Energy Choice Matters

September 9, 2009

Suppliers: ComEd Should Inform Customers in Smart Grid Pilot Areas of Retail Choice

Commonwealth Edison should be required to inform all customers within its smart grid pilot footprint of their supply options, including customers selected to test various customer applications, the Illinois Competitive Energy Association said in a post-hearing brief enumerating several ways to mitigate the barriers to competition contained in ComEd's proposal (Only in Matters, 9/8/09).

"The dangers of chilling competition may be ameliorated somewhat through a variety of simple elements to be included [in] ComEd's customer education and communication efforts," ICEA said.

ICEA recommended that ComEd be required to inform customers of their ability to obtain electric service from a retail electric supplier (RES), including informing customers how they can locate certified suppliers serving ComEd customers. ComEd should also be required to inform customers that a customer's initial participation in any smart grid pilot will not preclude the customer (at any time during the pilot or after its conclusion) from obtaining electric service from a competitive supplier, ICEA said.

ICEA compared the marketing of ComEd's smart grid pilot to the marketing of its residential real-time pricing option, and noted that the Illinois Commerce Commission only permitted ComEd to actively market the real-time pricing program under the condition that ComEd also inform customers of the availability of similar real-time pricing services from competitive suppliers.

Additionally, once a ComEd pilot participant makes known to ComEd an intention to switch to service with a retail supplier, or begins the process of initiating a switch to competitive service,

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Duke Ohio Files to Open Peak Load Rider to Competitive Supply Customers

Duke Energy Ohio applied at the Public Utilities Commission of Ohio to modify its tariff for Rider Peak Load Management (Rider PLM), ostensibly in order to allow Duke to serve customers under competitive supply under the tariff. Redlined changes to the tariff were not available yesterday on PUCO's docketing system, and Duke's petition is not explicit as to what specific changes are contained in the redline, but the only issue addressed by the petition is the eligibility of competitive supply customers under Rider PLM.

Voluntary Rider PLM is currently not open to customers on competitive supply. The rider offers customers the opportunity to reduce their electricity costs by agreeing to curtail load (with the option to buy-through) under certain peak conditions. Duke said it is relying on Rider PLM to meet part of its peak load reduction mandates under SB 221.

"As a result of a downward trend in market prices for energy, Duke Energy Ohio has been experiencing an increase in customers switching to competitive suppliers in its service territory. If this trend continues, and if Duke Energy Ohio cannot offer this program to customers choosing alternative suppliers, then its ability to reduce demand is significantly hampered," Duke said in its petition.

"Indeed, if Duke Energy Ohio lost its entire load to customers switching, it would be unable to

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MISO Seeks Clarification on Scope of RSG Task Force Study

The Midwest ISO sought clarification or rehearing of FERC's August 7 Revenue Sufficiency Guarantee charge order, as MISO said FERC's August order could be construed as requiring the ISO to conduct a broader evaluation of RSG costs and allocation than the issues raised by proposed RSG exemptions cited in the August order (ER09-411).

The August order suspended MISO's proposed Revenue Sufficiency Guarantee (RSG) modifications that would have exempted intermittent and certain other resources from the charges, due to a lack of justification.

In its August order, FERC directed MISO's Revenue Sufficiency Guarantee working group to study the exemptions, "as well as other issues pertinent to cost allocation," and, "among other things that the RSG Task Force deems relevant" (Matters, 8/10/09).

MISO argued that the review should be limited to the exemptions as proposed by MISO. However, some participants of the RSG Task Force have contended that FERC's language, including the use of the phrase "other issues," allows the task force's analysis to be wider, encompassing issues not directly related to the proposed exemptions.

"Moreover, it appears that such participants, and others that may share their leanings, may make additional data requests to the Midwest ISO during the RSG Task Force's study and discussion of RSG exemption issues in the next two months to expand (or, as one participant described it, 'open up') the scope of the analysis to include matters unrelated to the December 12 [exemption] Filing," MISO added.

Calling such anticipated data requests "irrelevant," MISO asked FERC to clarify that the task force's review is to be limited to issues relating to RSG exemptions for resources that (1) are intermittent in nature; (2) follow the Midwest ISO's directives; (3) are in test, start-up or shutdown mode; (4) trip or go offline; (5) are involved in Contingency Reserve deployment; (6) are covered by the deactivation of the Dispatch Band option; and (7) are affected by other events or conditions beyond the reasonable control of the relevant Market Participant.

Issues related to MISO's RSG redesign proposal and other RSG controversies in docket EL07-86 are not implicated by the MISO exemption proposal and are thus outside the scope of the instant case, MISO argued.

Separately, MISO also submitted a compliance filing outlining the schedule that the RSG Task Force will adopt in its review, in order to meet the Commission's directive of a November 5, 2009, compliance filing. The task force will analyze RSG allocation issues, particularly how intermittent resources and other situations exempt from Excessive/Deficient Energy Deployment Charges, impact Reliability Assessment Commitment and RSG costs.

MISO said it will provide initial data to the task force by September 11. The task force, independent market monitor (Potomac Economics) and possibly an independent third party will evaluate various issues and are to determine by October 7, 2009 whether they can make preliminary recommendations based on their analysis, or will require more time, and an extended compliance filing deadline.

NRG, CEAB Challenge Draft NEEWS Conclusion in DPUC IRP

A draft finding by the Connecticut DPUC that the New England East-West Solution (NEEWS) transmission line is the only viable solution to reliability needs "undermines" the purpose of the state's integrated resource plan and statutory RFP requirement for transmission alternatives, NRG Energy said in exceptions to the draft (Matters, 9/2/09).

Furthermore, the draft finding, "deprives ratepayers of the benefit of alternative solutions that could be lower-cost in both the short and the long run."

As only reported by *Matters*, the DPUC's draft concludes that, given the late stage of development, it would be extremely difficult to develop alternatives to NEEWS that would have sufficient certainty of development and that would address the same reliability needs as NEEWS. Accordingly, the integrated resource plan would not consider such alternatives.

NRG countered that finding, arguing that the DPUC reached its conclusion prematurely without consideration of evidence before the Department.

NEEWS includes four separate projects: (1) the Greater Springfield Reliability Project (GSRP); (2) the Rhode Island Reliability Project (RIRP); (3) the Interstate Project (IP); and (4) the Central Connecticut Reliability Project (CCRP), NRG noted.

NRG argued that NEEWS is not scheduled to come online for nearly half a decade (2014), further contending that, "large scale transmission projects are rarely implemented by their initial target in-service date ... [and] NEEWS is particularly susceptible to delay because of its size and multi-state permitting requirements."

Furthermore, NRG said that ISO New England is continuing to evaluate the reliability needs of the IP and CCRP. Accordingly, NRG said that time remains to consider alternatives to transmission, arguing that in-state generation, "likely could satisfy some or all of the reliability needs" of both projects.

NRG cited its 530 MW Meriden Plant, which has been fully permitted and partially constructed, and a GE plant as alternatives which could come online in time to meet the NEEWS reliability needs. NRG said that its Meriden plant could be operational in 2012 or 2013, "if it receives a contract with an EDC counterparty."

The Connecticut Energy Advisory Board also filed exceptions regarding the DPUC's draft finding relating to NEEWS. CEAB urged the Department to clarify that only the Greater Springfield Reliability Project segment of NEEWS is in the late stages, and that alternatives should be considered for other segments of the line. Since the Interstate Project and Central Connecticut Reliability Projects are under ongoing ISO-NE review, they "may be significantly altered, delayed, or be required to restart the approval process," CEAB said. Accordingly, ignoring alternatives to those projects, "would be a derogation of CEAB's responsibilities and a potentially critical flaw in the State's IRP," CEAB said.

Briefly:

FERC Approves Sempra Energy Trading Stake in MXenergy

FERC approved the indirect disposition of MXenergy Electric's jurisdictional facilities that may result from Sempra Energy Trading LLC's acquisition of approximately 7.37% of common stock in MXenergy Holdings Inc. (Only in Matters, 8/21/09). The jurisdictional facilities include MXenergy Electric's market-based rate tariff and related contracts, agreements, books, and records. Sempra Energy Trading will also receive the right to appoint a director to MXenergy Holdings' board under the transaction, as exclusively reported by *Matters*. Under the contemplated transaction, MXenergy and Sempra Energy Trading are to also enter into certain agreements under which Sempra Energy Trading will supply natural gas and electricity to MXenergy.

Constellation Creates Credit Workout VP Position

Constellation Energy has created a new position, vice president of credit workout, to handle the development and implementation of workout strategies for troubled or defaulted wholesale counterparties and retail customers. Robert Gauch, Jr. was named to the post. Gauch was most recently director, head of remedial management and senior credit officer, risk management, at Citibank.

Bounce Energy Launches Fixed Renewable Offer

Bounce Energy, which introduced its first fixed rate earlier this year (Only in Matters, 6/11/09), announced it is now offering a fixed rate renewable option in the ERCOT market. The Blue Sky Fixed product includes 100% renewable power with a fixed rate for six months. Previously, Bounce had been offering a variable, and later an indexed/capped, renewable rate. Among other things, the Blue Sky Fixed plan also includes a $50 American Express gift card and a $50 bill credit with successful auto bill pay enrollment. Bounce said it has lowered its rates seven times in the past nine months.

GDF Suez Challenges POLR Designation in AEP Central/Sharyland Area

GDF Suez Energy Resources NA challenged its inclusion on the PUCT Staff's preliminary list of non-volunteer POLRs for the medium non-residential class at the combined AEP Central/Sharyland territory, based on the fact that Suez is not eligible to serve Sharyland load (Only in Matters, 9/1/09). Due to the lack of commercial accounts in the primarily residential Sharyland footprint, Suez said it is not EDI tested for Sharyland, and does not have other necessary agreements or internal system configurations in place to serve Sharyland load. Suez did not challenge any of its other non-volunteer POLR designations, reported exclusively in *Matters*.

Patriot Energy Seeks Pa. Broker License

Patriot Energy Group applied for a Pennsylvania electric supplier license as a broker/marketer and aggregator to serve all sizes of non-residential customers at PPL, Duquesne Light, PECO, Met-Ed, Penelec, and Allegheny.

Nicor Services Expanding Nationally

Nicor Services is expanding its warranty and efficiency products and services to a national footprint, and re-branded itself as Nicor National. Nicor National will partner as a vendor with local utilities in their warranty/home services programs, and will also offer services directly to end users. Nicor National said it currently has customers in 15 states and is working on expanding to other markets. Services include HVAC cleaning/check-up, discounts for high-efficiency furnaces, air conditioners, water heaters and other appliances, repair plans for HVAC, water heaters and furnaces, and warranty plans for customer-owned utility service lines.

AReM Says DWR Operating Reserves Should be Refunded Pro Rata to Direct Access, Bundled Customers

Refunds of California Department of Water Resources operating reserves should be allocated on a pro rata basis to the customers who funded the reserves, the Alliance for Retail Energy Markets said in a prehearing memo. As the reserves were funded by both charges on bundled energy sales and through bond charges, which were paid by all customers except those classified as "continuous direct access," direct access customers who paid the bond charges should receive their share of the reserves, AReM said. AReM also said that issues relating to the electric service provider deposit requirement should be deferred to the Phase III of the PUC's rulemaking on re-opening direct access (R.07-05-025), and should not be addressed in the DWR revenue requirement case.

Mich. PSC Staff Says Consumers' Coal Plant Not Needed Absent Retirements

Consumers Energy's long-term capacity need, which Consumers says necessitates a $2 billion, 930-MW utility-built coal plant, is unjustified without the explicit retirement of existing capacity in Consumers' baseload generation fleet, Michigan PSC Staff said in a report. Given Consumers Energy's load growth assumption of approximately 0.3% per year, coupled with anticipated effects of energy efficiency and demand reduction initiatives, the long-term projected capacity need before the assumed expiration of the Palisades Purchase Power Agreement in 2022 is based primarily on assumed retirement of approximately 950 MW of existing coal capacity, Staff said. The risks associated with a long-term central station investment, "based on unusually speculative cost levels and future carbon regulation, appear significant enough to warrant a thorough review of short-term resource options and how they might add value to ratepayers by postponing long-term resource investment decisions until greater certainty is known about such investments," Staff added. Staff noted that Consumers did not provide with its application scenario analyses using various sensitivities, including a reasonable range of values for the key input assumptions such as capital costs, fuel prices, carbon costs, and load and energy requirements.

PJM Says FERC Hearings on ISO-NE Capacity Imports Inconsistent with Tower Companies Rulings

PJM and several stakeholders called FERC's decision to grant hearings in the complaint of

Connecticut load representatives against ISO New England capacity importers inconsistent with the Commission's prior decisions to deny similar hearing procedures for PJM's complaint against the Tower Companies. PJM noted that in denying hearings for PJM's complaint against Tower, which PJM alleged engaged in various types of market manipulation, FERC said that hearings were not needed since its Office of Enforcement found no evidence of the requisite intent for violations of the Federal Power Act, after a non-public investigation. Joining PJM in citing the "apparent inconsistency" in FERC's treatment of the two complaints were the Pennsylvania PUC, American Public Power Association, PJM Industrial Customer Coalition, the Pennsylvania Office of Consumer Advocate, and various other munis and cooperatives.

FERC Approves MISO Reliability Penalty Allocation

FERC accepted with minor modifications the Midwest ISO's proposal to allocate the costs of penalties incurred by the ISO for violations of reliability standards and other penalties assessed by federal and state regulators (Matters, 7/13/09). Among the changes ordered by FERC is the clarification that MISO may only directly assign penalties to responsible members in accordance with a finding of responsibility from FERC, NERC or the regional reliability entity. Transmission owners had said that MISO's proposed language could have been construed as allowing MISO to determine responsibility, and attendant cost allocation, itself.

EPSA Releases Tierney White Paper on Risk Allocation

The Electric Power Supply Association yesterday released a white paper by Dr. Susan Tierney of the Analysis Group, which reviews various approaches to allocating risk between investors, utilities and customers with respect to electric supplies. Among other things, Tierney called competitive solicitations carried out by load-serving entities such as electric distribution utilities one of two, "strong, well-functioning" approaches to market design, along with energy auctions administered by RTOs. Tierney also said that given the current economic climate, "it is more important than ever to do things to raise investor confidence in ways that will produce benefits to consumers." In this context, "it is not helpful to keep debating the 'markets versus regulation' question ... There is already enough uncertainty for all of us to deal with, without adding to it by continuing to debate whether a state should dramatically alter the structure of its electric industry," Tierney said.

ComEd ... from 1

ComEd should be expressly precluded from any sales or marketing activities or any other communication designed to keep the customer enrolled under ComEd Rider AMP-CA, ICEA argued. ICEA noted ComEd has testified that it intends to follow such a process, and ICEA suggested that the requirement should be contained in any final Commission order.

ICEA also sought to mitigate the impact of artificial incentives and disincentives contained in ComEd's pilots that may influence a customer's supply choice. For example, ICEA said that customers who have been promised a $50 payment/credit under Rider AMP-CA in return for participating in the pilot and completing an initial and final survey should be entitled to that payment/credit even if the customer elects to take service from a retail supplier during the duration of the pilot.

Likewise, in the event that a retail customer elects to terminate service under Rider AMP-CA, including switching to a retail supplier, the customer should be permitted to keep any advanced in-home device (IHD) or programmable communicating thermostat (PCT) that had been installed at the customer's premises. "To the extent practicable, ComEd should be required to offer to modify the remaining IHD and/or PCT to allow for it to reflect the energy service offerings of the customer-selected RES," ICEA said.

Furthermore, the, "substantial cost subsidies for beyond-the-meter monitoring and communication equipment offered by ComEd [citations omitted], in addition to being unsustainable in the marketplace as a method of promoting energy efficiency and demand response, are anti-competitive," ICEA argued. Competitive suppliers are not able to recover the costs of such incentives and subsidies from all customers in the service territory (as ComEd is able to accomplish through Rider AMP-CA), ICEA noted.

"This means that customers may be incented to choose or continue supply service with ComEd as opposed to a RES based on the availability of procuring specialized equipment at little or no cost to the customer, which no supplier other than ComEd may offer without incurring its own expenses," ICEA reasoned.

"Accordingly, in order to level the playing field to one that is competitively neutral, the Commission should either eliminate these proposals from the [pilot] or, if they are deemed by the Commission to have sufficient value to be included in the [pilot], require that a RES be entitled, if it so chooses, to offer the same customer benefits and equipment, the costs of which should be included in ComEd's rate base and allocated in the same manner as those provided by ComEd."

Hold harmless protections for customers in the pilot should also be eliminated, or, in the alternative, made available to retail suppliers and their customers, ICEA added.

ICEA further argued that implementation of the pilots containing customer applications and technologies should be delayed until ComEd implements utility consolidated billing and purchase of receivables. Such a decision should not cause a significant delay, as ComEd has indicated that it will file a UCB/POR plan this month. "[G]iven the fact that the Ameren UCB/POR proceeding has already been fully litigated and approved, the issues in the ComEd proceeding should be perspicuous," ICEA said.

The ICC Staff, in its post-hearing brief, recommended that ComEd's implementation plan for waivers of the Integrated Distribution Company code should contain the following statement, "The Company will not act to discourage customers from switching to RES service." The statement, relating to lifting restrictions on ComEd's marketing of its supply service for the pilot, would be in addition to ComEd's proposed language holding that ComEd will be permitted to, "seek to retain customers in the pilot on those rate designs, provided that such rates and activities shall not prevent customers from switching to RES supply service."

Duke ... from 1

comply with the mandates at all," Duke added.

Rider PLM allows customers to participate through the following options:

a) Reducing demand to a specified amount;

b) Reducing energy usage below a customer baseline; or

c) Selling the output of any customer-owned self-generation to Duke.

The targeted hours for the PLM Program are generally between 11:00 A.M. and 8:00 P.M., Monday through Friday, starting June 1 and ending September 30, though each customer's specific target hours are subject to individual negotiation.

Customers receive bill credits from Duke for either reducing their demand or usage, or selling self-generation. Credits take into account avoided energy and/or capacity costs, bill savings, and administrative costs.