a deferral accrued between May 2007 and June 2008, Gardner said.

While deferrals mitigate rate shock, "they are not free of charge," Gardner noted, as Met-Ed will collect interest at the statutory rate of 6% on the deferred rates. The cost to ratepayers for the \$57.5 million 2009 deferral will be approximately \$4.46 million. The total cost to ratepayers for the deferrals in collecting transmission rates that Met-Ed has made since 2006 will be approximately \$50 million, Gardner said.

Although a portion of Met-Ed's service territory lies on the expensive side of a major transmission congestion location, Gardner is "troubled" that Met-Ed initially underestimated its TSC rate, and the cost of the congestion, by such a wide margin thereby necessitating the costly deferrals.

"This case underscores the need to prudently build out our transmission infrastructure so that ratepayers can avoid inordinately high transmission congestion charges," Gardner added.

Pa. Committee Chair Pushing for State Power Authority

With rate mitigation proposals stalled in the state legislature, Pennsylvania Rep. Camille George, Democratic Chair of the House Environmental Resources and Energy Committee, has turned attention to creation of a state power authority, citing the Illinois Power Agency as a model the state could follow to avoid rate shock associated with the end of rate caps.

"A power authority would protect ratepayers from what has been called a 'lethal combination' of a dysfunctional wholesale market and a retail framework that inflates already-high wholesale prices," George said, who chaired a public hearing on the proposal this week.

The Pennsylvania authority would be charged with:

- Entering into agreements to advance construction of power plants in the state;
- Securing power for electric distribution companies for allocation to customers;
- Allocating rebates on "exorbitant" capacity charges to distribution companies and

consumers; and

- Managing power acquisition for customers unable or unwilling to secure alternate suppliers.

The authority would enter supply contracts of at least 10 years.

George said some provisions of the new legislation, yet to be filed, would mirror parts of HB 2791 from the legislative session of 2008, which included a tax on existing generators in addition to the provisions above.

A state power authority is a favored solution of industrials in the state.

Pa. PUC Strikes Recovery of Some Customer Education Costs at Duquesne, UGI

The Pennsylvania PUC yesterday rejected proposed monthly Consumer Education Surcharge rates at Duquesne Light and UGI Utilities for failure to meet the PUC's guidelines, as Commissioner Robert Powelson put companies on notice that the PUC takes education about customer choice and the end of rate caps, "very seriously." The surcharges recover the cost of education plans which inform customers about the end of rate caps and ways to reduce their electric bills, including conservation and customer choice.

At Duquesne Light, the Commission denied a requested Consumer Education Surcharge of 1¢ per residential customer, 21¢ per small commercial customer over 25 kW, and 40¢ per large C&I customer (as well as a 2¢ credit per small commercial customer under 25 kW).

In lieu of the proposed rates, the Commission directed Duquesne to issue credits of 8¢ per residential customer, 11¢ per small commercial customer under 25 kW, 13¢ per small commercial customer over 25 kW, and 3¢ per for large C&I customer. The adjusted rates reflect the removal from recovery of \$658,000 in consumer education costs that are budgeted for 2009, as the Commission said such costs do not meet the standards set forth in its August 2008 order regarding the education plan.

At UGI, the Commission denied requested rates of 0.007¢/kWh for residential customers and 0.008¢/kWh for small business customers.

UGI shall continue applying the current rate of 0¢/kWh to those classes. The requested charges were rejected because the materials used by UGI did not contain information pertaining to small businesses and did not address energy education standards outlined in the customer education plan order.

"These issues could have been addressed and corrected prior to the Company's use of the materials if the materials had been provided to the Office of Communications, the Office of Consumer Advocate, and the Office of Small Business Advocate in a timely manner as directed in the Final Order," the Commission said of both utilities.

The PUC further directed both companies to comply with their respective customer education orders, and said failure to comply may result in further Commission action that could result in the imposition of civil penalties.

Powelson said the PUC's decision puts utilities on notice that the Commission takes customer education very seriously, and will not hesitate to hold companies' feet to the fire. Powelson noted that Gov. Edward Rendell, at an event held yesterday marking Direct Energy Business' expanded Pennsylvania operations, alluded to the fact that it is critically important that customers are provided with information to make educated decisions as rate caps expire.

Vice Chairman Tyrone Christy dissented from the Commission's votes, and would have approved both utilities' proposed surcharges.

FERC Clarifies All Opportunity Costs to be Included in PJM Mitigated Offers

FERC granted a clarification requested by Mirant concerning its recent order regarding use of the three-pivotal-supplier test in PJM. In its February order, FERC said that the test had not been shown to be unreasonable, but also directed PJM to include unit-specific opportunity costs in mitigated offer prices under the test (EL08-47, Matters, 2/2/09).

In its February order, the Commission cited opportunity costs related to energy and environmentally-limited resources, and Mirant sought clarification that FERC was not limiting the inclusion of opportunity costs in mitigated

offers to only those types of costs. Mirant said that suppliers face other legitimate and verifiable opportunity costs that should be considered in their mitigated offer price.

FERC granted the requested clarification, and said its listing of two types of opportunity costs was only an example, not a limitation. PJM needs to consider all legitimate and verifiable opportunity costs as part of its stakeholder process and compliance filing to include such costs in mitigated offers, FERC said.

However, FERC also found it reasonable for PJM to focus on opportunity costs related to energy and environmental limitations for a required July 31, 2009 compliance filing, and to include in that filing a plan for developing additional market rules for other types of opportunity costs.

Conn. Load Representatives Name Three in Amended Capacity Import Complaint

The Connecticut DPUC, Attorney General Richard Blumenthal, and Office of Consumer Counsel submitted an amended complaint against ISO New England over high-priced ICAP import offers over the Northern New York (NNY) AC Interface to respond to updated ISO New England testimony, and to name Brookfield Energy Marketing Inc., H.Q. Energy Services (U.S.) Inc., and Constellation Energy Commodities Group in the complaint as well.

The complaint alleges that the high-priced offers were designed to avoid dispatch, and thus suppliers collected capacity payments with no intention of providing energy (Matters, 4/23/09).

The allegations against Brookfield, HQUS, and Constellation were based on the Connecticut parties' information and belief that the suppliers import capacity over the Northern New York AC Interface, but the complaint contained no specific allegation tying any specific supplier to one of the high offers over the interface which the complaint alleges are unlawful.

The Connecticut parties also claimed, on information and belief, that at least one HQUS employee left one NNY capacity resource to assume a similar position at another NNY capacity resource, Brookfield Energy Marketing,

alleging the, "possibility of at least indirectly collusive conduct."

The Connecticut parties also named other unidentified parties in the complaint, as ISO New England has not identified all of the capacity resources using the interface as requested by the parties.

The amended complaint stems from an ISO New England filing in which the ISO said capacity importers over the Northern New York AC Interface failed to deliver energy when called in over 100 hours, though the ISO later said its testimony was erroneous, and that no resource failed to deliver.

However, the Connecticut parties noted that the ISO has admitted that in at least one instance in which ISO-NE operators inquired about scheduling the high-priced energy associated with NNY capacity resources' imports during an OP-4 event, the operators checked with the New York ISO and determined that the resources were "unavailable."

As the resources were not dispatched, they did not fail to deliver.

"It is irrelevant whether ISO-NE's dispatchers actually attempted to dispatch the NNY Capacity Resources and they refused or whether the dispatchers simply checked with NYISO and confirmed that the NNY Capacity Resources would not be available even if formally called. The effect in either case was the same," the Connecticut parties said.

The amended complaint reflects the revised, lower value of capacity payments in dispute, some \$50.9 million, and seeks disgorgement of such proceeds as well as civil penalties.

Briefly:

UGI Energy Services Seeks D.C. Electric License

UGI Energy Services applied for an electric supplier license in the District of Columbia to serve commercial and industrial customers.

PUCT Approves Aggregation Certificate for Blue & Silver Energy

The PUCT approved Blue & Silver Energy Consulting's application for an aggregator certificate (Matters, 5/11/09).

PUCT Staff Open Project on Nodal Performance Measures

PUCT Staff have opened project 37052 to develop critical performance metrics and criteria for the ERCOT nodal market. Commissioners recently said that the ERCOT nodal market should have its own set of performance standards for market participants, apart from federal reliability standards, dismissing concerns from some stakeholders that the nodal standards would amount to double jeopardy (Matters, 4/24/09).

PUCT Opens Docket for New REP Certification Form

PUCT Staff have opened project 37053 for interim and final approval of a REP certification form pursuant to Subst. R. §25.107.

ERCOT Requests New CRE

ERCOT has requested the following Closely Related Element (CRE) addition:

- 1) San Angelo Power Station (SAPS) to Shrew
- 2) Shrew to Menard

ERCOT said that the Shrew Tap was added between the SAPS to Menard 138kV line. ERCOT requested that the CRE modifications become effective on June 12, 2009 should TAC approve the request or should TAC not take any action on the proposed modification. ERCOT believes that the CRE addition would provide it with an additional tool needed to reliably maintain the West Congestion Management Zone.

FERC Denies Rehearing of Duquesne-PJM Settlement

FERC denied the Pennsylvania PUC's rehearing request regarding approval of a stipulation that saw Duquesne Light remain a member of PJM, rather than moving to the Midwest ISO.

Pa. PUC Expands Tier I AEPS Resources

The Pennsylvania PUC yesterday finalized procedures and guidelines to allow for the limited expansion of qualified alternative energy sources that can be used for compliance with the Alternative Energy Portfolio Standards (AEPS) Act of 2004. A written order was not available, but the PUC's decision outlines the manner in which Pennsylvania-based low-

impact hydro-power facilities and generators utilizing byproducts of pulping and wood manufacturing processes will qualify as a Tier I resource as defined by the AEPS. The PUC also established reporting requirements and related procedures to adjust the AEPS Tier I requirements to account for the newly qualified resources.

PECO Announces Lower Gas Supply Rates

PECO said it will reduce its natural gas supply rate for residential heating customers using 80 ccf per month from \$1.36/ccf, to \$1.21/ccf. Across all rate classes, PECO reported an 11% drop in commodity rates.

Md. PSC Approves RGGI Credit

The Maryland PSC approved a Regional Greenhouse Gas Initiative customer credit of \$1.50 per residential electric customer in each of the billing months of June 2009 and July 2009.

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Gas Cost Recovery audits, Duke countered that such savings would be fairly insignificant when contrasted against substantive concerns related to an auction approach.

Duke said that over the five calendar years of 2004-2008, its average GCR was equivalent to NYMEX plus \$1.50 per mcf, which it said compared favorably to the SSO results at other LDCs. Duke noted Dominion East Ohio's initial SSO was NYMEX plus \$1.44 per mcf, but the price jumped to NYMEX plus \$2.33 per mcf for the second auction. However, the third auction produced a price of NYMEX plus \$1.40 per mcf. The initial SSO for Vectren is NYMEX plus \$2.35 per mcf.

The white paper further argued an SSO auction would enable demand response by providing customers with more accurate price signals. However, Duke countered that development of customer demand response is not dependent upon the auction process nor is it dependent upon volatile pricing. Duke contended that advanced meters and other enabling technologies will produce demand response under the current GCR mechanism.

"[T]he fact that regulated customers are shielded from price fluctuation might be equally

cited as a positive result of regulation rather than an argument in favor of the auction process," Duke added.

Allocation of Asset Management Revenues

In its report, Duke also addressed the allocation of revenues it receives from the asset management fee paid by its asset manager. Currently, 80% of the fee is allocated to customers (with the rest retained by Duke), with all of the customer proceeds going to GCR customers. Duke said at first glance such an arrangement appears equitable since the assets that make up Duke's capacity portfolio - and through which the asset manager derives value - are the same assets used to provide service to GCR customers.

However, Duke noted that a portion of the storage assets is utilized to provide daily balancing service to choice customers. Allocating a similar portion of the AMA fee to choice customers is thus reasonable, Duke said.

Accordingly, Duke developed an allocation factor based on the demand charges for transportation, storage and peaking services. Storage demand charges were allocated to GCR and choice customers based on the estimated usage for each class of customer on a peak day. Other transportation charges were allocated 100% to GCR customers.

Under that process, the allocation of the customer portion of the AMA fee is set at 82% for GCR customers and 18% for choice customers.

Expedited Switches ... from 1

25% threshold, on a non-discriminatory basis.

The REPs' recommended language also holds that TDUs shall apply a reasonable methodology in making adjustments required under the two scenarios listed above, and shall make the methodology available to REPs.