Energy Choice Matters

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Retail Suppliers Seek Storage Flexibility at North Shore, Peoples Gas

North Shore Gas and Peoples Gas should correct several barriers to retail gas competition in their service areas, including fair allocation of storage rights to alternative suppliers, several retail suppliers said in testimony on the two LDCs' rate cases at the Illinois Commerce Commission. Dominion Retail, Interstate Gas Supply, and Nicor Advanced Energy jointly sponsored the testimony of James Crist, President of the consulting firm Lumen Group (09-0166).

Despite choice customers paying the same storage costs as sales service customers, Crist said choice customers receive a lesser allocation of the daily and monthly storage injection and withdrawal rights compared to sales customers.

Unlike the LDCs, competitive suppliers are prevented from varying the amount of gas withdrawn from and injected into storage on a month-to-month basis, even though Crist said such flexibility could be provided using the storage assets that choice customers pay for.

Currently, the amount of storage capacity withdrawn from and injected into storage on a daily and monthly basis for alternative suppliers is a fixed number that is administratively determined by the LDCs with a limited consideration of actual weather. Although the current mechanism was the result of a prior working group and was an improvement over a much stricter proposal, competitive suppliers, "have come to the conclusion that they continue to be deprived of the flexibility that their allocated storage should provide," after several years of working with the rules.

"Not having the same level of storage rights that the Companies have (on a per-customer basis)

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Md. PSC Holds Pre-Approval of Constellation-EDF Transaction Required, Constellation Appeals

The Maryland PSC found that Electricité de France International, SA would acquire the power to exercise substantial influence over Baltimore Gas & Electric as a result of EDF's 49.99% investment in Constellation Energy Group's nuclear business, and held that pre-approval of the transaction is required under state law.

Constellation said it is appealing the decision before the Circuit Court for Baltimore City, arguing that EDF's nuclear investment falls within the safe harbor provisions of a 2008 settlement between Constellation and Gov. Martin O'Malley that precludes PSC review.

Under the PSC's ruling, it must now determine whether the transaction is "consistent with the public interest, convenience and necessity, including benefits and no harm to consumers." Parties are to convene June 17, and the Commission hopes an expedited schedule can be reached that would allow for evidentiary hearings on August 19-25 with an order issued before the transaction's anticipated closing on September 17, 2009.

In its order, the Commission first concluded that the safe harbor provision is not applicable to the EDF transaction. Second, the PSC held that the transaction would allow EDF to exercise substantial influence over Baltimore Gas & Electric, particularly given BGE's financial condition and debt-equity ratio.

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FERC Approves ISO-NE ICAP Import Reforms, Orders More Info on Exemption

FERC accepted, subject to refund, ISO New England's proposed changes governing ICAP import contracts, meant to prevent potential gaming that could allow suppliers to receive capacity payments without any intent to deliver energy when called (ER09-873, Matters, 4/10/09). However, FERC found a proposed exemption to new penalties may be unreasonable, ordering ISO-NE to file additional information.

The instant docket has spawned several complaints about the current import policies (fueled by an erroneous statement by ISO-NE which had said certain importers failed to deliver when called in over 100 hours), which the Commission did not address in its ruling.

The reforms approved by FERC require capacity importers to make "competitive" energy offers associated with ICAP import contracts, and establishes a mechanism to set the competitive level. The requirement is to prevent suppliers from submitting high-priced offers in an attempt to prevent being dispatched, while still collecting capacity payments.

Revised penalty structures for failure to deliver energy were also adopted, so that market participants importing capacity into New England are subject to performance penalties during the Forward Capacity Market transition period based on the hours that requested energy was delivered relative to the hours that energy was requested.

However, FERC did not approve an exemption from the penalties requested by ISO New England, which would have waived failure-to-deliver penalties for energy transactions associated with ICAP import contracts with the New York control area during hours in which the real-time energy market price at the source location is higher than the real-time Locational Marginal Price at the associated New England control area external node. The exemption was opposed by several franchised utilities, who argued it would deprive customers of capacity they have paid for to stand ready to deliver energy when called (Matters, 5/26/09).

The Commission said it has reliability concerns about the penalty exemption, stating it may be unjust, unreasonable, unduly discriminatory or preferential, or otherwise unlawful. Due to such concerns, the reforms were adopted subject to refund, effective July 1.

FERC directed ISO-NE to file, within 30 days, more information regarding the effect that the penalty exemption would have on reliability, and the extent to which the exemption would not result in internal capacity resources being treated comparably to market participants with ICAP import contracts.

Md. Staff Recommends Approval of On-Demand License With Assessment for Prior Brokering

Maryland PSC Staff have recommended that the Commission approve an electric broker license for On-Demand Energy, suggesting that the Commission's order should note On-Demand may be subject to a civil penalty in a future proceeding for its three years of operations in the state without the required license.

Additionally, under a Stipulation between Staff and On-Demand, the broker would be assessed a fee of $39.04 for its past revenues from Maryland operations (which were originally reported $3,157 in 2006, $5,237 in 2007, and $7,128 in 2008), as brokers are subject to the PSC operations assessment.

After the Commission refused to act on Staff's recommendation at the May 20 administrative meeting, On-Demand filed supplemental comments on its application.

According to On-Demand, which is based in Pennsylvania, "[O]nly a small number of On-Demand's Pennsylvania competitors have obtained their required licenses, and Pennsylvania has never, to On-Demand's knowledge, enforced its licensing requirement for energy consultant/brokers which made the licensing process seem almost irrelevant."

Given this experience, and the fact that it was only serving Pennsylvania clients who happened to have accounts in Maryland, and because it was not planning any Maryland-based campaigns, On-Demand said it did not believe it was necessary to investigate and evaluate whether any Maryland licensing was needed in 2006.

On-Demand became aware of the Maryland license requirement as it evaluated expansion plans in 2008. It also updated its Maryland revenues (as the above numbers reflected estimates of commissions based on historic load as well as two inadvertent errors) at $2,863 for 2006, $5,208 for 2007, and $9,193 for 2008.

Edison Mission Opposes Suspension of RSG Refunds to Virtual Suppliers

Halting the refund of Revenue Sufficiency Guarantee (RSG) charges from the period August 10, 2007 through November 10, 2008 to virtual suppliers (who paid the charges earlier this year before FERC reversed its decision to impose the charges on them for that period) cannot be justified by the ongoing disputes in another Revenue Sufficiency Guarantee proceeding at the Commission, Edison Mission Energy (EME) said at FERC (EL07-86).

After initially holding that virtual suppliers were liable for RSG charges for the period in question, which led MISO to start invoicing suppliers late last year, FERC reversed its decision on May 6, and held that virtual suppliers did not have to pay RSG charges through November 10, 2008, meaning amounts previously collected by MISO must be returned (Matters, 5/7/09).

However, in a separate proceeding (ER04-691), parties are also debating what factors should be included in the denominator of the RSG calculation, with a separate refund process occurring. MISO has said it may be appropriate to suspend refunds to virtual suppliers under the May 6 order until the other refund proceeding is resolved.

"There is no justification for the MISO to use the disputed refund calculation to deny EME and others prompt return of money which they are owed and about which there is no dispute," Edison Mission said.

"EME finds it especially ironic that the MISO disregarded requests that it defer requiring EME and other financial participants to pay the refunds originally ordered in Docket Nos. EL07-86 et al. while the dispute was still pending rehearing. The MISO could barely wait to get this money from the financial participants (driving some into bankruptcy) at the same time that it was deferring other resettlements. But when it comes to returning to the financial participants money that they are indisputably owed, the MISO reverses course and tells the Commission it would be perfectly acceptable to defer resettlement - even though no party, including MISO, has made a case under the applicable legal standard that a stay of the May 6 Rehearing Order is warranted," Edison Mission said.

Briefly:

DPUC Sets Proceeding on Billing Error Statute

The Connecticut DPUC has acknowledged the Office of Consumer Counsel's petition for a declaratory order regarding the interpretation of Conn. Gen. Stat. §16-259a, which governs rules for billing errors and the collection of re-billed amounts (09-05-10, Matters, 5/19/09). The DPUC designated all electric suppliers parties to the proceeding, and set a deadline of June 23 for initial comments on the interpretation. At issue is whether a one-year time limit in §16-259a applies only to the discovery of billing errors which may be re-billed to the customer (as the DPUC has held), or whether the section also limits the collection of such re-bills to one year as well.

New England Gas & Electric Now Viridian Energy

New England Gas & Electric, which was recently certified as a Connecticut electric supplier, has changed its incorporated name to Viridian Energy.

Chesapeake Energy Services Receives Md. Broker License

The Maryland PSC granted Chesapeake Energy Services an electric broker license for commercial and industrial customers (Matters, 5/20/09).

PUCT Staff Recommends LIDA Discount

PUCT Staff has recommended increasing the current 15.5% Low-Income Discount Percentage to 19% for August 2009 and 17% for September 2009. Staff also recommended

marinating the current $0.65 per megawatt-hour System Benefit Fee.

NRG Signs PPA with El Paso Electric for Solar Plant

El Paso Electric has signed a PPA for the full capacity of a 92 MW concentrating solar power plant to be developed in southern New Mexico by NRG Energy and eSolar, part of NRG and eSolar's recently announced plans to develop up to 500 MW of solar thermal power in California and across the Southwestern United States.

Advantage IQ CEO Stu Stiles Resigning

Advantage IQ CEO Stu Stiles has announced his plans to leave the company by the end of June to pursue personal goals. Stiles has served as CEO of Advantage IQ since 2004. COO Jeff Hart will lead the consultant on daily matters during a search for a new chief executive.

North Shore ... from 1

deprives Alternative Suppliers of the ability to fully hedge daily price volatility and meet day-to-day fluctuations in demand, and they must supplement the need for additional pipeline capacity during periods of peak demand. This all means that the price that Alternative Suppliers can offer to Choices For You customers is artificially higher than it would otherwise be as a result of the Companies' unfair policies," Crist testified, calling the current rules "anti-competitive."

While the LDCs have the flexibility to vary their storage injections or withdrawals based on the spot price of gas (allowing them to take advantage of favorable spot pricing), competitive suppliers are not granted that freedom due to the administratively determined limits, Crist noted.

The Commission, Crist added, previously found that alternative suppliers must have, "the ability to hedge daily price volatility, meet day-to-day demand fluctuations and supplement needs for additional pipeline capacity during peak demand periods through storage use." Crist argued that the current storage rules do not meet that requirement.

Crist recommended a storage program similar to that in place at Nicor gas, with five main aspects to the proposed program:

1. Seasonal storage capacity that reflects the cost allocation of both on-system and off-system storage assets;
2. Daily withdrawal and injection capability that reflects the combined flexibility of both on-system and off-system storage assets;
3. Daily delivery flexibility expressed by the current +/- 10%;
4. Monthly storage withdrawal and injection targets that must be met under threat of penalty; and
5. A month-end tolerance of +/- 5% that is enforced by a reasonable penalty.

Barring such changes, Crist suggested that choice customers be relieved of paying for upstream capacity that they cannot use, through a reduction in the Aggregation Balancing Gas Charge (ABGC).

Additional storage improvements sought by the suppliers include a requirement for the LDCs to state an inventory volume or storage capacity volume on the monthly bill, as Nicor Gas does.

North Shore and Peoples should also more accurately reflect the Maximum Daily Quantity (MDQ) of small customers, Crist said. Currently, customers who typically have an MDQ of less than 5 therms have their MDQ set at 0 therms by the LDCs, Crist noted. Such a calculation decreases storage allocation to suppliers, since allocation is based on Maximum Daily Quantity.

Single Billing Option

Two issues relating to the single billing option (one bill issued by the supplier containing supply and delivery charges) are hampering competition, Crist said.

First, North Shore and Peoples remove customers who have LDC arrearages 60 days past due from the single billing option. The rule particularly makes it difficult for customers who were previously on budget billing to enroll with a supplier using the single billing option, Crist said.

For budget plan customers who owe a true-up to the LDC at the end of the levelized payment plan and switch to competitive supply on a single bill, any true-up owed by the customer is immediately aged by the LDC, putting the customer in arrears and kicking them off the single bill option and onto dual billing or

utility consolidated billing. Aside from customer confusion, it also causes operational problems for suppliers, Crist said.

Crist recommended that customers in arrears with the utility should not be automatically removed from the single billing option, noting that utilities can still pursue the same collections protocol under the single billing option, and that LDC charges remain first-in-line for payment under the single bill.

The second problem with the LDCs' single billing tariff is the "unwillingness" of the utilities to transfer credit balances that the customer has with the utility to the alternative supplier when the customer has a debit balance with the alternative supplier -- a practice currently in place at Nicor, Crist said. The LDCs currently issue a check for any credits, but the process can be confusing to customers, and the time it takes versus an automated crediting process may mean the customer accrues late fees, Crist noted.

Other Issues

Crist recommended, similar to Nicor, that administrative costs related to choice should be included in base rates. Specifically, Crist pointed to an administrative cost which is included in the Aggregation Charge, and additional charges called the "LDC Billing Options Charge" imposed on alternative suppliers that use utility consolidated billing.

The suppliers also called the current month-end tolerance penalty punitive in light of the fact that the LDCs already have a requirement for daily deliveries within a tolerance band and also have a month-end cash-out provision. Adding the month-end tolerance penalty of $1.00 per therm to those restrictions makes the operational rules for a retail choice alternative supplier stricter than the requirements imposed on transportation customers, Crist argued.

The LDCs' current 19-day delay before activating a new choice enrollment should be altered to conform with the 10-day rescission period under SB 171, the suppliers said. Furthermore, new service customers who contract with an alternative supplier upon service initiation should not be required to take a month of LDC supply service before they are switched to competitive supply, Crist said.

Constellation NewEnergy

In separate testimony, Constellation NewEnergy recommended that Peoples and North Shore be required to implement all four the NAESB intraday nominations cycles for transportation customers or, at minimum, implement at least one other nomination cycle in addition to the Timely cycle. The LDCs should also be required to implement super pooling on Critical Days for groups under common management, similar to Nicor, CNE said.

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Two subsections of the Public Utilities Company (PUC) Article are at issue in the proceeding: § 6-105(e)(1) and § 6-105(e)(2).

PUC § 6-105(e)(1) holds that a person may not acquire, directly or indirectly, the power to exercise any substantial influence over the policies and actions of an electric company, gas and electric company, or gas company, if the person would become an affiliate of the electric company, gas and electric company, or gas company as a result of the acquisition, without prior PSC approval.

PUC § 6-105(e)(2) establishes a safe harbor for certain transactions. Subsection (e)(2) holds that a person may not be considered to have acquired, directly or indirectly, the power to exercise any substantial influence over the policies and actions of a gas and electric company if the person:

(i) after any acquisition of voting interests of a company that owns or controls a gas and electric company, directly or indirectly, owns, controls, or has the right to vote, or direct the voting of, not more than 20% of the outstanding voting interests of a company that owns or controls a gas and electric company; and

(ii) does not have the right to designate more than 20% of the board of directors or other governing body of a company that owns or controls a gas and electric company.

Constellation believes that because the EDF transaction would not take EDF's holdings in Constellation Energy Group (CEG) above 20%, and because it would not give EDF the right to designate more than 20% of CEG's directors, the transaction qualifies for the safe harbor.

However, the "plain language" of PUC §

6-105(e)(2), "does not immunize the transaction from all public interest review," the Commission found, holding that subsection (e)(2) is limited to "transactions in voting securities."

"[B]ecause EDF will, in the proposed transaction, acquire rights and assets other than voting interests in CEG, the 'safe harbor' does not and cannot apply. Once a proposed transaction includes elements other than acquisition of stock and board designation rights, it no longer is eligible for the (e)(2) exception," the Commission ruled.

After concluding that the safe harbor provision does not apply, the Commission examined whether EDF would have substantial influence over BGE under the transaction. The PSC held that the power to exercise substantial influence over BGE can result from EDF's ability to influence CEG's business decisions, even if EDF has no direct authority vis-à-vis BGE.

"CEG owns 100% of BGE, dominates BGE's Board of Directors, approves major capital expenditures, operates the cash pool in which BGE participates, and, perhaps most significantly, controls BGE's capitalization and debt financing decisions," the Commission said.

One area of focus for the Commission was the issuance of dividends by Constellation Energy Nuclear Group to its parent CEG. The transaction will give EDF veto power over any nuclear group dividends paid to the parent, which the Commission said will impact CEG's capital allocation decisions in a substantial way.

"This, in turn, could alter the options available to CEG and BGE as they attempt to rebalance BGE's debt-equity ratio to preserve BGE's investment-grade credit rating and BGE's latitude to issue its own debt to cover its capital needs."

"If CEG is unable to infuse capital into BGE, then CEG and BGE may have to consider other alternatives to raise BGE's revenues, including a rate increase BGE otherwise might not have sought," the Commission reasoned.

The risk is more acute, the PSC said, since BGE's current debt-equity ratio of is 41%, just above the minimum 40% equity required for an investment-grade rating.

Additionally, EDF's right to nominate a director to CEG's Board is another way in which EDF will acquire the power to exercise substantial influence over CEG, the Commission concluded, because CEG controls injections of capital into BGE, which competes with other CEG subsidiaries for capital allocations.

Constellation is seeking an expedited ruling on its appeal, and said it remains committed to closing the deal in the third quarter.

James Connaughton, Constellation's executive vice president for corporate affairs, public and environmental policy, dismissed concerns about Constellation's financial position should the EDF transaction ultimately not be approved. Noting CEG's recent actions to de-risk its portfolio and stabilize its books, "it's fair to say [that] we will be OK, it's Maryland that loses if this deal doesn't goes through," citing the economic benefits from the development of a third unit at Calvert Cliffs.