Energy Choice Matters
March 11, 2010

Revised Calif. Draft Would Limit New Direct Access Load in Year 1 to 35% of Space Available

A revised agenda decision scheduled to be addressed by the California PUC today would slow the previously proposed re-opening of direct access, by making less new direct access load available in the initial year of the transition period (R. 07-05-025, Matters, 2/1/0/10).

The revised agenda decision would still institute a four-year transition period for reaching the direct access (DA) cap set forth in SB 695. However, instead of allowing up to 50% of the available space under the cap to be filled in the initial year of the phase-in, the agenda decision would reduce the initial amount of load which can elect direct access in Year One to 35% of the room available under the cap.

"A front-loading of 50% in the first year could create a surge in demand for DA concentrated in the open enrollment window between mid April and June 30, 2010. This surge could be amplified especially since Year 1 will be truncated to nine months with an April 11 start date. Joint Parties' proposal for a cumulative DA load cap of 70% by the second year only leaves 20% in the second year if enrollment reaches 50% in the first year," the revised draft finds.

"As a result, customers could feel pressured to rush to sign up before the June 30th deadline. The truncated first year could create an undue burden on the program's first year," the agenda decision states.

"We shall therefore adopt annual DA caps of up to 35% in the first year, up to 70% in the second year, up to 90% in the third year, and up to 100% in the fourth year. Limiting the adopted limits in this manner reduces the burden on potential DA customers to sign up in the first year, and correspondingly increases the load available for new DA customers in the second year. Moderating

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RESA Urges DPU to Reject Artificially Low Price Projection in Nstar Green Reconciliation

The Massachusetts DPU, "should reject [Nstar's] unsupported and transparent attempt to hold down the 2010 cost of NSTAR Green to program participants," the Retail Energy Supply Association said in response to Nstar's annual reconciliation filing for the green tariff option (Docket 10-12).

Nstar's wholesale spot prices during the 2008-09 period being reconciled were far below the 2008 projections Nstar used in establishing the initial Nstar Green adders. "This caused excess output from NSTAR's two above-market wind contracts to be sold into the spot market at a substantial loss, causing most of the $1.55 million under-recovery being recovered through the reconciliation," RESA noted.

However, while Nstar has filed to collect the prior under-recoveries, it has not proposed to adjust the current forward energy settlement projections in the green pricing tariff despite the current lower wholesale market prices.

"Instead of fixing the under-recovery going forward by incorporating current wholesale market prices or reliable forecasts for the upcoming 12 month period, NSTAR ignores current prices and continues to rely on its 2008 forecasts, which have proven to be overly optimistic, at least in the near

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Ga. PSC Dismisses Infinite Complaint Against Gas South-Cobb EMC Marketing Agreement

The Georgia PSC granted a motion for summary dismissal of a complaint filed by Infinite Energy against Gas South, Cobb Energy Management Corporation, and Cobb EMC, finding that Infinite Energy has not shown that the relationship among the affiliates resulted in unfair competition (Only in Matters, 1/8/10). Although the Commission addressed the matter at an earlier open meeting, its written order of dismissal was not published until March 5 (Docket No. 30446).

As only reported by *Matters*, Infinite filed a petition with the PSC to enforce O.C.G.A. §§ 46-2-20(b) and 46-4-153.1 against Gas South, Cobb Energy Management Corporation, and Cobb EMC due to the marketing services agreement among the affiliates. Under O.C.G.A. § 46-4-153.1, the Commission, "may require that any customer service that an electric membership corporation provides to its gas affiliate be offered to all marketers at the same rate and on the same terms and conditions as provided to the gas affiliate," in order to provide equal access to captive electric customers.

Cobb EMC is an electric membership corporation providing retail electricity to about 195,000 customers under a monopoly franchise in its service area. Cobb Energy Management Corporation is a wholly owned subsidiary of Cobb EMC which provides various customer service, billing, and marketing functions. Gas South is a wholly owned subsidiary of Cobb EMC which markets competitive retail natural gas.

Cobb Energy Management Corporation only provides its marketing service of distributing gas supplier marketing materials in Cobb EMC electric bills if the supplier purchases a bundled package which requires the supplier to use Cobb Energy Management Corporation for its billing and backoffice services. Gas South procures such services on a bundled basis from its affiliate, and thus Cobb Energy Management Corporation said it was making the services available to other marketers on same terms they are made available to its affiliate.

Infinite, which has built a proprietary backoffice system, alleged that by forcing it to purchase an unneeded backoffice service to obtain the marketing services provided by Cobb Energy Management, Cobb EMC was not providing the same access to marketing services to suppliers as it was providing to affiliate Gas South.

However, the PSC said that it need only consider, per O.C.G.A. § 46-4-153.1(a), whether the marketing services relationship between Cobb EMC and Gas South fails to 1) prevent cross-subsidization between the provision of electricity and the provision of natural gas services; 2) encourage and promote fair competition in the overall retail natural gas market; and, 3) protect the privacy of both electric and natural gas consumers. "Before the Commission interferes with the relationship between Cobb EMC, Cobb Energy, and Gas South, Infinite should be required to produce evidence that at least one of these three policies is not being achieved," the Commission said.

The PSC concluded that Infinite failed to produce evidence showing that Cobb EMC or Cobb Energy cross-subsidized Gas South, or failed to protect customer privacy.

"While Infinite has alleged that Cobb EMC and Cobb Energy engaged in unfair competition by engaging in certain joint marketing activities with Gas South, the facts alleged by Infinite do not support this conclusion," the Commission added.

The Commission noted that it has previously addressed co-marketing/bill insert services provided by electric distribution companies for their affiliate competitive gas suppliers. In its earlier decision, the Commission found that, so long as the services were priced at the higher of the estimated fair market value and or cost (net book value for asset transfers and fully distributed costs for service transfers), the gas affiliate did not reap an unfair competitive advantage. "Here, Infinite has not shown that the gas affiliates have failed to pay the higher of estimated fair market value and or cost, and therefore competed unfairly," the Commission held in dismissing the complaint.

Having found that Infinite did not present sufficient evidence to sustain its complaint, the Commission did not make any findings on the provision of the marketing services as part of a bundled package including backoffice and billing services.

Anderson Recommends Refunds for Customers Charged for Smart Meter Tests

The installation of an advanced meter at a customer's premises essentially resets their ability to receive one free meter test in a four-year period, and thus customers who have been charged for their initial advanced meter test should receive a refund, PUCT Commissioner Kenneth Anderson said in comments on the advanced meter testing issues before the PUCT (filed in generic docket 37830).

P.U.C. Subst. R. 25.124(c) and Section 4.7.4 of the retail distribution tariffs provide that a customer may request that the accuracy of their meter be tested free of charge. Subsequent meter tests, if requested within the next four years, may result in a charge being incurred by the customer if the meter's accuracy is within the required parameters.

"I believe that after a customer receives a new advanced meter the four-year timeframe starts over. Therefore, I believe that any customer who requests a test on an advanced meter is entitled to receive one test free of charge. I also submit that any retail customer who was charged for a test of an advanced meter since the installation was inadvertently charged and, consequently, should receive a credit for this expense as soon as possible," Anderson said.

CenterPoint Energy justified its proposed waiver of the meter testing fee for advanced meters on the same grounds, but CenterPoint did not explicitly address the issue of refunds to customers who have already been charged the meter testing fee for their new advanced meters.

As the meter testing fee is charged to REPs, any refund invokes both the logistical and legal issues of how and whether REPs can be compelled to pass-through refunds of TDU charges to customers. In recent similar refunds (or other one-time credits related to distribution), REPs have only been granted the refunds upon signing an affidavit to fully pass through such refunds to the customer

Peoples Natural Gas Won't Pursue POR at this Time

Peoples Natural Gas Company LLC informed the Pennsylvania PUC that it is electing to file an updated cost of service study as part of its annual Purchased Gas Cost 1307(f) proceeding to be filed on or about April 1, 2011, or in its next base rate case, whichever is earlier, rather than immediately file for a POR program (R-2009-2088069).

Under a settlement in its 2009 1307(f) proceeding, Peoples said that it would re-evaluate its initial decision not to institute a POR program in response to the PUC's SEARCH order, upon the PUC ruling on its then-pending sale to a subsidiary of SteelRiver Infrastructure Partners. Peoples said that the uncertainty regarding its future ownership made it hesitant to commit to a POR program prior to final action on the acquisition (Only in Matters, 6/25/09).

Despite opting to file an updated cost of service study and not immediately pursue POR, Peoples did state that it, "wishes to advise the Commission that it will give careful consideration to including a voluntary POR [program] in its next base rate case by weighing its expected impact on furthering the development of a competitive natural gas choice market in Peoples' service territory."

BGE Asks for Delay of Electric POR

Baltimore Gas & Electric asked the Maryland PSC for a "brief" delay in its implementation of the purchase of receivables from electric suppliers, in order to accommodate Staff's request for a deferral of consideration of BGE's January 15, 2010 POR compliance filing, which had been scheduled to be addressed at the March 17, 2010 Administrative Meeting (Only in Matters, 1/18/10).

By letter order dated October 7, 2009, the Commission approved a POR implementation date of April 1, 2010. BGE reported, however, that in order to study the matter further, Staff has asked for delays in consideration by the Commission, including a recent request to move the issue to the April 7 Administrative Meeting.

BGE said that it has no objection to Staff's request for a deferral, provided that the Commission approves a delay in POR implementation.

BGE reported that it will need approximately one month after the Commission's decision on the compliance filing to complete the necessary IT work and system testing to commence POR.

FERC Clarifies Must Offer Obligation for ATSI Integration Auction

FERC clarified that, in the integration auctions to procure capacity for the American Transmission System Inc. zone needed for its entry into PJM, all generators in the ATSI zone will be subject to a must offer requirement unless they meet the exemptions in Section 6.6 of the OATT (ER09-1589).

A prior FERC order held that the must offer requirement should be applied to, "all generation that was offered into the base residual auction for the delivery year," which left open the possibility that ATSI-zone generators who did not offer into the base residual auction would not face the must offer requirement.

FERC clarified that, "PJM must apply these provisions of its OATT to the ATSI zone integration auction, based on the understanding that these integration auctions, for purposes of Section 6.6, will be functionally analogous to the operation of an initial base residual auction. As such, unless a generator in the ATSI zone meets one of the must-offer exemptions set forth in Section 6.6(g) or does not otherwise qualify as a 'resource,' under Section 6.6(a), it must satisfy PJM's must-offer requirement. In turn, the must-offer requirement applicable to the ATSI zone integration auctions will not be limited to capacity suppliers that have already offer [sic] into a prior base residual auction."

FERC further clarified that resources offering into PJM's Reliability Pricing Model auction for the first time, by way of the ATSI zone integration auctions, will not be permitted to price their offers at 10 percent above the base residual auction clearing price, as contemplated by Attachment DD, Section 6.4(g), of the tariff, because the relevant Locational Deliverability Area, in this instance, i.e., the ATSI zone, did not previously exist and, as such, there is no price or pricing data on which the 110 percent offer could be based. "Accordingly, we clarify that this alternative offer cap option (i.e., Section 6.4(g)) cannot, and does not, apply for: (i) units in the ATSI zone with no pre-existing RPM capacity obligations; (ii) units located in the PJM LDAs with no preexisting RPM capacity obligations in a relevant delivery year because they failed to clear; or (iii) units that did not exist at the time of the relevant base residual auctions, which are located in a PJM LDA," FERC held.

"[T]o the extent a capacity resource can demonstrate a pre-existing RPM capacity obligation for the relevant LDA and delivery year then the default offer-cap option should apply," FERC added.

Briefly:

Central Penn Electricity Consultants Seeks Pa. Broker License

Start-up Central Penn Electricity Consultants LLC applied for a Pennsylvania electric supply license as a broker/marketer serving all sizes of non-residential customers at PPL, PECO, West Penn Power, and Met-Ed. Central Penn Electricity Consultants' principals include Jason Lawrence, most recently Commercial Products Division Manager at Shipley Energy, where he developed Shipley's electric brokerage business, among other things. Other principals include Ryan Boyd, with a background in banking and lending, and Christopher Steiner, with a background in business development in the medical technology field.

Md. PSC Opens Review of LDC Hedging for Storage Injection Season

The Maryland PSC opened Case 9224 to review the policies and the appropriate extent of hedging of natural gas by Maryland LDCs for the summer storage injection season for the period April 2010 through October 2010. The PSC said that the investigation will determine whether the implementation of a temporary hedging program to reduce the risk of higher prices during the winter heating season should be mandated. The PSC directed the LDCs to respond to several question regarding their cost of gas and expected volume, and scheduled a hearing for March 29.

Brazos Seeks to Suspend Operation of North Texas Units

ERCOT informed market participants that it has received a Notification of Suspension of Operations for Brazos Electric Power Cooperative's thee North Texas gas-fired steam turbine units (NTX_NTX_1, NTX_NTX_2, and NTX_NTX _3). Units 1 and 2 were placed into service in 1958 and are 18 MW. Unit 3 was placed into service in 1963 and is 39.5 MW.

PUCT Denies REP Applications of Reliable Power, Premier Power

The PUCT denied, without prejudice, the REP certificate applications of Reliable Power, LLC and Premier Power, LLC for failing to cure deficiencies in their applications (Only in Matters, 1/14/10). Both REPs' management includes several principals from backoffice vendor ePsolutions.

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the first year's cap to 35% will help prevent the potential for customers to become aggrieved by being rushed into signing up for direct access without adequate time to consider all of the factors involved," the revised draft concludes.

The revised agenda decision would also create a "waiting list" of potential direct access customers who submitted Notices of Intent after the direct access cap applicable during the Open Enrollment Window (which is applicable in Year One only) is met. The purpose of the waiting list is to allow customers to establish their priority to take direct access should any customers who submitted Notices of Intent prior to the cap being met, and whose loads were accepted for direct access, ultimately fail to execute a direct access switch request within the required time period, thereby ceding their reserved allocation under the cap and freeing space for other customers.

The wait-list would have a maximum capacity equal to 25% of the Year One direct access limit, and would be maintained until the last day of the Open Enrollment Window.

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term. As grounds for disregarding market prices in calculating the energy settlement factor of the surcharge, NSTAR claims that wholesale prices are subject to 'significant variability' and raises concerns with rate continuity," RESA said.

"The Department should not countenance this pricing manipulation," RESA argued.

"This approach is contrary to the relevant definitions in the tariffs, which specify that the surcharge 'shall consist of ... (3) the difference between the estimated Market Energy Prices at the Company's Energy Costs with the Company's renewable generation contracts," RESA contended.

"NSTAR's approach also is inconsistent with NSTAR's testimony that the NSTAR Green service is intended to be 'cost-based,'" RESA added.

"Such rejection of current market price data threatens to harm competitors, create inequities between current NSTAR Green customers that will benefit from the artificial price reduction and future NSTAR Green customers that will be forced to pay costs associated with these 2010 under-recoveries, and hide from public view relevant information needed to evaluate NSTAR's nascent efforts to implement a managed portfolio of supply resources," RESA said.

"NSTAR's proposed suppression of NSTAR Green program costs harms the public interest in at least four ways. First, it has the potential to harm competitors offering green products bundled with energy by forcing them to compete against a utility product that fails to reflect its actual costs. Second, the failure to reflect current market prices creates anomalies that interfere with efficient markets and other policy goals. In the words of RESA's witness, Chris Kallaher during the original NSTAR Green proceeding, having a 'disconnect between the rate customers pay and the market value of the power they consume moves the Commonwealth even farther away from its important policy goals of increasing energy efficiency, demand response, and conservation.' Third, it creates rate inequities among NSTAR's customers by favoring 2010 customers with artificially reduced rates and disadvantaging future customers that will be forced to bear the costs associated with 2010 service they did not receive. Finally, it hides from public view information useful in evaluating NSTAR's efforts to develop a managed portfolio of its own supply resources (with associated risks of stranded cost) rather than relying exclusively on price-protected wholesale supply arrangements. NSTAR devoted extensive text in its original NSTAR Green filings touting its abilities to adopt a managed supply approach that would prove superior to relying on price-protected wholesale supply contracts," RESA added.

Enrollment in Nstar Green as of December 31, 2009 was 5,778 for the 100% Green Option and 1,982 for the 50% Green Option, which RESA noted remains short of Nstar's projection of 10,000 participants.

In its filing, Nstar has proposed to increase the Nstar Green rate from 0.837¢/kWh to 2.356¢/kWh under the 50% supply option, and from 1.396¢/kWh to 4.435¢/kWh under the 100% supply option.