Energy Choice Matters

September 7, 2009

NYISO Requests Authority to Impose Generator-Specific Mitigation on Three Market Parties

The New York ISO requested that FERC expeditiously approve unit-specific mitigation measures for three undisclosed generators in the New York Control Area (but outside of the New York City Constrained Area) to address conduct that constitutes an exercise of market power, but that does not trigger the conduct and impact mitigation thresholds set forth in the Market Mitigation Measures. NYISO asked that the mitigation to be effective with the Hour Beginning Zero on September 8.

At issue are three redacted generators who, when committed for reliability and not economic reasons, receive Bid Production Cost Guarantee payments in excess of 100 percent of the amount that they would have received had they submitted offers at their reference levels. NYISO's monitoring plan requires it to develop additional mitigation measures for units exceeding the 100% threshold if they do not otherwise trigger the conduct of impact tests, which NYISO says is the case here.

NYISO said that when any of the three unnamed generators are committed for reliability as Day-Ahead Reliability Units or via a Supplemental Resource Evaluation, the Market Party's offering behavior typically departs from the conduct that would be expected under competitive market conditions (in particular, the bids significantly exceed each facility's marginal operating cost). The generators' market behavior and associated guarantee payments, "are not attributable to legitimate competitive market forces or incentives," NYISO said.

Generators that are selected to operate for reliability are entitled to recover their "startup and

Continued P. 4

RESA Says Mix of Six-Month Contracts, Spot Purchases Would Lower Maryland SOS Rates

Transitioning Maryland residential and Type I SOS to a structure utilizing six-month contracts, procured no more than three months ahead of delivery, with at least 10% of supplies procured on the spot market would reduce retail electric rates for SOS customers, the Retail Energy Supply Association said in comments to the House Economic Matters Committee which is conducting an ongoing review of restructuring ahead of the 2010 session (Matters, 6/17/09).

RESA noted that short-term contracts and spot purchases would reduce the risk premiums associated with longer SOS contracts that are procured further out from the delivery date. Particularly with respect to the spot purchases, the SOS supplier would not be subject to fixed price risk for those supplies, which could reduce the migration risk premiums associated with supplying SOS, RESA noted.

Conversely, using a blended portfolio approach for SOS would not shield Maryland consumers from any potential run-up in electricity prices, RESA said.

"Rather, the blended portfolio approach would only establish a lagging price effect that will eventually impact consumers some months or years later. Moreover, the retail price distortions created by a blended portfolio may insidiously delay the development of a sustainable, competitive market as retail suppliers cannot compete against the artificial 'blended' SOS prices, thus, leaving

Continued P. 5

Pactiv Says Nonbypassable Charge Complaint Permissible Under PSL

"Multiple causes of action" under the Public Service Law arise from Rochester Gas & Electric's mitigation of increased nonbypassable charges only for utility fixed-price option customers, Pactiv Corporation said in response to RG&E's motion to dismiss.

As only reported by *Matters*, Pactiv is seeking relief from higher nonbypassable charges at RG&E approved in May. As part of its order, the New York PSC directed RG&E to use credits in the Asset Sale Gain Account (ASGA) to mitigate the impact of the higher unavoidable charges experienced by customers on RG&E's fixed-price option (FPO). However, customers on competitive supply were not granted similar relief, prompting Pactiv to seek the same treatment for customers on fixed competitive contracts (Only in Matters, 8/18/09).

RG&E moved for dismissal as Pactiv's complaint does not allege a single violation of the Public Service Law, Commission rules/orders, or the utility's tariff. RG&E also called the complaint an untimely motion for rehearing (Only in Matters, 9/3/09).

Pactiv countered that by treating utility fixed-price customers differently than the fixed-price customers of ESCOs, "RGE is violating the Public Service Law's ('PSL') prohibition on unjust and unreasonable rates and on discriminatory treatment among a utility's customers." Section 65 of the PSL states that all charges imposed by a utility "shall be just and reasonable" and that the utility may not grant "any undue or reasonable preference or advantage to any person ... or subject any particular person ... or any particular description of service to any undue or unreasonable prejudice or disadvantage in any respect whatsoever," Pactiv said.

As also cited by the Retail Energy Supply Association, Pactiv called establishing different nonbypassable charges for competitive and bundled customers (which selective mitigation has essentially done) inconsistent with the PSC's order adopting RG&E's commodity plan, which held that the nonbypassable charge shall be fixed, for all customers, regardless of commodity option.

Pactiv also argued that its complaint was not a rehearing request, but a request for reconsideration, which is not subject to a 30-day filing deadline and may be granted at the Commission's discretion. Pactiv said that the Commission must reconsider its approval of the new nonbypassable charges, with selective mitigation, in light of its earlier finding in the RG&E commodity order that the nonbypassable charge imposed on fixed-price customers of ESCOs shall be the same as that charged to RG&E's fixed-price option customers.

NOPEC Calls EDC Switch Letter Confusing

The Northeast Ohio Public Energy Council said Friday that switch notification letters provided by the FirstEnergy distribution companies to NOPEC customers regarding the customers' switch to Gexa Energy are confusing.

The letters from the distribution utilities inform customers that a switch request has been placed for the customer's account, and absent action from the customer, they will be switched to Gexa. The letter informs the customer of their rescission right, and provides the utility's phone number to rescind the switch.

However, the letters do not indicate that Gexa is the supplier for the NOPEC aggregation, which NOPEC said is confusing to customers who wish to remain with the aggregation, and do not view it as a switch.

NOPEC reported that many customers are calling regarding the letter since customers are surprised that they will be switched when they wish to remain with NOPEC. NOPEC said it has never before received the volume of calls generated by the switching letters.

NOPEC is using its website and toll-free phone number to try and alleviate customer confusion, and inform customers that Gexa is NOPEC's supplier.

Earlier last week, NOPEC protested the FirstEnergy distribution companies' corporate separation plan, alleging that FirstEnergy Solutions' marketing practices and relationship with the affiliated distribution companies are injurious to NOPEC and the competitive retail market (Only in Matters, 9/4/09).

Dominion, SteelRiver, OCA, OSBA File Settlement on Peoples Sale

Dominion Resources and SteelRiver Infrastructure Fund North America have filed a settlement at the Pennsylvania PUC with several parties that would permit the sale of LDC Dominion Peoples to SteelRiver. The stipulation is signed by Dominion, SteelRiver, the Office of Consumer Advocate and Office of Small Business Advocate. Hess Corporation, which intervened in the case but identified no specific issues in its prehearing memo, is not a signatory but does not oppose the settlement. The Office of Trial Staff is also not a signatory.

Among other things, the stipulation holds that within 12 months of the close of the transaction, Peoples Natural Gas shall convene a collaborative to develop a strategy to promote retail gas competition, with retail suppliers, OCA, OSBA and OTS.

SteelRiver will also conduct an investigation into Unaccounted for Gas to be completed for its 2011 1307(f) proceeding.

Dominion will provide gas purchasing and supply services to SteelRiver for up to 18 months after the transaction close. If SteelRiver elects to outsource procurement activities after that time, it will conduct an RFP.

The settlement also includes some $35 million in distribution rate credits to be paid out over three years. Customers on competitive distribution service (e.g. LDC vs. LDC delivery competition or alternative fuel source competition) receiving discounted rates are not eligible for the credits.

ComEd Asks for Billing Glossary Waiver to Accommodate UCB

Commonwealth Edison has asked the Illinois Commerce Commission for a waiver of certain billing rules to accommodate the future inclusion of retail electric supplier charges on ComEd delivery bills.

Specifically, ComEd is seeking waiver of the requirement that it include with each bill definitions or explanations of any abbreviation and technical terms used on the bill.

The waiver is necessary, ComEd said, because currently, the explanations and definitions appear on the back of a one-page bill. However, with the addition of retail electric supplier charges to bills under utility consolidated billing, ComEd will need two sides of the bill to adequately contain and explain the addition of retail electric supplier charges on the bill.

If ComEd were still required to include the definitions and explanations of abbreviations and technical terms, the bill would expand from one to two pages in length, at a cost of $555,000 annually in bill production costs and mailing. ComEd said that the added page would also result in an additional 1.6 million pounds of paper annually. Two page bills would also place a "severe restriction" on ComEd's bill insert program, which offsets around $400,000 of revenue requirement annually.

As part of its proposal, ComEd would end the use of the abbreviations ACT (Actual), EST (Estimate), MULT (Multiplier) and Tot (Total) on the reconfigured bills, using the full words instead.

For the remaining definitions, ComEd would inform customers twice annually how to obtain such information in a separate brochure, and would provide the brochure to customers by mail annually, on its website, to new customers, and to any customer requesting the information when calling the call center.

ERCOT Identifies Issue with NSRS Resources in RPRS Clearing

ERCOT has identified a procurement issue with Non-Spinning Reserve Service (NSRS) Resources when clearing Replacement Reserve Service (RPRS), it said in a market notice.

In June 2007, ERCOT implemented modified software code to enable the Replacement Reserve Service engine to include consideration of Resources with Non-Spinning Reserve Service capacity commitments. To accomplish this, the code designates any Resource identified in its Resource Plan as committed for NSRS as "On-line." This On-line indication prevents the RPRS engine from procuring the Resource for the NSRS-indicated intervals.

However, ERCOT has identified an issue with the code that causes Resources transitioning from an NSRS-committed interval to an interval with unit status of "Off-line" and "available" to be considered RPRS-eligible. Rather than recognizing the Resource as Off-line, the RPRS engine assumes the Resource is On-line and that it can extend the run time of the Resource without incurring the Resource's start-up cost, therefore not considering the start-up portion of the bid in RPRS clearing.

This could potentially result in under-pricing the RPRS Market Clearing Price for Capacity (MCPC) by artificially displacing more economic alternate bids, ERCOT said. Off-line Resources procured for RPRS are kept whole to their start-up bids in settlement. The ERCOT Settlement system identifies their Off-line status via breaker status and makes an ex-post payment adjustment to the QSE for Resource start-up and actual run time.

ERCOT is currently investigating a solution to this issue.

Briefly:

PUCO Accepting Comments on FirstEnergy RTO Realignment

The Public Utilities Commission of Ohio opened a docket for public comment on the application of FirstEnergy Corp. to move its three Ohio electric distribution utilities from the Midwest ISO to PJM (Matters, 8/18/09). PUCO also invited several stakeholders to participate in a presentation on the RTO realignment at the September 15 Commission meeting -- the FirstEnergy distribution companies, their affiliate American Transmission Systems, the Ohio Consumers' Counsel, the Midwest ISO, PJM, AEP-Ohio, and the Ohio Energy Group. PUCO said that the invitations reflect a, "wide range of jurisdictional interests," though no competitive retail supplier was included, nor was any merchant generator. PUCO is accepting comments from all parties through September 25 in Docket 09-778-EL-UNC.

MXenergy Holdings Extends Exchange Offer

With extensions to its existing credit and hedging facilities granted (Only in Matters, 9/4/09), MXenergy Holdings again extended the expiration of its Exchange Offer and Consent Solicitation (until midnight September 18) of its outstanding Floating Rate Senior Notes due 2011 (Matters, 7/2/09).

Ameren Offers Buyouts to 350

Ameren Corp. said it is offering buyouts to 350 of its nearly 10,000 employees in a further effort to cut costs. The buyouts may be followed by involuntary cuts. Though not isolated to Ameren's merchant units as previous cuts have been, the cuts are aimed at operating in an environment where costs are rising, demand for energy has softened and prices for merchant power have declined. Buyouts were offered to members of Ameren's full-time management ranks, who will be age 58 or over as of Dec. 31, 2009.

NYISO ... *from 1*

minimum generation costs not recovered in the Dispatch Day" via a guarantee payment. In addition, because they are operating, these generators have the opportunity to receive additional real-time energy revenues based on the economics of their Incremental Energy Bids.

During discussions with NYISO, the Market Parties said, among other things, that the bids were not inappropriate because generators should be allowed to recover legitimate fixed costs associated with the operation of their generators. NYISO responded that there is nothing in the NYISO tariffs which guarantees generators that are committed for reliability the opportunity to recover "fixed" costs as a component of their guarantee payment.

Submitting bids that incorporate a fixed cost component is not consistent with the conduct that would be expected under competitive market conditions, NYISO added. "In a competitive market, Generators offering at their marginal costs would be expected to undercut Bids that include a fixed cost component. The generators offering at marginal cost would be selected to run, while a Generator that incorporated the recovery of fixed costs into its Bids would forego opportunities to be committed," NYISO said.

NYISO's generator-specific mitigation would essentially apply a significantly tighter reference level threshold to the bids of the three generators. The reference levels are administratively determined to capture the marginal costs of providing the service that is being bid. A narrow bandwidth will be provided to allow for possible uncertainty in setting reference levels, including possible changes in costs since the reference level for a bid was last set.

Currently, in order for a generator's offer to break the conduct threshold and trigger mitigation, it must be 300 percent or $100 greater than the generator's reference level. The current impact thresholds are a $100/MW increase in market clearing prices, or a 200 percent increase in guarantee payments.

Under the proposed generator-specific mitigation approach, mitigation would be triggered if a bid or bid component:

a. Exceeds the Generator's Minimum Generation Bid reference level by the greater of 10% or $10/MWh, or

b. Exceeds the Generator's Incremental Energy Bid reference level by the greater of 10% or $10/MWh, or

c. Exceeds the Generator's Start-Up Bid reference level by 10%, or

d. Exceeds the Generator's minimum run time reference level by more than one hour, or

e. Exceeds the Generator's minimum generation MW reference level by more than 10%.

NYISO said that the lower thresholds are justified because local market power exists when the resources owned by a single supplier must be committed to resolve a reliability requirement. "This is analogous to the situation in the New York City load pockets where much lower conduct and impact thresholds are applied to address local market power," NYISO said.

The proposed mitigation would be applied prospectively and apply to the three generators only in cases where: the generators have been committed for reliability; there is only one supplier that is able to solve the reliability need; and the generator submits offers that exceeds its reference level by the specified amounts.

The ISO asked FERC to waive the normal six-month limit for the application of mitigation measures under the relevant tariff, and also said that it will conduct a stakeholder process to develop rules addressing the mitigation of generators that are committed for reliability outside the New York City Constrained Area.

Maryland ... *from 1*

consumers with limited or no competitive price offers," RESA noted.

RESA pointed to an analysis by NERA Economic Consulting, prepared for Allegheny Power and Baltimore Gas & Electric in Case 9117, which found that, "the use of long-term contracts in a customer choice environment leads to more expensive and more volatile prices due to migration" (Only in Matters, 10/2/08).

The Economic Matters Committee also asked whether SOS should terminated as the default service in favor of some other structure, such as random assignment of customers to competitive suppliers, or assignment of customers by auction.

RESA called the idea of an alternative form of default service "interesting," adding that, "[i]t is possible that some SOS alternatives could result in large-scale, accelerated migration of residential customers to competitive supply, even where the utility retains the obligation to act as the provider of last resort." RESA noted the preliminary success of the Ohio gas market in assigning Dominion East Ohio customers to retail suppliers though an auction.

However, RESA ultimately believes that such measures may be unnecessary in Maryland if the state adopts programs to combat the inertia of customers placed onto default service. For example, Maryland residential customers on SOS could be presented with choice through a "check box" included on their utility bill, which would allow them to choose to remain on SOS or to switch to a competitive supplier, RESA said. "Customers should also be given the opportunity to establish service with a competitive supplier when they move into the service territory or re-commence service following a change in residence, and the choice to go with a competitive supplier should be no more difficult to implement than the choice to stay on SOS," RESA added.

RESA pointed to Governor Martin O'Malley's announcement on April 15, 2009 - just two days after the end of the 2009 legislative session - that the State Government had chosen a competitive supplier to serve its smaller agency electric accounts at savings totaling $10-15 million or 15% of the state's electricity budget as only a sample of the opportunity that awaits similarly situated smaller private sector customers under a properly structured market (Matters, 4/16/09). O'Malley supports legislation which would end mass market retail choice.

Capacity additions remain a concern for numerous Maryland policymakers, but RESA noted the success of other restructured markets in adding new capacity -- 10,000 MW in Connecticut and Massachusetts in the first six years following restructuring, and 2,500 in New York just since 2006.

"Texas, which has a market structure considerably different from Maryland, has seen extensive development of new capacity, entirely without the use of regulatory intervention or long-term contracts between generators and distribution utilities," RESA noted. Some Maryland policymakers and stakeholders have shown an aversion to the mere mention of the Texas model, but RESA said it, "would be pleased to discuss the Texas market in more detail with the Committee, as we believe there are a number of misconceptions about that market that have obscured the tremendous benefits the restructured market has brought to Texas consumers."