

Energy Choice

Matters

January 4, 2010

Space Available Under SDG&E Direct Access Cap May be Less than 500 GWh

San Diego Gas & Electric may only have some 460 annualized GWh available under an expanded direct access load cap to be implemented by the California PUC, based on current participation in direct access (R. 0705025).

As only reported in *Matters*, SDG&E originally reported that the maximum amount of competitive load served in a historic 12-month period (which SB 695 sets as the size of an expanded direct access load cap) was 3,562.121799 GWh (Only in *Matters*, 12/8/09).

In response to a request for further information from the PUC, SDG&E reported that its current amount of annualized direct access load, as of November 30, 2009, is 3,100.204760 GWh, leaving only 462 GWh available should SDG&E's calculation of the cap be accepted.

The Alliance for Retail Energy Markets had previously stated that it appeared that only 320 GWh of new direct access load would be available at SDG&E under the cap. Though the PUC asked SDG&E to confirm whether AReM's calculation was correct, SDG&E said that it has not provided any actual calculations to date, and without knowing precisely what sources AReM is using to reach its conclusions, SDG&E is unable to confirm AReM's calculations. The AReM figure, presented in a filing in early December, may not have had the benefit of the November 2009 direct access migration data to calculate remaining space available, potentially accounting for the difference.

Southern California Edison would have nearly 4,100 annualized GWh available for new or

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Pa. PUC Fines Mid American Natural Resources, LLC for Unapproved Transfer of License

The Pennsylvania PUC fined natural gas supplier Mid American Natural Resources, LLC \$500 for serving customers without appropriate Commission authorization after an internal corporate merger/reorganization, and for not timely providing the Commission with supplemental information when it did finally seek recognition of a transfer/reorganization of its license.

The Commission granted Mid American Natural Resources, LLC a new license at its December 17 meeting, but a written order disclosing the fine was only recently published (Only in *Matters*, 12/18/09).

In 1999, predecessor Mid American Natural Resources, Inc. was granted a natural gas supply license by the PUC. In 2005, Mid American Natural Resources, Inc. was acquired by Norse Energy Corp., USA. It continued to operate as Mid American Natural Resources, Inc. until December 12, 2007, when it was merged into Mid American Natural Resources, LLC. Mid American Natural Resources, LLC continued to provide the services that Mid American Natural Resources, Inc. had provided to customers prior to the merger.

Mid American Natural Resources, LLC did not send out a blanket notice of the change in its name to customers, and only notified larger customers with whom it had NAESB contracts. Additionally, Mid American Natural Resources, LLC stated that it failed to report a change in organizational structure or operational status as required by 52 Pa. Code § 62.105 due to the understanding by the

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Briefly:

Publication Notice

Energy Choice Matters published issues on both Jan. 1 and Dec. 31. Stories included:

Jan. 1:

- PUCT Staff Seeks Revocation of TexRep5 REP Certificate
- Direct Energy Partners with Whirlpool, Lennox, Best Buy, and OpenPeak to Offer Home Energy Manager
- RESA Objects to Expansion of Mass. Switching Restriction Beyond Nstar
- Pennsylvania PUC Adds, Revises Conditions of Licensure Recommended by Just Energy
- DPL Energy Resources Seeks Force Majeure Waiver of Ohio-Based Solar REC Requirement
- AEP Retail Energy Partners Seeks Ohio Supply License

Dec. 31:

- BGE Seeks to Collect Additional SOS Working Capital Through Nonbypassable Charge
- Detroit Edison Reports Preliminary 2010 Choice Cap
- Tres Amigas Project May Raise Rates for Texans, Destroy Value of CREZ Investment, Industrials Say
- Pa. PUC Staff Calls Omissions in UGI POR Discount Rate Inconsistent with Guidelines
- Columbia Reaches Compromise on Pipeline Scheduling Point Definition for Ohio Tariff
- Md. PSC Revives EDI Working Group

Viridian Energy Seeks Pa. Electric License

Viridian Energy applied for a Pennsylvania electric supplier license as a generator and supplier of electric power serving all sizes of residential, commercial and industrial customers. Viridian will initially market at PPL Electric, but will evaluate opportunities in other service areas within the next 12 months. Viridian intends to offer a variable priced renewable product that would comply with potential 2020 federal Renewable Portfolio Standards. Viridian said that its Pennsylvania entry will be backed by a \$25 million revolving credit facility, in addition to sufficient equity capital. Viridian, which launched in Connecticut this year and started

serving customers in August, said that it has, "signed up more than 9,000 consumers in Connecticut." The most recent Connecticut migration reports, with data as of November 30, 2009, show Viridian with 5,400 flowing customers. Viridian is led by Michael Fallquist, former Commence Energy COO and senior manager at Macquarie Bank's energy markets division. Viridian will use Energy Services Group for various backoffice functions in Pennsylvania, including EDI and billing.

Taylor Consulting and Contracting Seeks Md. Broker License

Taylor Consulting and Contracting applied for a Maryland electric broker license.

CyberMark Systems Seeks Md. Broker License

CyberMark Systems, Inc. d/b/a ProEnergy Consultants has applied for a Maryland electric broker license to serve all customer classes at the four investor-owned utilities.

Field Personnel Services Seeks Md. Broker License

Field Personnel Services, Inc. d/b/a Vanguard Engineering Services applied for a Maryland electric broker license.

PJM Says Sell-Back Provision in Incremental RPM Auction Would Harm Customers

PJM submitted a compliance filing at FERC detailing further revisions to the Reliability Pricing Model capacity market, in response to FERC's October 30 order directing PJM to further justify or revise several provisions (ER09-412, Only in Matters, 11/3/09).

Among other things, PJM proposed that the annual adjustment to the Cost of New Entry using the Handy-Whitman Index of Public Utility Construction Costs will be based on the Handy-Whitman "Other Production Plant" index. PJM said that this category of the index is the most appropriate, as the other Handy-Whitman categories are for Steam Production Plant, Nuclear Production Plant, and Hydro Production, while the RPM reference plant is a combustion

turbine. While the Other Production Plant index includes a sub-category for gas Turbogenerators, PJM said that using the sub-category alone would be inappropriate since it would not take into account the costs of other generation plant cost components.

PJM also specified which Handy-Whitman regional index it will use for each CONE area. PJM proposed using the Handy-Whitman North Atlantic Region for purposes of CONE Areas 1 and 2, and the Handy-Whitman North Central Region for purposes of CONE Area 3. Should PJM's pending new CONE areas be approved, it would use the Handy-Whitman North Atlantic Region for CONE Area 4, and the Handy-Whitman South Atlantic Region for purposes of CONE Area 5 (Only in Matters, 12/2/09).

Additionally, PJM is dropping its previously proposed four-year review provision for CONE, which FERC said had not been fully justified. Instead, PJM is reinstating the triennial review. The proposed changes also clarify that the next triennial review will be for the 2015-2016 Delivery Year, i.e., a CONE review in 2011 for use in the May 2012 Base Residual Auction.

PJM did not revise its tariff to include a "sell-back" provision for cases in which (as described by FERC), "a generator is willing to buy its capacity obligation back from PJM for an amount greater than what the excess capacity is worth to PJM, as reflected in the VRR [Variable Resource Requirement] curve". PJM said that such a sell-back provision would harm loads economically in the short term, and would also degrade the incentive of committed capacity resources to honor their commitments, further harming loads.

PJM noted that a seller that cannot honor its commitment, and does not secure a replacement, pays the compliance charge, i.e., it pays back the clearing price it is due as a result of its commitment, plus the greater of 20% of that clearing price or \$20 per MW. However, under FERC's suggested sell-back scenario, "the committed seller could avoid its commitment by paying loads less, potentially far less, than the \$20/20% compliance charge rate," PJM said.

If PJM is required to offer to sell back capacity at any price above the capacity resource clearing price when the region or a Locational Deliverability Area (LDA) has cleared

above the Reliability Requirement, "then sellers of committed resources in that region or LDA will know that the effective penalty rate will be below 20% whenever the area clears above the Reliability Requirement," PJM added.

PJM did revise its earlier proposal that it would submit a Buy Bid at a price of 1.5 times Net CONE (i.e., the highest price on the VRR Curve) when it needs to obtain capacity in the Incremental Auctions for either (or both of) the Short-term Resource Procurement Target Applicable Share or any increase in the Reliability Requirement. FERC had said that the 1.5 times Net CONE value had not been justified.

Rather than using the highest price on the complete curve, PJM will now use the highest price that takes into account the previously committed capacity. This revision will reflect that the bid price will equal the price at the intersection point of the Updated VRR Curve and the vertical line representing, "the net Unforced Capacity committed to the PJM Region as a result of all prior auctions conducted for such Delivery Year," with the term "net" reflecting that some capacity might have been sold back in any prior Incremental Auctions for that Delivery Year.

"This approach more correctly values the desired capacity under the VRR Curve, recognizing that the PJM Region already has procured most of the capacity needed for the Delivery Year, and thus moving 'down the curve' to price the next increment of needed capacity," PJM said.

Maine PUC Issues Written Order Denying GridSolar CPCN

The Maine PUC issued a written order denying GridSolar, LLC's petition for a Certificate of Public Convenience and Necessity for its distributed solar and propane-fired generation project meant to increase distribution system reliability. The PUC denied the petition at a meeting in November, but had not previously released a written order with its findings (2009-152, Matters, 11/24/09).

As only reported by *Matters*, GridSolar was seeking a CPCN for its distributed generation project by arguing that its project is a transmission alternative to Central Maine

Power's Maine Power Reliability Project, because the generation will facilitate reliability in certain load pockets. GridSolar was also seeking cost-of-service regulation for the sale of energy, capacity and RECs generated by the GridSolar project through a long-term contract with CMP (Matters, 5/26/09).

The written order confirms that, "[s]ince 2000, the legislature's intent could not be more clear [that] generation service is deregulated, whereas transmission and distribution service remains a utility service."

"GridSolar rightfully claims that sometimes generation can serve as a substitute for additional transmission or distribution lines or equipment. When generation rather than transmission is installed to provide network reliability, GridSolar jumps to the conclusion that such generation and related equipment becomes 'transmission and distribution plant' within Title 35-A. The flaw in GridSolar's logic, however, is that almost any kind of generation facility provides reliability to the transmission grid and a generation owner can transform its facility to a rate-based regulated transmission facility merely by asserting that its intended use is for reliability purposes. Thus, the bright line between generation and transmission intended by the Legislature in the Restructuring Act not only fades, but the distinction virtually disappears," the written order holds.

The PUC added that it cannot compel a utility to enter into a long-term contract outside of a competitive bidding process.

FERC Accepts MISO Facilities Construction Agreement for Multiple Parties

FERC accepted the Midwest ISO's proposal to commence use of a facilities construction agreement for multiple parties (MPFCA) under its interconnection process which makes interconnecting customers jointly responsible for the costs of common upgrades, dismissing concerns regarding cost allocation as outside the scope of the proceeding (ER09-1619).

MISO characterizes the introduction of the MPFCA as the second phase of its interconnection queue reform process. The

approved pro forma MPFCA is intended to provide certainty to the interconnection customer and the transmission owner by including all of the jointly responsible interconnection customers in a single agreement and requiring them to provide irrevocable security in advance to fund the common use upgrades. MISO also said that having a single agreement simplifies revisions if changes occur to the details of the common use upgrades.

FERC agreed with MISO's reasoning that the MPFCA will also help eliminate, "the risk that the first mover must fund upgrades without a guarantee that others who jointly cause the need for the shared upgrade ... will come on-line as planned and reimburse the first mover." Additionally, the MPFCA allows MISO to replace a defaulting interconnection customer with the next interconnection customer in line with a comparable project through a "backfill" provision.

In accepting the MPFCA proposal, FERC found that the cost methodology that MISO will use to assign and allocate costs to interconnection customers for building common use upgrades will affect the rates, terms and conditions outlined in the pro forma MPFCA. Therefore, the Commission required MISO to incorporate these cost allocation factors in its tariff.

Otherwise, FERC generally dismissed protests to the MPFCA. The Commission held that the Integrys companies' concerns regarding allocation of costs between generator interconnection customers and other beneficiaries of network upgrades are outside the scope of the instant proceeding and are the subject of another proceeding (Docket No. ER09-1431, et al.). FERC similarly rejected NextEra Energy Resources' arguments that the MPFCA could be used to shift costs of large, regional reliability upgrades onto interconnecting customers, calling such concerns better addressed in Docket No. ER09-1431 and ER09-1581, regarding cost allocation.

Several generators also objected to the fact that MISO's proposal may require interconnection customers to execute an MPFCA prior to a Generator Interconnection Agreement (GIA). As such, in some cases, interconnection customers may have to commit

to funding upgrades prior to receiving interconnection commitments, the generators had protested.

FERC denied such complaints, stating that, "[o]n balance, we find that when multiple parties are involved in an upgrade to an affected system, it is just and reasonable for Midwest ISO to require interconnection customers to execute an MPFCA prior to executing a GIA." Still, FERC stressed that, "we expect that these agreements will be executed simultaneously or that the interconnection customer will know what its cost responsibility will be under its GIA."

The Commission noted that even if the interconnection customer funds the common use upgrade prior to executing a GIA and withdraws from the project, the interconnection customer can receive Financial Transmission Rights associated with the MPFCA under the tariff. "Furthermore, there is no evidence that an interconnection customer's financing arrangements would be jeopardized by executing the MPFCA before the GIA," FERC concluded.

FERC accepted without modification the Midwest ISO's proposal that, if an interconnection customer withdraws from an MPFCA, and the resulting cost adjustments cause any of the remaining interconnection customers' costs to increase by more than 25 percent, then any such interconnection customer has the option to withdraw from the MPFCA and have the unused portion of its irrevocable security refunded. While some generators said the 25 percent threshold was too high, FERC said that if the threshold is revised to be an increase equal to the lower of 25 percent or \$2 million, "there will be a greater opportunity for interconnection customers with significant cost responsibility to withdraw from an MPFCA."

FERC Accepts MISO Tariff Changes to Accommodate Stored Energy Resources

FERC accepted the Midwest ISO's tariff revisions to allow stored energy resources to provide regulating reserves, but directed MISO to file a report on efforts to incorporate other,

long-term storage resources, that may be used for all reserve products, into its markets (ER09-1126).

FERC noted that the MISO's proposal is intended to implement a specific technology, the fly-wheel technology developed by Beacon Power, so that it can provide a specific reserve product, regulating reserves. "While we appreciate the need to integrate this new technology into the operations of the Midwest ISO in a timely manner, as the Midwest ISO proposes, we do not want to foreclose the consideration of other storage technologies and the use of those technologies for other reserve products, such as contingency and spinning reserves."

The Commission said that an additional report, and potential tariff changes, are appropriate since the specificity of the instant tariff revisions may be insufficient to address barriers to the participation of other new technologies and storage devices, including those providing longer term storage.

The approved tariff revisions will allow the fly-wheel technology to participate in the Midwest ISO regulating reserve market as stored resources on a comparable basis to other resources that provide regulating reserves. FERC found the operating requirements proposed by MISO for stored resources to be comparable to those for other resources providing regulating reserves because stored resources must be deployable in a manner comparable to other resources, and stored resources must perform within the same response times as other resources.

Compensation for stored resources will also be comparable to other resources, FERC said. Stored resources will set prices if the clearing price for stored resources is less than the clearing price for non-stored resources, resulting in the entire market-wide regulating reserve requirement clearing on stored resources.

Ameren had raised concerns that stored resources will be paid for providing 60 minutes of regulating reserves when, in fact, they are not providing regulating reserves over the entire hour. "We do not expect this scenario will occur because Stored Resources will be compensated in the same way as other reserve providers. Therefore, if a Stored Resource was paid for

providing 30 MW in the day-ahead market, and it then did not provide regulation down and regulation up service for every five-minute interval during the hour in the real-time market, the Stored Resource would have to buy back the deficiency," FERC said.

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returning direct access load should its calculation of the direct access load cap be accepted. SCE originally reported that the maximum amount of competitive load served in a historic 12-month period was 11,710 GWh.

In response to a request for further information from the PUC, SCE reported that its current amount of annualized direct access load, as of November 30, 2009, is 7,627 GWh, leaving 4,083 GWh under the cap.

Both the SCE and SDG&E data does not include transmission and distribution losses.

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company's compliance person at the time that the merger procedure did not require further action.

The Commission stressed that Section 2208(a) of the Public Utility Code, 66 Pa. C.S. §2208(a) states that, "No entity shall engage in the business of a natural gas supplier unless it holds a license issued by the commission." Also, Section 2208(d) of the Public Utility Code, 66 Pa. C.S. §2208(a) states, "No license issued under this chapter may be transferred without prior commission approval."

Mid American Natural Resources, LLC assumed the license of Mid American Natural Resources, Inc. and operated as a supplier for about a year before filing a license update/transfer application with Commission on November 24, 2008. Although the year delay was "troubling," the Commission said that, "of more significance, is the Company's lack of expediency in providing the necessary information to complete the application and provide the Company with the appropriate authority to provide natural gas supply services." Specifically, the Commission requested additional information to complete the application in March 2009, but the company did

not provide all the required information until November 2009. "As a result, we believe that a \$500 fine should be levied, per Section 3301(a) of the Public Utility Code, 66 Pa. C.S. §3301(a)," the Commission held.

The Commission otherwise approved the withdrawal of the license held by Mid American Natural Resources, Inc. and granted a new license to Mid American Natural Resources, LLC. However, since Mid American Natural Resources, Inc. only provided limited notice of the merger and its exit, the Commission held the license abandonment in abeyance pending publication of a notice of the abandonment in the newspapers appropriate for the service territories in which Mid American Natural Resources, Inc. was active, per the market exit notice provisions of the Interim Guidelines Regarding Notification By a Natural Gas Supplier of Operational Changes Affecting Customer Service and Contracts, at Docket No. M-000001343. The interim guidelines also require customer notification of a market exit; however, due to the time lapse since the merger, the PUC said that the appropriate customer notice would now be moot.

Mid American Natural Resources, LLC's new license allows it to operate as a broker/marketer and aggregator engaged in the business of supplying natural gas services to large commercial, industrial and governmental customers in the service territories of Columbia Gas of Pennsylvania, Inc., Equitable Gas Company, National Fuel Gas Distribution Corporation and The Peoples Natural Gas Company d/b/a Dominion Peoples.

The PUC's order is contained in docket A-2009-2090931.