Energy Choice Matters

November 4, 2009

OCC Seeks Elimination of Vectren Standard Choice Offer Auction

The Ohio Consumers' Counsel petitioned PUCO to abandon the initial Standard Choice Offer auction scheduled to procure supplies for Vectren Energy Delivery's non-shopping customers, arguing that the SCO process will result in higher taxes for customers compared to the current Standard Service Offer (SSO). Vectren and competitive retail suppliers countered that OCC's arguments are simplistic, and are procedurally improper in any case.

OCC's recommendation was styled as a response to various improvements to the SCO process filed by stakeholders in September (Only in Matters, 9/24/09), but Vectren said that OCC is using, "the Commission's ongoing regulatory authority over SCO service as an excuse to renege on its commitment to SCO service as provided for in the [2008 SCO] Stipulation which it signed and which was approved in the Commission's Order."

OCC explained that customers purchasing supply from Vectren (sourced through wholesale SSO auctions) pay a gross receipts tax of 4.88%. Under the SCO retail auction, customers will be directly supplied by competitive retailers, and will pay state and possibly local sales tax rather than the gross receipts tax. Noting that sales tax may range from 6.25% to 7.75%, OCC claimed that, "there can be absolutely no dispute that the SCO does produce tangible, quantifiable additional costs for residential customers."

"Despite claims made to the contrary, to date there have been no tangible, objectively quantifiable benefits for residential customers as a result of the change to the SCO in place of the SSO," OCC

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Calif. Draft Would Institute Bilateral, Multi-Year Forward Capacity Requirement

Draft Rejects Centralized Capacity Market on Jurisdictional Concerns

Rejecting the use of a centralized capacity market, the California PUC would move forward with the addition of a three-to-five-year forward commitment period to its current bilateral resource adequacy (RA) requirement, in a draft decision released yesterday (R. 05-12-013). The draft, if approved, would establish general guidelines and make broad policy decisions, but would leave the finer details of implementing the forward commitment period to a third phase of the proceeding. The draft concludes that the new forward commitment could not be implemented prior to 2012.

Most notable from the draft is the rejection of a centralized capacity market due to the Commission's desire to retain jurisdiction over resource adequacy and avoid ceding control to FERC, and the draft's dismissal of arguments that a forward commitment period under a bilateral approach is inconsistent with a competitive retail market.

The fundamental finding in the draft is that while the current one-year resource adequacy obligation has worked thus far, "it does not adequately foster investment in new generation." In particular, the Commission noted that most new generation has been built by the utilities, or is the result of the utilities' long-term procurement plan (LTPP) mechanism or RPS requirements. "The resource development that California has seen in recent years cannot be attributed to significant

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WGL Seeks Quarterly Imbalance Reconciliations in All Three Territories

Washington Gas Light has proposed to regulators in each of its three jurisdictions to reconcile a competitive supplier's imbalances between the supplier's deliveries and actual consumption by its customers on a quarterly basis.

Currently, an annual reconciliation is used. Under the proposed quarterly reconciliations, the same tracking of competitive supplier deliveries and customer usage will continue, and the difference will still be calculated on a monthly basis.

Reconciliations would occur on a quarterly basis for the period ending June, September, December and March, by either an adjustment to the supplier's Daily Required Volumes within 90 days of the reconciliation (the preferred method), or an adjustment to the supplier's imbalance account within 90 days of the reconciliation. The adjustment will be made at WGL's discretion, based on operational considerations. If a reconciliation would cause a supplier's Daily Required Volumes to exceed its maximum storage and firm transportation entitlement, the reconciliation will be continued into the following quarter.

WGL said that the change would benefit the LDC and suppliers by minimizing the accumulation of imbalances, and by allowing for reconciliation closer to the time of occurrence.

WGL is seeking the change for its Maryland, District of Columbia, and Virginia systems.

FERC Suspends NYISO Generator-Specific Mitigation, Orders Public Identification

FERC accepted for filing but suspended the New York ISO's extra-tariff mitigation measures it sought to impose on three unnamed generators to address conduct that NYISO said constitutes an exercise of market power, but that does not trigger the conduct and impact mitigation thresholds set forth in the Market Mitigation Measures (Matters, 9/7/09).

FERC said that the generator-specific mitigation has not been shown to be just and reasonable, and may be unjust, unreasonable, unduly discriminatory, in an order suspending the provisions subject to refund. In particular, the Commission said NYISO's filing lacks the LBMPs used to calculate the Bid Production Cost Guarantee Payments at bid and at reference level.

The Commission further ruled that the generators' names are not confidential, and ordered the NYISO to publicly disclose the generators in a revised filing. "Disclosure of the names does not reveal otherwise confidential financial or commercial information or permit other market participants to connect their names to commercially sensitive bid or other data since we determine below that such data is privileged and will not be released," the Commission held.

Additionally, FERC said that while bid data, bidding strategies not previously disclosed publicly, generator reference prices, and generator costs are commercially sensitive and entitled to confidential treatment, the generators, some of which filed reposes that were entirely redacted, cannot redact arguments and testimony that (1) do not reveal specific bid data or pricing, (2) concern previously publicly released bidding strategies, or (3) consist of information that is general or hypothetical in nature. The disclosure of the latter items would not cause harm to the commercial position of the generators or to the NYISO market, the Commission said.

FERC noted that in its September 4 filing, the NYISO publicly disclosed the three generators' strategy of bidding at levels substantially in excess of their marginal costs and reference prices in order to recover fixed costs. Further, the NYISO disclosed that by such conduct the three generators exceeded one of the two impact thresholds in the mitigation plan, i.e., a 100 percent increase in guarantee payments. Therefore, "[a]ny references to that strategy or impact, as well as any arguments and testimony related thereto, are not confidential and must be disclosed," by the generators in revised filings of their earlier pleadings, FERC directed.

As first reported in *Matters*, the NYISO's petition for mitigation involves three generators who, when committed for reliability and not economic reasons, received Bid Production

Cost Guarantee payments in excess of 100% of the amount that they would have received had they submitted offers at their reference levels.

Md. Proposed Order Would Allow WGL to Continue Self-Management of Assets

A proposed Maryland order would find that Washington Gas Light's decision to move asset management activities in-house has benefited ratepayers and may continue, as a hearing examiner found that any margins from the activities should flow to sales customers only, not distribution customers (Only in Matters, 8/26/09).

As only reported in *Matters*, Maryland PSC Staff had petitioned for an investigation of WGL's asset management, arguing that Commission approval was required before WGL could perform asset management activities itself. Several other related issues were addressed in the case, including the sharing of margins, ratepayer risk, storage accounting, and the potential sale of WGL-owned assets.

The hearing examiner found that once brought in-house, WGL's asset management activities have resulted in a tripling of rate benefits from the approximate 10-year period in which the company utilized a third-party asset manager, and thus should continue. While Staff and other parties opposing WGL's self-management program attributed the higher benefits to market conditions, the hearing examiner called such assertions speculative. Customer margins from asset management have increased from an annual average of $2.2 million in the period of 1997 through 2006 to $5.7 million in 2007, and $7.3 million in 2008 under the change to self-management.

With the change to self-management, WGL petitioned to change the methodology for sharing asset management margins, and the hearing examiner adopted WGL's final proposal as contained in its post-hearing brief under which customers would receive 100 percent of the first $2.6 million in margins, 75 percent of the next $3.3 million (25 percent retained by shareholders), and 50 percent of margins over $5.9 million (50 percent retained by shareholders). The recommended methodology removes the current distinction in margin allocation between Company-supported and customer-supported assets.

With such a margin allocation distinction removed, the hearing examiner believes most issues regarding the use of an affiliate for non-regulated gas sales are resolved. Staff had recommended that all non-regulated gas sale activities should be performed by a separate affiliate, with a transfer of assets to that affiliate. Hess Corporation argued that should WGL be required to shed any Company-supported assets, the sale should be done through a competitive process, and not an uncontested transfer to the affiliate.

With the recommended uniform margin sharing allocation, "the interests of shareholders and ratepayers are now in alignment for all off-system sales so that the issues regarding establishment of a separate affiliate may no longer be extant," the hearing examiner said, though the examiner noted WGL has indicated it may wish to explore this aspect further, and that the issue may necessitate further review if future circumstances warrant.

The hearing examiner agreed with protests concerning negative margins, and found that customers should be insulated from negative margins, which WGL has said occur in some months due purely to timing issues. "[C]ustomers are not an appropriate party to bear risks of loss in any transaction involving self-management activities by the Company that are intended to optimize gas assets," the examiner said in directing such risks to fall on shareholders. Since WGL contends that negative margins result from timing differences or accounting adjustments and that there is no risk to ratepayers from them, "then there should be no harm to the Company from a specific protective tariff to that effect," the examiner said.

Accordingly, WGL would be directed to develop a tariff to prohibit the pass-through of a net negative margin to customers over the annual period of the fuel adjustment charge. In the event an annual period would result in a negative credit, the negative margin must be retained by WGL for future adjustment or otherwise borne by shareholders, rather than passed through to ratepayers at that time, unless otherwise ordered by the Commission.

WGL could petition the Commission to justify the pass-through of a negative margin, per the proposed order.

Under the draft order, margins passed through to customers (which outside of an express Commission order will only be positive and not negative) would only be allocated to sales customers through the Purchased Gas Charge, rather than the Firm Credit Adjustment paid by delivery customers.

The hearing examiner found that the use of the ratable fill methodology to determine the cost of storage gas is appropriate, and would not order any refund related to its use in the past. However, parties would be given 60 days to propose alternative methodologies to price storage gas.

The proposed order would also require separate accounting or tracking of asset optimization transactions, with specific metrics to be developed by WGL in consultation with intervenors.

APPA, Consumer Groups Petition Congress, FERC for Investigation of Deregulated Rates

The American Public Power Association, Public Citizen, and several other consumer groups called on Congress and FERC to investigate high electric prices in deregulated electric markets.

"The 42 million consumers in full retail choice states served by Regional Transmission Organizations are being hit hardest - their rates are 55 percent higher than those in regulated states, a gap that has been increasing, according to data from the Energy Information Administration," APPA and others said in a news release.

The EIA data is the same as cited previously by APPA, and suffers from the same flaws, most notably the use of an all-in rate which commingles generation rates and delivery rates, and does not take into account relative fuel mix and changes in fuel prices. Furthermore, the call for the investigation seems incongruous due to the precipitous decline in generation rates in RTO markets, with, at least in terms of competitive supply options, an attendant drop in retail prices. Ironically, default services rates in several restructured states are higher than current wholesale market rates because of the laddering and forward procurement of supply supported by load representatives as a preferable means of pricing default service.

"At a time when consumers are facing extreme hardships from rising electricity costs and growing numbers face shut-offs, FERC must assure electric rates are just and reasonable." said Mark Crisson, president of APPA. "The promises of deregulation - competition and lower prices - have not been kept," Crisson said.

"While consumers continue to struggle to pay their electricity bills, the deregulated markets serving about two-thirds of the country, continue to create opportunities for excessive profits for a handful of companies that own generating plants," an APPA news release added.

Briefly:

Calif. PUC Says SB 695 Implementation to be Addressed in R.07-05-025, or Other Proceeding

The California PUC, in a draft decision on the Department of Water Resources' revenue requirement, said that it intends to implement the limited expansion of direct access under SB 695 in Rulemaking 07-05-025, or another appropriate proceeding, though it did not elaborate on an expected timeline. The draft would leave questions regarding the electric service provider deposit and reentry fee requirement to the forthcoming SB 695 proceeding, and did not address them in the DWR draft. In the draft, DWR's power charge would be set at \$0.23139/kWh at Pacific Gas & Electric, \$0.06112/kWh at San Diego Gas & Electric, and \$0.03763/kWh at Southern California Edison. The DWR bond charge would be set at \$0.00515/kWh at each utility.

Constellation Expects Migration to Reach 55% By 2011

Constellation expects the overall retail electric switch rate to increase to 55% of load in 2011, with expected growth of about 20% from 2009 to 2011, CFO Jonathan Thayer said during an EEI conference. Constellation also expects load available to be served at wholesale through default service procurements in 2011 to increase 50% versus 2008 levels. Pennsylvania and Ohio are driving most of the expected growth, with some contribution from opportunities in California and Michigan, Thayer said. Thayer reiterated comments, first reported in *Matters*, that Constellation is seeking attractively priced generation and longer-term offtake agreements in NEPOOL, ERCOT and the Midwest ISO to back its customer supply obligations (Only in Matters, 11/2/09). Thayer also said that for 2009, 55% of Constellation's retail power products are fixed quantity or indexed. Nearly all of its retail gas products are fixed quantity or indexed.

Unified Energy Services Seeks Md. Broker License
Unified Energy Services, LLC applied for a Maryland electric broker license to serve commercial and industrial customers at the four investor-owned utilities, Choptank Electric Cooperative, and the Southern Maryland Electric Cooperative.

Texzon Utilities Seeks Ohio Broker Licenses
Texzon Utilities applied for an Ohio electric broker-aggregator certificate to serve all customer classes in all service areas, and a natural gas broker-aggregator certificate to serve all customer classes in all service areas. Texzon said it has brokered over 5,000 commercial clients and over 3,000 residential clients in Texas, and said it has brokered load for Champion Energy, Cirro Energy, Direct Energy, Hudson Energy, Integrys Energy Services, Spark Energy, StarTex Power, and Suez Energy. Texzon also has a lighting division that markets high efficient lighting to industrial customers, primarily for outdoor use.

Energy Alliances Seeks Ohio Electric Broker License
Energy Alliances Inc applied for an Ohio electric broker-aggregator certificate to serve all customer classes in all service areas. Energy Alliances currently brokers Ohio gas customers. The broker has residential, commercial, mercantile and industrial clients throughout the Duke Energy Ohio territory, and serves nine communities through natural gas aggregations in Southern Ohio at Duke Energy and two communities in Northern Ohio at Dominion East Ohio, serving approximately 25,000 residents. Energy Alliances said that it also serves as a gas sales agent for Integrys Energy Services at Duke Energy Ohio.

Gateway Energy Services Promotes William Cateno to SVP of Sales & Marketing
Gateway Energy Services has promoted William Cateno to senior vice president of sales and marketing. Cateno was previously Gateway's vice president of sales, and led expansion into four new market territories since 2006, bringing Gateway's total footprint to 28 market territories. Prior to joining Gateway, Cateno spent 15 years in retail energy, including senior sales and marketing positions at Select Energy.

Illinois Commissioner Elliott Seeks Responses on Demand Response Procurement Questions
An Illinois Commerce Commission ALJ directed the Illinois Power Agency (IPA), Commonwealth Edison, Ameren, and Staff to address several questions from Commissioner Sherman Elliott regarding demand response in the PJM Reliability Pricing Model, and aggregation of retail customer demand response in the Midwest ISO, in light of the Illinois Power's Agency's procurement plan, and statutory requirements to purchase demand resources (docket 09-0373). Other parties were invited to respond to the questions as well. Aside from allowing demand response to compete in the all-source spring procurement, the IPA proposed a fall procurement for demand response resources only, if the spring procurement does not attract any demand response resources (Only in Matters, 10/2/09). ComEd and others have argued that the procurement of least-cost demand response in RPM meets the statutory requirement to procure demand response in the IPA procurement plan, and that a carve-out is unnecessary,

AGR Group Seeks Md. Electric License
AGR Group applied for a Maryland license to supply electricity or electric generation services. AGR's application was not available publicly yesterday. As only reported in *Matters*, AGR is

currently seeking a Pennsylvania broker license (Only in Matters, 10/20/09).

Qvinta Energy Receives D.C. Broker License
The District of Columbia PSC granted Qvinta Energy Services an electric broker license for all customer classes (Only in Matters, 9/16/09).

Tekoa Business Consultants Receives Texas Aggregation Certificate
The PUCT granted an aggregator certificate to Tekoa Business Consultants.

Prenova Seeks Illinois Broker License
Prenova, Inc. applied for an Illinois ABC license.

Tyno Named Chair of Peak Load Management Alliance
The Peak Load Management Alliance elected Paul Tyno, Executive Vice President of Market Development for Energy Curtailment Specialists, as its new Board Chairman for the 2010-2011 term of office.

Calif. Draft Would Allow SCE Recovery of IGCC Study Costs
A California PUC draft decision would allow Southern California Edison to recover up to $30 million in costs necessary to co-fund feasibility studies of a California integrated gasification combined cycle plant with carbon capture and storage (the Hydrogen Energy California project).

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said, in arguing that the SSO should be maintained. Only one SCO auction (at Dominion East Ohio) has been held for Ohio customers to date.

However, the Ohio Gas Marketers Group (OGMG) called OCC's tax discussion incomplete. The group includes Interstate Gas Supply, Direct Energy Services, SouthStar Energy Services and Vectren Retail.

"The OCC fails to mention in its Comments that while some residential customers would have their after purchase tax obligation reduced if the gas supply for the default service is obtained in an SSO auction, it failed to state that charitable institutions, state and government entities and non-profit corporation [sic] are exempt from sales tax," OGMG noted. "Thus, if the OCC is successful in its request the after tax cost of standard service gas supply to homeless shelters, hospitals, places of worship and governmental agencies will be increased," the marketers added.

Many commercial and industrial standard service customers pay reduced or no sales tax on the purchase of natural gas if it is used in their business, OGMG added.

Furthermore, the marketers stressed that nowhere in its pleading did OCC claim that the SSO will produce a lower price than the SCO, only that tax charges will be lower. That assertion, OGMG said, is based on facts not in record evidence, and assumes that the SSO auction price will equal the SCO auction price.

"If a hearing had been held the members of the OGMG would all have testified that they would not price, assess risk or bid on load in the same manner under an SSO auction as they would for an SCO auction," OGMG said, noting that in Dominion East Ohio's February 2009 concurrent SSO and SCO auctions, SCO bidders offered $1,449,000 more in cash premiums for the right to serve SCO load than they did for SSO load.

OCC attempts to argue away the benefits of the premium, or retail price adjustment, seen in the Dominion East Ohio SCO by claiming that its benefits were offset "in part" by the higher sales tax costs.

Vecten noted that the tax issue is not a new development, and was specifically contemplated in the stipulation signed by OCC. Indeed, the stipulation cited the parity in taxes paid by default SCO customers and competitive supply customers as a benefit of the SCO process. "Apparently, the tax aspect OCC originally viewed as a positive feature of SCO service has mutated into a basis for retreating from it," Vectren said.

OCC further contended that while an oft-cited benefit of the SCO auction is greater bidder participation, such bidder participation could actually decrease under an SCO auction because bidders must be licensed retail suppliers, unlike in the wholesale SSO auction. Several wholesale suppliers, such as DTE Energy Trading, that typically competed in the SSO auction have obtained retail licenses to compete in the Dominion East Ohio SCO, and a decrease in bidder participation has not been seen in the single SCO auction to date.

Finally, OCC argued that its petition is procedurally sound because the stipulation allows parties to bring issues not addressed to their satisfaction in the SCO working group to the Commission, and because the Commission, in the SCO order, retained authority to reject SCO auction results, and direct Vectren to conduct portfolio procurement using a gas cost recovery (GCR) charge.

Vectren and marketers argued that the working group only addresses implementation issues and does not create a right to challenge a pillar of the SCO settlement agreed to by all parties. Furthermore, in regards to rejecting the SCO auction and returning to GCR rates, Dominion Retail said that such a decision is contemplated only after the results of an auction are known, and rates are found not be in the customer's interest (due to a force majeure market shock or auction defect, for example). "[N]othing in these passages [cited by OCC] can conceivably be construed as authority for the Commission to reject the SCO auction process it has already approved before the results of an SCO auction are known," Dominion Retail said.

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merchant investment that was prompted by the RA program," the draft says.

"Compared to the current short-term procurement approach for RA, a multi-year forward commitment would provide important reliability benefits. It would provide advance knowledge of impending reliability problems, years ahead of delivery, allowing planners to address those problems in a timely, cost-effective manner. Additionally, a multi-year forward commitment should stimulate merchant generator investment, supporting our policy not to rely solely on Commission-directed forward procurement by IOUs to provide the investment needed for new generation. Further, as the CAISO points out, a multi-year forward commitment would promote competition between new and existing resources as well as competition between transmission upgrades and supply additions," the draft finds.

Retail suppliers had opposed a multi-year forward commitment, particularly under a bilateral approach, and had argued that California ISO market developments, such as the Market Redesign and Technology Upgrade and nodal pricing, will likely spur greater investment under the current one-year resource adequacy regime.

The draft rejects such a "wait-and-see" approach, stating, "we do not find it prudent to await such a demonstration [of development under the current model] before deciding whether a multi-year forward commitment is needed."

"The risks of being wrong are considerable, particularly as we seek to reduce the current extent of reliance on IOUs for forward investment," the draft adds.

"As long as IOU procurement is the primary source of new generation investment, merchant investment will tend to be crowded out of the California market," the proposed decision concludes.

PG&E Proposal Generally Endorsed

The draft endorses the principles of Pacific Gas & Electric's proposed multi-year bilateral approach, which would require LSEs to demonstrate compliance with capacity obligations for five, four, and three years in the future. As proposed by PG&E, an LSE's initial (five year-ahead) showing would be at least 80% of its load assessment, rising to 100% by the three-year-ahead showing, though the draft reserves the right to provide for a phased-in approach whereby the full effect of the requirement is deferred beyond the first year of implementation.

Each five-year capacity cycle would begin with a comprehensive forward assessment of the state's needs. LSE procurement deficiencies would be addressed by CAISO backstop procurement. A standardized, tradable capacity product and associated Resource Adequacy Registry would be used under the program.

The Commission would order a subsequent rulemaking to implement and refine such provisions. Among other things, the draft notes that a standard resource adequacy capacity product is being addressed, at least in significant part, in other proceedings, finding that the next phase of the instant rulemaking would examine how PG&E's Resource Adequacy Registry would complement or replace existing resource adequacy compliance procedures.

The ensuing phase would also address the mechanics of the forward compliance demonstration, as the draft notes that, "it will be appropriate to establish specific requirements that give due recognition to the development and preservation of competitive retail markets," such as the aforementioned phase-in of the obligation. Also, it will be necessary to develop a mechanism that accommodates entry and exit by individual competitive retail suppliers, the draft observes. Load migration and load forecasts for specific LSEs are to be addressed in a future proceeding, which must be harmonized with the multi-year forward capacity commitment.

The draft would authorize the Commission's Executive Director to spend $1 million per year for consultants to assist the Energy Division in performing the analysis necessary for setting the forward statewide capacity requirement. Reimbursement for such expenditures would be paid by some or all LSEs through mechanisms to be developed in the implementation proceeding, the draft holds.

An electronic bulletin board of capacity offers to facilitate bilateral transactions would be explored under the draft.

Centralized Market Rejected

The draft's recommendation for a bilateral capacity market rather than a centralized capacity market is largely due to concerns regarding the loss of jurisdiction over resource adequacy. "Less than a decade ago, California experienced the results of a costly, disastrous experiment with the redesign of electricity markets when painstakingly designed mechanisms did not function as intended by the Commission. As the 2000-2001 energy crisis played out, California found that its ability to craft its own remedies was limited because much of the electricity market regulatory apparatus had been federalized," the draft notes.

The proposed decision notes that FERC has asserted that the federal Commission has authority to set the installed capacity requirement used in centralized, RTO administered capacity markets, claiming a nexus with wholesale energy rates (which the courts have affirmed).

"Specifically, it must be recognized that maintaining our current scope of jurisdiction over the RA program is a very important benefit of the bilateral approach in terms of achieving the RA program objectives. It would enable the Commission to make changes to the program going forward, both for routine program refinement and for responding to any market breakdown or other unforeseen consequences," the proposed decision adds.

The draft further observes that a centralized capacity market has been used extensively in eastern RTOs, "but we do not find that it is yet a proven, long-term success story."

The proposed decision calls the experience in PJM "instructive," citing the complaint, dismissed by FERC, of several load representatives against the Reliability Pricing Model transitional auctions. The complaint, the draft notes, alleged flaws in the RPM market design, including short lead times for transitional auctions, extreme sensitivity to small changes in demand and supply curves, vulnerability to market power exercise combined with lack of adequate market power mitigation, and excessive reliability requirements imposed by PJM in local areas.

"[B]ecause a decision to move to a centralized auction in California would not be an easily reversible choice, there would be a clear benefit to observing the PJM experience (as well as that of the ISO-NE and NYISO markets) play out further before determining whether a centralized auction operated by the CAISO is the best solution for California," the draft concludes.

Cost Allocation Mechanism Unchanged

The draft also denies, in the instant decision, changes to the Cost Allocation Mechanism adopted in D.06-07-029, which assigns the cost of certain new generation to all benefiting customers, with customers on competitive supply considered beneficiaries due to reliability benefits. Retail suppliers have proposed various opt-out procedures of the Cost Allocation Mechanism for LSEs who demonstrate adequate supplies, but the

Commission said that the proposals were flawed because they treated utilities and competitive LSEs differently, (by allowing only competitive LSEs to opt-out), and because the opt-out could occur after the resource is procured.

The proposed decision finds that the issue of the Cost Allocation Mechanism opt-out did not receive adequate attention during workshops or comments, and that the record does not support adoption of any of the opt-out proposals before the Commission. Therefore, pending further order of the Commission, the Cost Allocation Mechanism procedure adopted in D.06-07-029 would remain without modification. Since the topic is closely related to the establishment of a multi-year forward resource adequacy obligation for all LSEs, the draft finds it to be appropriate to further consider the opt-out mechanism in the forthcoming implementation rulemaking.