Energy Choice Matters

October 21, 2009

BlueStar Confirms Residential Plans in Complaint Against Ameren Regarding Rescission Period

BlueStar Energy Services filed a complaint at the Illinois Commerce Commission for expedited declaratory relief against the Ameren Illinois utilities to suspend a provision of final tariffs regarding the rescission period applicable to mass market customers. In its complaint, BlueStar confirmed it would broaden its residential marketing in Illinois this year.

BlueStar said that Ameren's tariffs, which include a 10-day mass market rescission period, conflict with, "a valid, pre-existing administrative rule -- approved by the Commission and the Joint Committee on Administrative Rules ('JCAR')." BlueStar further noted that the ICC previously directed that customer protection issues such as the rescission period shall be addressed in an upcoming rulemaking, not in the tariffs.

Pursuant to a Commission order in 2003, 83 Ill. Adm. Code 453.40(a)(4) provides that, "residential customers may cancel the enrollment within 3 business days after Internet enrollment," BlueStar noted, which intends to use internet enrollments for residential customers.

"Section 453.40 is still a valid rule and remains in full force and effect in Illinois and may only be modified by the Commission pursuant to a legislatively-proscribed rulemaking process," BlueStar said.

However, in final tariffs filed by Ameren to implement Purchase of Receivables and utility consolidated billing (UCB), a provision holds that, "For [a] Mass Market account, the rescission request must be made by the Customer to the Company within ten calendar days of the Company's

Continued P. 5

FirstEnergy Ohio Utilities File for MRO Using Three-Year Laddered Procurement Process

The FirstEnergy Ohio utilities filed at PUCO to procure Standard Service Offer supplies for the period beginning June 1, 2011, through a Market Rate Offer using descending clock auctions to establish a three-year laddered portfolio of full requirements contracts.

Under the application, Ohio Edison, Cleveland Electric Illuminating and Toledo Edison would hold semi-annual auctions in June and October of each year using a descending clock format to procure hourly load following, full requirements contracts on a slice of system basis. The initial auctions in June and October 2010 would procure a mix of 12, 24 and 36-month contracts to establish the laddered portfolio. Thereafter, each semi-annual procurement would only procure 36-month contracts to replace the contracts due to roll off the in following delivery year. After the initial laddering, each solicitation would procure about 17% of requirements for a three-year period beginning the following year.

The FirstEnergy utilities said that the staggered nature of the procurement will smooth out volatility and benefit customers. The distribution companies further said that a full requirements, slice of system product is superior to class-based products because the class-based products would include higher migration risk for certain classes, raising risk premiums and thus prices. The FirstEnergy companies also said that an active portfolio approach blending long and short-term

Continued P. 5

TNMP Files for Declaratory Order on Fort Stockton Billing Errors

Texas-New Mexico Power filed a petition for declaratory order at the PUCT regarding a refund to be provided to correct certain errors in billing information for retail delivery service provided to the City of Fort Stockton and the retail electric providers serving the City.

TNMP said that errors in its billing information resulted in over-billing and under-billing for various street lighting services provided by TNMP. The over-billing resulted from over-counting the City's street lights; TNMP did not specify what caused the under-billing. TNMP argued that since it is only seeking to "net" under-billed amounts against over-billed amounts, versus seeking to "collect" such under-billings, the standard tariff provisions limiting collection of under-billings do not apply.

The under- and over-billings occurred both prior to and since the restructuring of the Texas electric market. TNMP said that it and the City agreed on October 16, 2009, that the City would be due a refund of $654,000 for the net over-billings. TNMP did not provide a breakdown of the amount; but said that, in an earlier and similar refund amount of $631,000 discussed during negotiations, the amount would have included $238,000 in pre-restructuring charges from TNMP, with the balance to be provided by three REPs serving the City (passing through the refund they are due from TNMP), subject only to acknowledgements and releases in favor of those REPs from the City relating to such overbilled TDU charge amounts.

TNMP did not list the REPs for competitive reasons. Under the preliminary $631,000 total, REP "A" would refund an amount of $100,000; REP "B" would refund an amount of $46,000, and REP "C" would refund an amount of $246,000. TNMP did not provide the breakdown by REP under the final $654,000 total to be refunded.

However, TNMP said that on October 19, 2009, in an apparent reversal of its agreement with TNMP, the City rejected the $654,000 agreement, and is apparently seeking from TNMP a refund of energy and other non-TDU charges that were assessed directly by the REPs to the City during the post-restructuring period.

"Based on the City's threats of imminent suit, TNMP therefore requests the Commission exercise its jurisdiction over this matter and issue an order (1) declaring that TNMP is not required to refund to the City any additional energy or other non-TDU charges that were assessed directly against the City by the REPs and (2) determining any dispute regarding the amount to be refunded."

TNMP said that the City is now seeking at least $955,000 in a refund from TNMP to cover the non-TDU charges.

"TNMP is not responsible for any energy or other non-TDU charges assessed by the REPs, as such charges were assessed directly to the City by the REPs," TNMP said.

"Those energy and other non-TDU charges are matters between the City and the REPs in which TNMP has no role, and there is no legal basis on which the City can insist that TNMP refund any such energy charges to the City," TNMP added.

CAISO Calls Consideration of New Products to Mitigate Exceptional Dispatch "Premature"

The California ISO said that it would be "premature" to consider the development of new products solely targeted toward reducing exceptional dispatches, reporting to FERC that such a process should not begin until a year of operational data is obtained.

In a monthly exceptional dispatch report, CAISO noted that some stakeholders have expressed a "strong desire" to begin stakeholder discussions of new products to address the reliance on exceptional dispatch.

However, CAISO noted that it continues to implement operational, modeling and software enhancements that, "will further reduce the need for exceptional dispatch over the coming months," recommending that any discussion of new products be deferred until after the implementation of such improvements.

Additionally, CAISO said that a full year of operational experience is needed due to the seasonal nature of exceptional dispatch.

CAISO argued that the need for specific new products will not be known until a year's worth of data is compiled, and the results of ongoing enhancements are known.

In particular, CAISO noted that some stakeholders have recommended the development of a 30-minute ancillary services product, and a voltage support product.

CAISO said that in that a prior stakeholder process to discuss the merits of developing a 30-minute ancillary services product, it, "found that a 30-minute ancillary services product may not reduce the level of exceptional dispatch under the new market design."

The data on exceptional dispatch show that exceptional dispatch is seldom used exclusively to address voltage support problems, CAISO added.

"In summary, there is no compelling evidence at this time that the development of these specific products should take priority over other design enhancements and implementation activities that are expected to have a greater impact on improving market efficiency and grid reliability," CAISO said.

National Grid Calls Long-Term Offshore Wind PPA Significantly Uneconomic

Narragansett Electric (National Grid) said that proposed terms for a long-term PPA to support construction of Deepwater Wind's wind project off the coast of Rhode Island are, "uneconomic by a significant margin," in comments to the PUC.

Legislation, specifically aimed at supporting the Deepwater project, requires Grid to sign a "commercially reasonable" long-term contract for renewable energy. In response to an RFP, Deepwater proposed a 21.6 MW (nameplate capacity) offshore wind project.

After negotiations and evaluating several different forms of pricing, Grid said that a 20-year PPA with Deepwater would price electricity at 30.7¢ per kilowatt-hour for the first full year, with the price escalating at a fixed rate of 3.5% per year. The price excludes the cost of a required cable between the mainland and Block Island.

"If the prices were actually fixed at that rate with such escalation, that would be problematic enough," Grid said. "But the other significant concern that National Grid has with the pricing is that the pricing is not fixed."

Grid reported that while Deepwater would take the risk of construction, ratepayers would bear virtually all the production and post-construction cost risk once the project becomes commercially operational.

"The PPA not only includes a high starting price that escalates, but also contains provisions that effectively insulate the developer from the financial risks of production and maintenance. Although Deepwater has indicated that some of the terms of the proposal are necessary in order to achieve financing in an economy where obtaining project financing may be challenging, National Grid nevertheless believes that the contract terms create too much risk and unreasonable cost for customers and, for that reason, should be disapproved by the Commission," Grid said.

Grid estimated that it would pay Deepwater a total of $657.5 million over the life of the 20-year agreement, assuming there were no adjustments for variations from the assumed capacity factors and operation and maintenance expenses. Of that amount, Grid estimated that the total amount of above-market costs will be over $500 million. In the first full year of operation, which is expected in 2013, the above market cost to customers would exceed $16 million and continue to escalate every year thereafter, Grid said.

Deepwater said that the cost of electricity under its terms is about 20-25¢/kWh, and said that the unsigned agreement filed by National Grid with the PUC did not reflect final pricing as proposed by Deepwater, but rather terms drafted according to Grid's requests.

Long-Term Contracting Rulemaking

In a separate PUC rulemaking to implement legislation requiring utilities to annually solicit proposals from renewable energy developers and, upon commercially reasonable proposals, to enter into long-term contracts for renewable energy, Grid objected to draft language which would require the utility to rebid long-term contracts if a project initially selected from an RFP proves to be unviable after three years. Grid said that entering into the initial contract fulfills the utility's statutory obligation, and that no rebidding is permitted under law. The Division of Public Utility Carriers filed similar comments opposing the rebidding requirement.

Briefly:

Ambit to Enter NYSEG Electric, Gas Market

Ambit Energy said it will begin marketing electricity and natural gas in the NYSEG territory starting in the first quarter of 2010. Ambit, which is currently in ConEd, NiMo and KeySpan, said it will offer its guaranteed-savings-versus-the-utility-tariff product to NYSEG customers. To date, Ambit's product in New York has offered guaranteed savings of 1% off the applicable utility supply rate over a 12-month period. The multi-level marketer noted that, collectively, only about nine percent of the 871,000 electric and 256,000 gas customers in NYSEG have migrated to an ESCO.

Public Power & Utility Seeks to Expand Maine License to Residential Customers

Public Power & Utility, which was licensed to serve non-residential customers in Maine in February, applied at the Maine PUC to expand its competitive electricity provider license to serve residential customers.

Price Energy Solutions Seeks Conn. Aggregation Certificate

Price Energy Solutions applied for a Connecticut electric aggregator certificate to serve residential, commercial, and industrial customers. Price Energy Solutions currently brokers in New York and New Jersey.

Major Energy Services Seeks Michigan Gas License

Major Energy Services applied for a Michigan alternative gas supplier license as a marketer.

PG&E Files for Novation of GWF Contract

Pacific Gas & Electric applied at the California PUC to novate the Department of Water Resources' supply contract with GWF Energy LLC, and replace DWR as the buyer. The novation was first reported in *Matters* (Only in Matters, 10/12/09). The novation also includes a new PPA for an upgrade of GWF's Tracy peaker, which would include an incremental 145 MW. To the extent that SB 695, which provides for the recovery of nonbypassable charges for certain PPAs and utility-owned generation, is implemented by the Commission, PG&E said that it reserves the right to seek cost recovery under that statute. PG&E asked for a decision on its application within six months.

N.Y. PSC Denies Green Island Power's Petition Regarding Brookfield's Lightened Regulation Status

The New York PSC denied a petition for a declaratory order from Green Island Power Authority, which sought to strip Erie Boulevard's lightened regulation status, as the PSC ruled that the petition amounted to a late rehearing request of a 2004 order. Erie is ultimately a subsidiary of Brookfield Asset Management, and owns 75 hydro plants in New York totaling 810 MW. A 2004 PSC order approved the sale of the hydro plants from an affiliate of what was then Reliant Energy to a Brookfield predecessor, and granted the plants lightened regulation. Green Island Power Authority, which is seeking to build a competing hydropower plant at Erie's School Street facility, alleged in its petition that Erie is underutilizing the flow of the Mohawk River at that site, and made various allegations that Erie's "dominant" position in the hydropower market afforded it market power. The Commission called the allegations "conclusory and speculative," and denied the requested relief. Green Island Power Authority has sought various relief from FERC as well, which has been denied.

Flexon Leaving NRG

NRG Energy said that CFO Robert Flexon is leaving NRG, effective November 2, to assume the position of President and CEO of Foster Wheeler USA. NRG's Board of Directors has named Gerald Luterman interim CFO while the company conducts an internal and external search for a new CFO. Luterman, who currently sits on the NRG Board and its Audit Committee, served for eight years as CFO of KeySpan.

Catholic University to Buy Output of WGES Solar System

The Catholic University of America has signed a 20-year agreement with Washington Gas

Energy Services to purchase the electricity generated by solar panels to be installed at the school at fixed prices. The solar energy system, owned by WGES, will produce about 340,000 kilowatt-hours of electricity each year. Standard Solar will handle installation of the panels.

Ameren ... *from 1*

processing of the enrolment DASR [Direct Access Service Request]."

While the tariffs do not state whether the 10-day rescission period is applicable to internet enrollments or suppliers not participating in UCB/POR, Ameren informed BlueStar, in response to a question, that it intends to apply the 10-day rescission period to all mass market enrollments regardless of UCB/POR participation or customer type.

The Commission's order on the UCB/POR tariffs did not specifically address the 10-day rescission period. However, BlueStar noted that Commission addressed consumer protection measures more broadly and said that only those consumer protection measures, "upon which consensus is developed in the [Office of Retail Market Development] workshops," should be included in the tariffs. Non-consensus customer protection provisions could either be submitted in a separate tariff so the Commission could suspend the disputed provisions and investigate them without delaying implementation of any consensus provisions, or the disputed protection measures could be considered as part of a formal rulemaking.

BlueStar reported that it, and various other suppliers, have raised concerns about the 10-day rescission period in the Office of Retail Market Development's workshop, most recently in comments filed in response to the latest draft circulated October 10.

Accordingly, as the tariffs contradict established administrative rules, and are inconsistent with the Commission's direction in the UCB/POR order, BlueStar requested that the Commission (i) declare that the 10-day rescission window in Ameren's final UCB/POR tariff does not apply to residential internet enrollments; and (ii) suspend the 10-day rescission window from going into effect until such time as existing rules governing internet enrollments are modified through formal rulemaking, if at all.

Residential Marketing

In its pleading, BlueStar confirmed that it, "intends to begin a broader residential program (including in [Ameren's] territory) in 2009." BlueStar had earlier launched a pilot program to provide electricity service to residential customers, and recently told the *St. Louis Post-Dispatch* that Ameren customers would have the choice of an alternative electric supplier by year-end, though it declined at that time to say it was entering the residential market.

BlueStar said that all of its residential enrollments will be done over the internet. BlueStar also said in the complaint that it will not use UCB/POR.

FirstEnergy ... *from 1*

contracts would increase risks for customers, because the active portfolio exposes customers to costs changes arising from load and price uncertainty.

Each tranche in the proposed auction would equal 1% of the FirstEnergy utilities' SSO load.

The blended price from the auctions would be adjusted by the applicable distribution line loss factor and a seasonal allocation factor.

The full requirements procurement would not include renewable energy or RECs to meet the FirstEnergy companies' statutory alternative energy portfolio standard mandates, as the utilities said that the current lack of Ohio-based renewable facilities may discourage participation among wholesale suppliers if they were required to procure such resources. Such renewable requirements would continue to be procured through RFP, and recovered through bypassable Rider AER.

The full requirements contracts would also exclude certain "non-market" transmission, ancillary and other FERC or RTO-approved charges, such as Network Integrated Transmission Service. The FirstEnergy companies said that wholesale suppliers cannot hedge these charges, and that including them in the full requirements contracts would increase risk premiums. Such "non-market" costs would be recovered on a nonbypassable basis from all customers, as the FirstEnergy utilities said that they are billed for such charges for their entire distribution load, including customers on competitive supply.

Under the application, the FirstEnergy companies would end all credits to SSO customers under Rider EDR (which are not available to competitive supply customers), except for the credit provided to lighting customers on Rates STL and TRF. Such lighting customers would continue to receive mitigation such that their estimated annualized rate increase from the Market Rate Offer would only be 5%. Such mitigation would continue to be recovered on a nonbypassable basis from customers on Rates GS and GP.

The distribution companies will continue to reconcile generation costs every quarter on a nonbypassable basis under Rider GCR. Such costs include (1) any difference between the amounts billed to customers and the costs under the wholesale contracts; (2) costs to conduct the procurement; and (3) any costs if contingency plans for procurement must be enacted.

Of note is that the FirstEnergy utilities applied to offer three voluntary rates under the Market Rate Offer: real-time pricing, time-of-day pricing and critical peak pricing. While the time-of-day pricing option would fall under Rider GEN (the generation rate for default service), real-time pricing and critical peak pricing options would not fall under Rider GEN. Reconciliation of the amounts billed under these two time-differentiated options and actual wholesale costs would be recovered through Rider GCR on a nonbypassable basis, meaning customers on competitive supply could potentially subsidize these utility-offered rate options, since these utility customers will be served on the same slice of system contracts which are priced at the flat retail rate in Rider GEN.

The three time-differentiated options are the same options currently pending before PUCO in a separate docket (Only in Matters, 6/30/09).

The FirstEnergy utilities also proposed to procure via competitive RFP interruptible load from customers, to comply with the utilities' statutory load reduction goals. The costs of such interruptible agreements, however, would be nonbypassable under Rider PDR (Peak Demand Reduction), as the FirstEnergy companies argued that all customers, regardless of generation supplier, would benefit from the interruptible capacity. Certain large customers self-implementing load reducing technologies could avoid Rider PDR.