Energy Choice Matters

September 17, 2009

ComEd Says Demand Response Carve-Out in Default Service Procurement May Raise Rates

A proposal from the Illinois Power Agency to procure demand response in a separate RFP as part of the default service supply mix is not required under statute, Commonwealth Edison said, as PJM's Reliability Pricing Model already meets the requirement for the IPA to procure demand resources which are lower-priced than comparable capacity products. Moreover, ComEd raised concerns that a carve-out may actually raise retail rates.

As first reported by *Matters*, the IPA proposed conducting a second default service RFP in the fall to procure 500 MW of demand response resources on five-year contracts (Matters, 8/19/09).

However, ComEd said that RPM meets the statutory requirement to procure cost-effective demand resources, since demand may bid into the capacity auction and clears if such demand resources are lower-priced than other capacity offers.

Furthermore, ComEd noted that overall capacity costs may be reduced more by having all demand response resources bid into the RPM auction rather than being acquired in a separate process, since increasing the supply of demand response in the RPM auction should reduce the overall capacity price for the entire ComEd zone.

In contrast, the demand resources procured outside of RPM would have to be implemented (and not just available) during the time of the PJM peak load each year to be counted as lowering ComEd's load and thus capacity payments. In addition, because PJM's load forecasting process is based on many years of historical data, the impact of new demand-reduction resources would not

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Generators Assail PJM's Proposal to Reinstate Demand Response Subsidy

A proposal from PJM to reinstate economic demand response subsidies during certain hours of the year drew protests from generators who argued that the measures would raise rates for customers not in load response programs, and would distort price signals and dispatch. Demand response supporters, however, called PJM's proposal too narrow and unjust because of the hour limits for the incentive payments (Matters, 8/27/09).

As first reported by *Matters*, PJM proposed that during the nine percent of hours when LMP is at its highest levels, economic demand response shall be paid the full Locational Marginal Price, with no deduction for the customer's generation rate, or (for customers whose retail rate is the LMP rather than a flat rate), LMP plus $75/MWh.

In joint comments, Exelon, Dayton Power and Light, Dominion Resources, and PPL opposed the subsidies, noting that the subsidies will not lower prices to all consumers. "Instead, non-participating consumers will pay those subsidies on top of market clearing prices."

Generators said that paying economic demand response at LMP minus the generation component of the retail rate (G) is just and reasonable, and reflects the basic fact that a load must "buy" its power before it can sell the power at a higher price.

"LMP minus 'G' for demand response is conceptually equivalent to paying LMP for electricity to a

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FirstEnergy Solutions Using Grants to Lock-In Municipal Aggregations

FirstEnergy Solutions yesterday launched a program which pays Ohio municipalities grants in exchange for enacting municipal opt-out aggregations and electing FirstEnergy Solutions as their supplier, in some cases through 2018.

The "Powering Our Communities" program started by giving grants to existing aggregations supplied by FirstEnergy Solutions for extending their supply agreements beyond the current end date of 2012: Akron ($2.2 million grant), Summit County's nine townships and New Franklin ($1 million), Barberton ($300,000), and Green ($250,000). Pricing will remain a 6 percent discount off the Price to Compare for residential customers, and a 4 percent discount for small commercial customers.

The offer is being extended to 50 communities already supplied by FirstEnergy Solutions and will be open to communities with government aggregation proposals on the November ballot.

The level of grant funding to each community will be based on the number of customers who participate in the government aggregation program. No community will receive less than $50,000 in community grants, FirstEnergy Solutions said.

Draft Calif. Resolution Would Limit CCA Opt-Outs to 60 Days Prior to Enrollment

Pacific Gas & Electric would be ordered to cease providing opportunities for customers to opt-out of community choice aggregations (CCA) prior to a notification period commencing 60 days before automatic enrollment, under a draft resolution from the California PUC.

San Joaquin Valley Power Authority had voiced concerns to the PUC's Energy Division Staff regarding PG&E's website for community choice aggregation information and PG&E's marketing trifolds sent to customers which enable potential SJVPA customers to opt-out of the aggregation service anytime prior to its commencement. Marin County expressed similar concerns about PG&E's website, noting that customers are being given an opportunity to opt-out of the CCA prior to receiving notice of the aggregation's rate and terms, which occurs in a 60-day period prior to automatic enrollment.

PG&E posted an electronic opt-out form on its website, offering PG&E's bundled service electric customers an opportunity to opt-out of future CCA service that might be offered anywhere in PG&E's service territory. PG&E also circulated marketing trifolds to customers within SJVPA's service territory offering them the opportunity to opt-out early from CCA service.

In the draft resolution, the Commission would find that the Legislature's and Commission's intent was to provide customers with at least four notices regarding the CCA service being rendered by a community while giving customers sufficient information about rates, terms, and conditions of service. Since CCA-specific information becomes available to customers when the CCA provides this information during a 60-day window prior to service, the utilities should not solicit or accept opt-out requests until the necessary information for an informed decision is made available to customers, the draft says.

Opt-outs would thus only be accepted once the 60-day window starts.

Furthermore, the resolution would require PG&E, and other utilities if necessary, to send letters to customers who have already opted out, informing them that the utility solicited the opt-out in error, and that the opt-out will not take effect, because the community in which the customer is located has not initiated the statutorily mandated CCA opt-out notification process yet.

Customers who have already opted out would not be removed from the list of potential CCA customers that may eventually be provided to SJVPA, or any other community wishing to implement a CCA program, the draft says.

National Fuel Gas Distribution Raises Concerns on Competition from Pipeline

National Fuel Gas Distribution urged the New York PSC to, "reserve for itself all of the legal tools provided by the Public Service Law to enable adequate regulatory oversight," of

Alliance Energy Transmissions, as the Commission weighs a request from Alliance and Seneca Power Partners for relief related to transactions designed to transfer a pipeline from Seneca to its affiliate, Alliance. National Fuel Gas Distribution raised the concern that the transfer may result in the uneconomic bypass of its regulated service, to the detriment of its ratepayers (09-G-0490).

While Seneca has long operated the pipeline for the purpose of supplying natural gas service to its co-generation plant located Batavia, Alliance is seeking authority to transport gas to "a limited number ... of additional non-residential customers."

"When, as here, the Commission is asked to support the application of a gas corporation possibly intending to 'cherry pick' an incumbent utility's retail industrial load or load opportunities," the inherent economic equities of the model in which a single regulated utility serves a franchised service area are compromised, National Fuel said.

"Distribution requests that the Commission maintain sufficient oversight of Alliance's operations to assure that Alliance does not gain competitive advantage solely by virtue of regulatory differences that favor Alliance, or otherwise engage in conduct that will result in uneconomic bypass contrary to established Commission policy," National Fuel said.

National Fuel also rebutted claims from Alliance that Alliance will provide gas service where none currently exists, as National Fuel has a commitment in place to fund the construction of gas facilities to serve an industrial park in question.

Briefly:

ERCOT Approves 2010 Budget, Maintains Current Fee

The ERCOT board approved a 2010 budget of $176.8 million which does not require a change in the current administrative fee of $0.4171 per megawatt-hour. Major changes made since the preliminary budget proposal from last month included further reductions in employee costs, outside services, and the Legislative Sunset Review costs, and a decision to fund some extraordinary facility construction costs with extra revenue received from a sales tax refund, related to the recent change to 501(c)4 status, from a 501(c)6, ERCOT said.

MXenergy Reports Estimated EBITDA for Fiscal 2009

Although MXenergy has not yet finalized audited financial statements for the fiscal year ended June 30, 2009, MXenergy said in an 8-K that it currently estimates that total sales of natural gas and electricity and Adjusted EBITDA will exceed $780 million and $42 million, respectively. MXenergy said there can be no assurance that these estimated results will not differ from the financial information to be reflected in the company's final financial statements for the period ended June 30, 2009. MXenergy also reported that it has received an extension in the date by which a liquidity event must occur under its current hedge agreement until September 21, 2009, as MXenergy continues to hold open its exchange offer to execute such a liquidity event.

Energy Choice LLC Would Receive Aggregator License Under Conn. Draft

The Connecticut DPUC would grant Energy Choice LLC an electric aggregator certificate to serve all customer classes under a draft decision issued yesterday (Matters, 7/21/09)

I.C. Thomasson Seeks Pa. Electric License

I.C. Thomasson Associates applied for an electric broker/marketer/aggregator license at the Pennsylvania PUC to serve all sizes of non-residential customers in all service territories. I.C. Thomasson has a natural gas broker application pending as well (Only in Matters, 8/27/09)

Amigo, Tara File REP Certificate Amendments

Vega Resources, LLC, which markets as Amigo Energy, applied for a REP certificate amendment to reflect, among other things, a change in its legal name to Fulcrum Retail Energy LLC d/b/a Amigo Energy. Separately, Tara Energy, which as only reported by *Matters* entered into a merger with Fulcrum Power Services, also filed for a certificate amendment to reflect new ownership (Only in Matters, 9/4/09).

N.J. BPU Approves Lower Gas Supply Rates

The New Jersey BPU yesterday approved new gas supply rates for the LDCs, effective immediately. Public Service Electric and Gas' rate will decrease to $0.88795 per therm from $0.990753 per therm. New Jersey Natural Gas' rate will decrease to $0.8039 per therm from $1.1008 per therm. South Jersey Gas' rate will decrease to $0.8398 per therm from $1.0977 per therm. Elizabethtown Gas' rate will decrease to $0.8031 per therm from $1.2801 per therm.

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be fully reflected for a number of years into the future, ComEd said.

Another issue raised by ComEd is that the price paid by load serving entities for capacity will change as load throughout PJM changes over time. In essence, under RPM, generators guarantee to supply a fixed amount of megawatts to PJM three years in the future at the RPM market clearing price. To the extent forecasted load in PJM is less than what was expected when the capacity auction was held, the price charged to the LSEs will likely increase to allow PJM to make the payments promised to the generators, ComEd said. "Consequently, for periods in which an RPM auction has already been held, it is unclear to what degree, if any, the capacity obligations of LSEs can be reduced through additional demand resources procured outside of the RPM process. In fact, it is possible for the incremental demand-resources to increase costs to customers since such resources will have a cost but potentially provide little or no reduction of PJM capacity charges paid by ComEd in the near term," ComEd added.

ComEd recommended removing the separate demand response procurement from the IPA plan, urging the Illinois Commerce Commission to find that RPM meets the statutory mandate to procure cost-effective demand response.

In contrast, the Citizens Utility Board supported the demand response carve-out, since the RFP, "will provide potential providers of demand response services for eligible customers a stable five year revenue stream for their demand response capacity."

"This stability is critical to the expansion of demand response programs provided to eligible customers," CUB said. Furthermore, uncertainty in available revenue streams for demand response services can shorten investment horizons and increase financing costs to the point that demand response services cannot be cost effectively provided to eligible customers, CUB added.

Constellation Energy asked for clarification that all customers, including those on competitive supply, will be able to offer demand response into the demand-side RFP.

Illinois Commerce Commission Staff said that the IPA needs to provide more details regarding its proposed demand response procurement. Among other things, Staff asked whether the demand response products will be standardized and well-defined in the solicitation, as they have been for all other ComEd and Ameren electricity procurements since 2006, or whether each firm responding to the solicitation will be permitted to offer whatever demand response products that it chooses.

Turning to the types of products procured, Staff requested that the IPA report on its analysis of credit costs or risk premiums associated with the laddered block product approach. "[T]here is reason to believe the contracts that the IPA has been soliciting on behalf of ComEd and Ameren include risk premiums and therefore are greater than expected average future spot market prices," Staff said, noting the presence of such premiums is an important consideration in evaluating the IPA's decision to not oversubscribe the procured supplies for peak periods as it did in the last procurement.

Constellation Energy argued that, "the recent reduction in wholesale electric market prices over the past year suggests that now may be an opportune time to solicit full requirements products in order to take advantage of favorable economic conditions, as opposed to continuing with the standard wholesale block product approach." At a minimum, the IPA should procure supplies in a manner that preserves flexibility for a change in the types of products procured in the future, Constellation said. "Constellation is concerned that by continuing to chart a course for a laddered procurement strategy that utilizes standard wholesale block products, it will be difficult or more challenging to alter the product mix and move to a more traditional full requirements contract product."

Staff and Constellation both requested more detailed information regarding the IPA's proposal to consolidate the REC procurements of ComEd and Ameren, with Staff outlining several risks and benefits from such consolidation. Constellation said that the REC procurements need to be better defined, noting that in Ameren's procurement under the previous plan, it was unclear whether NOx was a part of the product.

Constellation further argued that the procurement plan should allow the use of green-e certified RECs in addition to RECs delivered through PJM-EIS GATS or M-RETS. "[P]ermitting RECs that are green-e certified to be bid into the competitive procurements will provide for a greater number of RECs, and a more competitive and potentially more cost-effective rate for consumers," Constellation said.

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generator who necessarily already has paid for the fuel stock to generate the electricity to sell into the pool. In simple terms, if a generator's fuel cost exceeds the LMP, then that unit will not be dispatched by the pool as it is an uneconomic resource (i.e. the need can be met by cheaper resources). Similarly, if LMP minus the generation component of the retail rate is insufficient compensation to a customer to offer demand response, the customer should assume that the pool need for resources can be met with cheaper resources," Exelon et. al. said.

"Thus, any payments in excess of LMP minus 'G' are in excess of the fair market value for that resource. Paying some participants in a competitive market a subsidy in excess of the fair market value by definition undermines the market in which resources priced higher than the competitive clearing price are not dispatched," the generators added.

"Paying demand resources a subsidy to entice their participation in the market, even when the competitive price would not, is tantamount to subsidizing new generation in order to lower market clearing prices, which the Commission recognizes will undermine competitive markets," the generators continued.

EPSA, in similar comments, noted that the proposed subsidies are, "merely a work-around - in the wholesale markets - for a problem in the retail market," -- the lack of dynamic pricing and price responsive demand.

"There is little chance that the proposed subsidy will foster the goal of more price responsive demand at the retail level (after all, five years of the subsidy previously failed to do so)," EPSA said.

The PSEG Companies, in a refrain cited by several generators, dismissed PJM's argument that the subsidy is needed to support demand response, noting that, "recent PJM capacity market results provide compelling data to show that demand resources are in fact thriving under the current rules and are participating on a level competitive with supply side resources."

For example, during the Base Residual Auction for the 2012/13 delivery year held in May 2009, nearly 10,000 MW of demand response bid into the RPM auction. Of that amount, 71% or 7,047.3 MW cleared the market, with 67% of the cleared MW being offered in the constrained regions, PSEG said.

"The PJM Filing offers nothing to demonstrate that its compromise proposal is anything other than an unnecessary subsidy to demand resources interests," PSEG added.

The PJM Power Providers Group and others also called PJM's filing procedurally deficient, as the relief proposed is appropriately sought under section 206 of the Federal Power Act, not in a report in a complaint docket pending rehearing, as PJM's filing was. As a section 206 complaint, generators said that PJM has failed to prove that existing economic demand response rates are unjust or unreasonable, nor has it shown that its proposed replacement rates are just and reasonable.

Allegheny Energy also opposed the lack of a firm sunset date in PJM's subsidy, with the payments ending only when 1,000 MW of new, small scale demand response are enrolled. Allegheny suggested that, if FERC approves PJM's subsidy payment, it should be limited to three years.

However, Comverge, EnergyConnect, EnerNOC, the PJM Industrial Customer

Coalition, Viridity Energy, and Wal-Mart argued that, not only is an incentive payment appropriate, it should not be limited to only the nine percent of hours when LMP is at its highest levels, noting that demand response can and does provide value at all points of the supply curve.

"In order to ensure comparability between generation and demand-side resources, compensation for demand reductions must [always] be the full LMP applicable to the demand resource," the demand response (DR) supporters said.

The DR supporters argued that the current compensation arrangement which deducts generation and transmission from load response payments, "stifles demand response participation in PJM, and by doing so perpetuates inelastic demand, which leads to more volatile and higher prices than are necessary."

"The current compensation arrangement operates as a barrier to demand response, and produces market outcomes that are inefficient; the resulting energy prices produced by PJM's energy market are unjust and unreasonable," the DR supporters said.

"The same principles that motivate LMP compensation for generators apply equally to demand response resource compensation. A demand resource responding to, for example, a scheduled or required curtailment is entitled to the established LMP. There is no evidence supporting the payment of something other than LMP," the DR supporters added.

Even if an offset can be justified on policy grounds (which DR supporters said cannot be done), FERC in any case has no authority to order an offset in demand response payments, DR supporters reasoned, since the offsets involve retail rates paid by customers. "When and how retail customers pay for retail service is a matter of state law and within the jurisdiction of state regulators," the DR supporters noted.

The DR supporters also called the 1,000 MW sunset provision proposed by PJM capricious, and said no sunset provision is warranted.