

Energy Choice Matters

March 18, 2010

DPU Rules Not All Nstar Smart Grid Costs Should be Recovered in Basic Service Rates

Despite ostensibly clear statutory language, the Massachusetts DPU found that some costs related to Nstar's smart grid pilot program shall not be recovered in basic service rates, and shall instead be recovered from all distribution customers (09-33).

The Green Communities Act required distribution companies to file smart grid pilots. Nstar's smart grid pilot includes a dynamic pricing program available only to basic service customers, a distribution automation program, and an urban grid monitoring and renewables integration program.

The Green Communities Act provides that, "[t]he programs filed by the distribution company shall include proposals for rate treatment of incremental program costs; provided, however, that such program costs shall be deemed by the department to be a cost of basic service and recovered in rates charged for basic service."

Accordingly, Nstar sought to recover all incremental costs of the smart grid program in basic service rates. The Attorney General, however, claimed that the DPU has discretion under the Green Communities Act to determine the mechanism of cost recovery, and said that the distribution automation and urban grid costs should be recovered from all customers, since they do not relate to supply.

The DPU conceded that the canons of statutory construction provide that "[o]rdinarily, if the language of a statute is plain and unambiguous it is conclusive as to legislative intent." However, without explanation, the Department said that it is persuaded that the language of the Act regarding the recovery of pilot costs, "is sufficiently ambiguous to warrant further analysis."

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NYISO Cautions New York PSC Against Hedging Renewable Contracts

The New York ISO cautioned the New York PSC, "against stepping into the role of hedge provider," in response to several questions from the Commission regarding potential changes to RPS contracts (03-E-0188).

The PSC has asked whether it should encourage hedging contracts or contracts for differences in the Main Tier solicitations.

"The NYISO recognizes the fact that the commercial hedging market collapsed in the wake of the financial crisis in the fall of 2008 and applauds the Commission's efforts to respond to the difficulties developers have had in trying to raise financing for renewable projects. Private party hedging arrangements have an important role in the energy markets, and the NYISO fully expects that banks will make financing available to the market as conditions stabilize. However, the NYISO cautions the Commission against stepping into the role of hedge provider," NYISO said.

"Unless very carefully designed, either a hedge contract or a Contract for Differences ('CFD') will tend to reduce renewable generators' sensitivity to the prices in the NYISO market, leading to distortions in the system dispatch and increased costs to ratepayers. In addition, either approach risks allocating investment risk to ratepayers. By contrast, exposure to real time pricing incents

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Briefly:

Public Power & Utility Seeks Illinois Electric License

Public Power & Utility has applied for an Illinois alternative retail electric supplier license. A copy of Public Power & Utility's application, filed yesterday, was not immediately available, but the supplier typically seeks to serve all customer classes, with a focus on the mass market.

Peevey Expresses Concern with Proposition 16

During the California PUC's hearing on Proposition 16, which would require the vote of two-thirds of residents within a Community Choice Aggregation to approve the CCA for it to be formed, PUC President Michael Peevey expressed concern over the initiative, which is backed by Pacific Gas & Electric. "I have a philosophical problem with requiring a two-thirds vote on anything," Peevey said, noting that such a hurdle essentially makes 33% plus 1 the effective majority.

ConocoPhillips Receives D.C. Gas Supply License

The District of Columbia PSC granted ConocoPhillips Company a natural gas supplier license (Only in Matters, 3/8/10).

ERCOT Initial Determination Finds Valley Units Needed for Reliability

ERCOT announced that after a preliminary review, its initial determination is that all three Valley Units of Valley NG Power Company (Luminant) are required to support ERCOT System reliability. Valley NG Power Company had submitted Notices of Suspension of Operations for the three units last month. ERCOT said that it will continue to study the need for the Valley resources for Reliability Must Run (RMR) Service and will issue its final determination by April 26, 2010. The three gas-fired Valley units (VLSES_UNIT1, etc.) total 1,069 MW. Separately, ERCOT said that its initial determination is that Tradinghouse Unit 2 (THSES_UNIT2), owned by Tradinghouse Power Company LLC (also Luminant), is not needed to support ERCOT System reliability. Tradinghouse Unit 2, a 787-MW gas-fired plant,

may cease or suspend operations according to the schedule in its submitted Notice of Suspension of Operations, ERCOT said. Luminant said it plans to mothball the plant on September 30.

Md. PSC Defers BGE Electric POR Consideration to April 7 Meeting

The Maryland PSC has deferred consideration of Baltimore Gas & Electric's electric purchase of receivables program until its April 7 administrative meeting, granting a delay requested by Staff (Only in Matters, 3/11/10). BGE's electric POR had been scheduled to be implemented on April 1. BGE has said that it will require approximately one month from the date of a Commission order approving its POR compliance plan to complete necessary IT work and system testing to implement POR, making the earliest date of the start of electric POR May 7, and only if the Commission issues an order approving POR at the April 7 meeting. Meanwhile, the Commission took BGE's gas POR compliance filing under advisement after hearing the matter at its administrative meeting yesterday. Staff recommended approval of BGE's gas POR plan as reflected in its February 24 compliance filing, which included a discount rate 2.62% for residential customers, and 1.09% for non-residential customers (Only in Matters, 2/25/10).

PUCO Approves Stipulation Requiring Link to Columbia Supplier Website

The Public Utilities Commission of Ohio approved a stipulation concerning a performance/management audit of Columbia Gas which requires Columbia to place a link on the Columbia Gas of Ohio homepage for choice suppliers to jump directly to Columbia's choice supplier homepage (www.columbiachoice.com). The audit noted that such a link to the supplier page did not exist, and prospective suppliers would either have to call Columbia or perform an internet search to find the separate supplier page (which serves as a supplier portal for all of the Columbia LDCs).

Detroit Edison Says No Refund/Collection Required Under Choice Incentive Mechanism

No refund or collection is required under Detroit

Edison's reconciliation of the Choice Incentive Mechanism for the period from January 14 through December 31, 2009, Detroit Edison said in a filing with the Michigan PSC (U-15244). "The actual Electric Choice sales for the period from January 14 through December 31, 2009 were 1477 GWh, and within the 'deadband' +/- \$7.3 million of base levels of Electric Choice sales," Detroit Edison reported. Thus the sales level resulted in no incremental increase or decrease to Detroit Edison non-fuel revenue, and no refund or collection is required.

ATSI Seeks FRR Waiver Regarding Demand Response Resources

The American Transmission Systems Inc. utilities requested that FERC grant the utilities a waiver of Capacity Resource Deficiency Charges which might be imposed on the ATSI Utilities in cases where the load associated with Demand Response Resources that are part of the Fixed Resource Requirement Integration Plan departs. The waiver would apply when Demand Response participants whose Demand Response Capacity Resources that clear in the FRR Integration Auctions demonstrate the inability to provide the level of demand response specified in their sell offer due to complete or partial permanent load departure. The requested waiver parallels the waiver granted for Demand Response participating in the regular PJM capacity auctions under Section 8.4 of the Reliability Pricing Model of the PJM tariff.

NJR Home Services Offering Solar Leasing Program

A New Jersey Resources subsidiary has launched a solar leasing product that will provide customers with solar panels with no upfront installation or maintenance costs, which New Jersey Resources said will make renewable energy more affordable and accessible.

NJR Home Services will lease solar panels to homeowners for approximately \$52 per month for a six-kilowatt system over a 20-year period. The monthly rate is fixed over the life of the lease and includes all installation and maintenance costs. NJR plans to initially offer the product to approximately 130 residential customers, and

assuming full participation, expects to invest up to \$4 million. Investments made by the company will qualify for a 30 percent federal investment tax credit along with current New Jersey Clean Energy Program rebates up to \$1.55 per kilowatt installed. In addition, the energy produced will be eligible for solar RECs, while the lease payments from residential customers will provide an additional return on investment.

NJR said that the renewable technology is estimated to save the average homeowner approximately \$100 a month on electric costs, based on current prices.

In addition to its initial lease program, NJR said that it is in the process of exploring several other solar and renewable opportunities in the residential, commercial and industrial markets.

Pa. ALJ Recommends Approval of Duquesne Light Default Service Settlement

A Pennsylvania ALJ has recommended approval, without modification, of a settlement which would establish Duquesne Light's default service plan for the period January 1, 2011, through May 31, 2013 (P-2009-2135500).

As only reported in *Matters*, the settlement would establish a fixed price for residential customers of \$78.60/MWh for the duration of the default service plan, absent PUC-approved changes.

Under the settlement, Duquesne Light would procure power to provide service to small commercial and industrial customers (less than 25 kW maximum peak demand) and medium commercial and industrial customers (from 25 kW up to, but not including, 300 kW maximum peak demand) for the 29-month period using five (six for medium C&Is) staggered RFPs to obtain full requirements contracts.

Default service rates for small commercial and industrial customers would be revised annually and would be subject to reconciliation. Medium commercial and industrial rates would be revised semi-annually and would be subject to reconciliation.

Duquesne Light would offer to purchase competitive supplier receivables for medium

commercial and industrial customers (25 kW to <300 kW) at a discount of 0.28% (0.10% for administrative costs and 0.18% for uncollectible costs). The discount rate for the purchase of receivables for residential and small commercial and industrial customers would be lowered from 0.7% to 0.52% (0.10% for administrative costs and 0.42% for uncollectible costs). Duquesne Light would continue to purchase receivables under the same rules and conditions applicable to the current POR program.

A complete discussion of the settlement may be exclusively found in our February 26 issue.

BHE Reports Efforts to Develop Short-Term Dynamic Rate Pilots

Bangor Hydro-Electric intends to commence several short-term dynamic rate trials prior to the completion of its advanced metering deployment at the end of 2011, in addition to the previously proposed long-term trials which will start once such deployments are complete, BHE said in an update to the Maine PUC (201-14).

BHE estimates that its recently approved advanced meter deployment will be completed by the end of 2011. At that time, customers will have the ability to access hourly interval usage data via BHE's web portal.

BHE said that it is exploring several lower-cost, smaller breadth and short-term rate trials in addition to the three long-term programs previously identified in its advanced metering docket. The purpose of the short-term trials will be to explore and potentially leverage critical learning opportunities from a technology implementation standpoint, and gather customer response and feedback.

Specifics for the short-term programs have not been finalized as BHE is still actively exploring several collaborative opportunities with potential partners. BHE said that the short-term programs would occur during the 24-month implementation timeline for advanced meter deployment, and could last as few as six months. Although BHE has identified several programs, they remain confidential pending continued negotiation with potential partners.

However, BHE said that it has explored five basic supplier alternatives for the rate pilots:

1. Existing Standard Offer Provider: using the existing Standard Offer provider process to identify suppliers for day ahead hourly pricing
2. Competitive Energy Provider: using the existing competitive energy provider process to identify suppliers that are not currently the Standard Offer provider
3. Third Party Broker: identifying third party brokers to obtain and/or provide supply
4. BHE: BHE arranges for supply or provides supply as a provider of last resort
5. BHE Affiliate: a new or existing business affiliate is created for the pilot

BHE said that its preferred solution involves using a process similar to that of the first method, utilizing the existing Standard Offer provider. BHE said that implementing this process could be accomplished through the March 2011 Standard Offer bidding process, either through linking the day-ahead hourly supply to the winning supplier, or conducting a separate solicitation only for the day-ahead hourly supply trial.

As for longer-term pilots, BHE affirmed its earlier proposals of a web presentment rate trial, a Home Area Networking rate trial, and a carbon dioxide reduction trial.

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Given this ambiguity, the DPU said that, "we must consider the cost recovery language of Section 85 not in isolation, but in relation to Department precedent related to cost recovery."

"In inserting the words 'shall be *deemed by the Department* to be cost [sic] of basic service' (emphasis added [by DPU]) in Section 85, we find that the Legislature intended to defer to the expertise of the Department to determine which Pilot costs are related to distribution companies' provision of basic service (and thus are appropriately recovered through basic service rates) and which costs are related to distribution service (and thus are appropriately recovered through distribution rates)," the DPU said.

"The Department cannot 'deem' a cost to be a basic service cost if the underlying activity is unrelated to a company's provision of basic service," the DPU added.

"The Department understands that a cursory

reading of the phrase 'shall be deemed by the Department as a cost of basic service and shall be recovered in rates charged for basic service' [sic] could be construed as a directive to assign all Pilot costs to basic service rates. Such an interpretation, however, does not resolve the dispute before us because the words of a statute will not be read literally if to do so would be lead [sic] to an absurd or unworkable result," the Department continued.

The DPU concluded that Nstar's interpretation of the Act, which would leave no discretion for the Department to allocate the costs of the Nstar pilot to the "appropriate" rate elements, "would render an irrational and inequitable result."

"Accordingly, the Department finds that to the extent the Department deems Pilot costs to be a cost of basic service, the Company shall recover those costs in rates charged for basic service."

After establishing its authority, the DPU found that certain of Nstar's pilot costs are unrelated to its provision of basic service, and are instead related to the distribution service that Nstar provides to all of its customers. "The issue of where cost recovery should occur hinges on which groups of customers will be the beneficiaries of these programs," the DPU said.

The dynamic pricing pilot costs are appropriately recovered in basic service rates because the pilot is limited to basic service customers, and is designed to inform the provision of potential alternative forms of basic supply service in the future.

However, the DPU noted that in the urban grid and distribution automation programs, Nstar will install equipment on its underground and overhead distribution system that will allow it to monitor and improve the operational efficiency of the system. "Because a primary objective of these programs is to improve the manner in which the Company provides service to all of its distribution service customers, all customers (basic service and competitive supply customers alike) will benefit equally from their implementation. Unlike the Dynamic Pricing program, there is no relationship between the information the Company will gain from implementation of the Urban Grid and Distribution Automation programs and the manner in which the Company provides basic

service," the DPU found.

"Therefore, it would not be appropriate for the Department to deem the costs associated with these programs a cost of basic service for the purpose of Section 85. Instead, we find that Urban Grid and Distribution Automation program costs clearly are related to distribution service, and direct the Company to recover such costs through the distribution rates charged to all of the Company's customers," the DPU ordered.

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generators - including renewable suppliers - to comply with NYISO dispatch instructions and to locate new projects at the highest-value locations," NYISO added.

"For example, a wind operator's relative indifference to fuel costs - even without a hedge - could result in the generator continuing to operate at full output even when prices are low or even negative. These circumstances create two potential problems from the NYISO's perspective: First, some wind generators may self-curtail in the face of low or negative prices, which could raise a potential for reliability issues and result in increased costs of regulation service. Prior to placing wind units 'on dispatch' the NYISO's operators observed instances of wind self-curtailment. Second, reliance on manual and out of market directions to reduce production does not solve the constraints efficiently. These manual actions tend to take more wind offline for longer periods of time than would be achieved through an automated economic evaluation," NYISO added.

"To the extent a hedge agreement or CFD insulates the renewable energy supplier from the NYISO's real time price signals, the supplier's incentive to comply with dispatch signals will become distorted. If a renewable generator is completely insulated by the terms of the hedge from NYISO market price signals, market and operational inefficiencies will result, and the costs of managing the system around those suppliers will be passed on to loads and ultimately to ratepayers," NYISO said.

The Commission also asked if the Main Tier contracts should allow the sale of energy outside the NYISO spot market. NYISO

cautioned the Commission against shifting investment risk to ratepayers through long-term, fixed price energy purchase contracting, but said that, should the Commission choose to encourage bilateral contracts for renewable energy, its market mechanisms could accommodate such transactions.