Energy Choice Matters

April 5, 2010

Central Hudson Opposes RESA Petition Related to Changes in Account Info

Central Hudson Gas & Electric says a petition from the Retail Energy Supply Association mischaracterizes what occurs when a change prompts the closing of a utility account, and urged the PSC to deny RESA's petition regarding the placement of such customers on bundled utility service. Additionally, Central Hudson said that it generally supported RESA's goal of allowing an ESCO to retain a customer who desires to withdraw a previously submitted drop to bundled service, but said that the request should be addressed in implementing the contest period related to ESCO switches (98-M-1343).

As only reported in *Matters*, RESA petitioned the New York PSC to amend the Uniform Business Practices to (1) prohibit utilities from returning a customer to full utility service unless such a request to return to full utility service has been made by the customer or the ESCO acting on behalf of the customer, and (2) allow ESCOs to retain a customer that has previously either requested or was scheduled to return to full utility service upon customer consent to remain with the ESCO (Only in Matters, 1/28/10).

Specifically, RESA noted that when a customer experiences a name change or other data modification that precipitates a utility account number change under the utility's record keeping system, the ESCO will be dropped from the account automatically, without notice to the ESCO or customer. "Under this process, the termination of ESCO service will occur even if the customer has not expressed any interest or desire to return to utility commodity service," RESA said, arguing that

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Mich. ALJ Would Deny Pooling at MichCon

Reaching a conclusion different from that of an ALJ in Consumers Energy's current rate case, a Michigan ALJ recommended denying Constellation NewEnergy's petition to institute pooling at Michigan Consolidated Gas (U-15985).

As only reported by *Matters*, Constellation had urged the Commission to:

1. Require that MichCon accept pooled nominations from marketers;
2. Modify MichCon's tariff to assess charges, including local balancing charges, authorized and unauthorized gas usage charges, and other surcharges, fees, or penalties based on the net imbalance of a marketer's pool; and
3. Implement pooling of transportation customer storage and require that pool monthly injection rights are established based upon the pool member's individual tariff rights.

An ALJ recently concluded that such measures should be in place at Consumers Energy (Only in Matters, 3/25/10).

However, in the MichCon case, the ALJ found that adoption Constellation's proposal, "is not adequately supported by the record, and recommends that the tariff changes necessary to implement such a proposal not be approved in the context of this proceeding."

"Under this Intervenor's proposal, it appears that marketers on Mich Con's system would benefit significantly from the pooling of nominations and imbalances, and would find it administratively easier for them to manage their assigned inventories, withdrawals, and injections in the aggregate

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RESA Asks for Waiver of Ohio Solar Requirement Until 2010

The Retail Energy Supply Association has petitioned the Public Utilities Commission of Ohio for a waiver of the solar REC (SREC) requirement for all competitive retail suppliers for the calendar year 2009, citing the lack of available SRECs as a force majeure event (10-428-EL-ACP).

RESA asked that the 2009 solar obligations of each load serving entity be carried over into the 2010 compliance year.

For 2009, suppliers must purchase SRECs for .004% of their baseline sales or pay a penalty. However, "[n]o S-REC market with sufficient liquidity exists, and few S-RECs are available through bilateral contracts," RESA said.

RESA noted that PUCO granted the FirstEnergy utilities and AEP utilities a declaration of force majeure and moved their 2009 solar obligations into 2010. Retail suppliers, "experienced the same dearth of S-RECs experienced by the FirstEnergy utilities which led the Commission to declare a force majeure," RESA said.

The sum of the solar generation capacity for all certificated solar facilities deliverable into Ohio is a mere 1.092 MW of capacity, RESA reported. Assuming that all of the those projects were available for every clock hour in 2009, which is highly unlikely, and under an optimistic assumption of 25% capacity for a solar facility in Ohio and the surrounding states, the maximum MWh that could have been generated for 2009 would be less than 3,000 MWh. Total utility sales alone in Ohio are over 116 million MWh, meaning compliance with the rule would require entities to acquire roughly twice the number of S-RECs available, RESA noted.

Additionally, since the 2009 requirement for SRECs is only 4 thousandths of one percent, many competitive providers will not have an SREC obligation of a full megawatt hour, which is the size of an SREC, RESA noted. "It would be inequitable to make small suppliers have to carry a significantly larger S-REC obligation than the utilities simply because the Commission Rule 4901:1-40-08 requires rounding up to the nearest S-REC. Combining reporting years 2009 and 2010 would help alleviate this barrier for smaller suppliers," RESA said.

APS Says Public Interest Broader than Low Rates for Certain Customers

"The public interest ... is broader than the desires of individual customers for lower rates than those established by [the Arizona Corporation] Commission to meet its energy policy goals," Arizona Public Service said in supplemental comments in the ACC's investigation into the current state of direct access.

"The public interest encompasses not only all electric customers but those who benefit from a wide range of regulatory programs ranging from the RES to energy efficiency to resource planning to the protection of society's most vulnerable customers," APS said.

"Many important policy considerations, such as investment in renewable resources and energy efficiency, the offering of limited income and other public assistance programming, as well as the treatment of externalities, may be ignored or marginalized in a market-driven resource selection process. Large capital-intensive projects, whether they be nuclear or solar, become difficult if not impossible to plan or finance. And the impact of sales lost to potential competitors (almost certainly a select group of the most profitable sales) will compound the impacts of energy efficiency and distributed generation to the detriment of the Company's core base of residential and small business customers," APS added.

APS also promised that if the Commission determines it is appropriate to move forward with competition, "it must recognize that a new competitive framework will create a new generation of competition-related stranded costs for consumers to pay."

"There are still no clear-cut examples of competition's success in achieving lower costs for all classes of consumers, greater technological innovation or improved efficiency," APS added.

"As time passes it becomes clearer that allowing direct access for a few results in significant risks for the whole," Salt River Project and New West Energy agreed.

"Since the comments filed in January 2009, states that have experimented are continuing to retreat from the 1990s model," SRP said, citing the following as evidence of this statement.

"The major change in Texas since the January 2009 position paper is that electricity deregulation in northeast Texas was stopped," SRP said. However, SRP later concedes that the relevant bill, SB 547, merely delayed competition at SWEPCO, and did not "stop" it. Moreover, SB 547 did not represent so much as a "change" as further codification of existing policy, as the move to competition at SWEPCO had already been indefinitely delayed at the PUCT and through prior legislation. Meanwhile, the PUCT is at a minimum going to take an overview of where competition stands at the only ERCOT investor-owned utility not currently open to choice (Cap Rock, see exclusive story in Matters, 4/2/10).

SRP also pointed to the 30% rate increase at PPL on January 1, 2010, but not the nearly 30% of residential customer migration.

In Maryland, "[t]hough recent efforts to re-regulate the electric market have not been successful, there remains concern that deregulation of the Maryland market will lead to a shortage of generation and higher rates in the future," SRP said.

In New York, just as in Pennsylvania and Maryland, SRP could cite no concrete action constituting a "retreat" from competition as it had characterized earlier, though it cited various criticisms of the New York ISO market by the American Public Power Association and Robert McCullough.

Meanwhile, the Compete Coalition cited lower rates in states with electric choice. In Illinois, rates in 1997 were 24% above the national average and are now 2% below the national average (21% lower when adjusting for inflation), Compete said. In Pennsylvania, customers are paying 12% less for power on an inflation-adjusted basis versus 1996, when rates were 15% above the national average but are now over 4% below average. In Texas, residential rates in 2001 were 15% above the national average, but now the average competitive rate is 9% below average, Compete said.

Freeport-McMoRan Copper & Gold and the Arizonans for Electric Choice and Competition argued that there would be little downside risk from re-introducing direct access. "No customer would be forced from cost-of-service rates over which the Commission would still assert jurisdiction," AECC said.

"Customers would simply have an alternative option for obtaining generation supply. This is a very low risk proposition," AECC added.

AECC noted that it was ironic that California, cited by many opponents of direct access in the earlier 2009 round of comments as a reason Arizona should not pursue retail choice, has adopted an expansion in non-residential direct access. SRP dismissed the expansion as a backroom political deal.

Aggregator Yam Services urged that any expansion of direct access should not be limited to customers 1 MW or larger in size, and be made available to all large non-residential customers as defined in the utility tariffs.

N.Y. PSC Rejects Utility-Owned Renewables in Written RPS Order

The New York PSC rejected suggestions for a utility-owned RPS tier within is new carve-out for downstate programs, in two written orders regarding the RPS released Friday. Although the Commission had previously announced new RPS funding, several key policy decisions in the orders were not discussed (03-E-0188).

While several utilities suggested utility ownership for photovoltaics included in the downstate program, the Commission, "recognize[d] the concerns expressed by stakeholders regarding utility participation in the bidding process and utility ownership of renewable generation."

"We also recognize that constructing a bidding process with a level playing field between utility and non-utility participants could present a challenge. We agree with stakeholder assertions that the retail distributed solar photovoltaic market is demonstrably competitive and utility involvement in the market, at this time, does not appear necessary to address any deficiencies," the PSC added.

The Commission said that utilities' role shall include promoting the best locations for distributed resources to help achieve the environmental, load reduction and economic development benefits afforded by siting these technologies in strategic locations in the utilities' respective service territories. The PSC also encouraged the utilities to streamline the interconnection process for distributed generation renewable projects.

The Commission did stress, however, that, "there may be merit in allowing utilities to participate further in this program, at a later date, if it were to be found that private investment is not available or sufficient in areas where utility ownership may be better targeted, more cost-effective and beneficial."

Regarding the RPS Main Tier, the Commission also rejected utility-ownership, denying the Energy East utilities' proposal to allow incremental hydroelectric generation at existing utility-owned facilities to qualify for the RPS. "NYSEG/RG&E fail to address in their comments the anticompetitive effect utility bids would have in the Main Tier. A utility could unfairly undercut other bidders because its bid would not necessarily have to reflect its costs since it has another 'captive' source of revenues, utility customers, not available to non-utility generators," the Commission found.

The Commission further tabled any attempt to introduce a hedge into the RPS program at this time. Staff had reported that while the availability of renewable energy hedges from financial entities in the marketplace is not as robust as it was prior to the peak of the financial crisis in late 2008, "it has since improved to the point where hedges are available, albeit at higher costs than in the past and rarely for a duration in excess of 5 years," the PSC noted. Furthermore, the recently concluded fourth RPS solicitation attracted a "substantial" number of bids at reasonable prices, and "we have every reason to believe that the currently in-progress fifth solicitation will be robust and has attracted the interest of a sizeable number of bidders."

"These results have been obtained without offering developers any help in hedging the risk of the future market price of electricity. The parties are correct in noting that the virtues of simplicity and transparency inherent in the current RPS fixed price process is valuable, and that an approach that uses a hedge would undoubtedly be more complex, and perhaps less transparent, despite Staff's and NYSERDA's best efforts," the Commission concluded.

However, "[i]f circumstances change and/or the results of future solicitations indicate an increased need for a hedge to be provided by the program, we can consider it at that time."

Additionally, the PSC added that, "[a]s for the desirability of obtaining long-term energy hedges for ratepayers, this is an issue that need not be decided at this time, and can be pursued outside of the RPS program at any rate."

The Commission also maintained the January 1, 2003 vintage date for RPS, but stressed that, "investors should understand that RPS incentives will likely continually evolve and are, therefore, subject to changing policies as we further refine our objectives in response to changing circumstances," in reserving the right to revise the vintage date in the future.

The PSC also denied a set aside or greater support in the Main Tier for offshore wind and farm waste anaerobic to biogas digesters as inconsistent with the basic competitive structure of the Main Tier.

Columbus Southern Power Proposes Voluntary Time of Use Rates

Columbus Southern Power has proposed implementing a pilot two-tier Time of Day generation rate for residential and small commercial customers receiving smart meters in its gridSMART pilot (10-424-EL-ATA).

For both classes, a high price would be charged for the hours of 1pm through 7pm on non-holiday weekdays from June 1 to September 30. For all other hours in those months, and all hours during winter months, a low price would be charged.

For residential customers (RS-TOD2), the high rate would be 22.76048¢/kWh, and the low rate would be 0.5¢/kWh. For small commercial customers (GS1-TOD), the high rate would be 32.44250¢/kWh, and the low rate would be 3.5¢/kWh.

Even though Columbus Southern Power,

since it does not purchase power through load following wholesale contracts, does not face the exact same issues regarding generation cost recovery and reconciliation under voluntary time-based rates as the FirstEnergy companies do, Columbus Southern Power was silent in its application as to whether any recovery or reconciliation from other classes would be required to make it whole under its electric security plan due to the operation of the optional time-based rates.

FERC Staff Says No Economic Withholding from ISO-NE Capacity Importers

Three New England capacity importers did not intentionally seek to avoid or recklessly disregard their obligations as external capacity suppliers to ISO New England, FERC Office of Enforcement Staff said in testimony (EL09-47).

The case involves a complaint from Connecticut Attorney General Richard Blumenthal who alleged that the high-priced offers from certain capacity importers were designed to avoid dispatch, and thus suppliers collected capacity payments with no intention of providing energy (Matters, 4/23/09).

While Staff said that the difference in timing deadlines between the New York ISO and ISO-NE established a temporal seam between those markets which created a window in which the Respondents' use of NYISO placeholder bids would not permit them to perform in all circumstances in which ISO-NE might seek to dispatch energy at the high offer prices, "no evidence indicates respondents believed that their use of placeholder bids eliminated their obligations to perform as capacity resources in ISO-NE."

While Respondents' failure to confirm use of the placeholder bidding practices with ISO-NE while continuing to accept large capacity payments from ISO-NE for energy they might not always be able to provide is "troubling," Respondents provided a reliability product that gave ISO-NE first priority to dispatch that capacity during reliability events, however unlikely those events were to occur. Other potential offering and bidding strategies would have either imposed prohibitive uneconomic costs on the external capacity suppliers or resulted in no NYISO energy purchases to meet ISO-NE's needs, Staff said.

Specifically, Staff said that evidence indicates Shell Energy North America and Constellation Energy Commodities Group reasonably believed they could meet their energy obligations upon direct notification from ISO-NE that would overcome temporal seams issues that otherwise would prevent an obligated energy flow, while Brookfield Energy Marketing reasonably relied on a plan, albeit one imperfectly implemented, to adjust its placeholder energy bids in NYISO in anticipation of delivering needed energy into ISO-NE while avoiding false dispatch. Staff rejected allegations of economic withholding.

Briefly:

ERCOT Receives Notice of Suspension from Two Valero Units

ERCOT has received a Notification of Suspension of Operations for Valero Refining's Coastal_CoastAG1 and Coastal_CoastAG2 units.

Cianbro Energy Receives Conn. Self-Supply License

The Connecticut DPUC granted Cianbro Energy an electric supplier license to serve its affiliated construction companies only (Only in Matters, 12/30/09).

Reliant Launches New Ad Campaign

Reliant Energy has launched a new advertising campaign branded "Lights" focusing on the "complete package" provided by Reliant, by touting via television and radio spots what Reliant said were: (1) a range of plans; (2) easy-to-use tools that help customers manage their energy use; (3) best-in-class customer service; (4) a commitment to the true innovation of energy; and (5) devotion to the communities Reliant serves

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such a process is inconsistent with the UBP.

However, Central Hudson called such an understanding a misinterpretation of the events which occur, and stressed that such changes in account information prompt a closing of the account, and not a drop to full utility service. The new account, naturally, begins on full utility service before the customer has an opportunity to elect competitive commodity supply.

"[T]here is no UBP violation because there is no return of the account in question to utility service. Instead, there is a closing of the account. In some cases, a new account will be opened at the same location, in some cases not," Central Hudson said. In either case, the provision of supply service to the new customer by the utility is not an unauthorized change in the customer's provider, but rather a consequence of the action of the customer that results in a change of the account owner, Central Hudson said.

While Central Hudson concedes that, due to this mechanism, a gap will occur if the new customer wishes to continue on ESCO service, "the argument that a new customer must be enrolled immediately in order to provide a 'seamless' transfer is not compelling when that haste could result in the improper imposition of contractual obligations on a new customer."

RESA argues that even in cases where a customer is acquired, a valid contract still exists, and must be honored. Central Hudson did not disagree, but said that the utility should not be called upon to judge whether the new customer has an obligation to the ESCO, just as the utility would not judge, in the case of a new ESCO acquiring an existing ESCO, whether the new ESCO has obligations to its acquired customers.

RESA's second petition is to afford ESCOs the same contest period rights for drops to utility service as the ESCO receives for switches to another ESCO -- that is, the ability, with proper authorization, to cancel the switch if the customer changes its mind before the deadline in the switching process.

Central Hudson said that since such authority for an ESCO to cancel a drop, "places tremendous power before the ESCOs," any changes to the UBPs to grant such authority must make explicit such canceled drops can only be performed with customer consent in the same manner as enrollments, and subject to penalties for non-compliance. "[W]hile we assert our belief that most ESCOs would not abuse this power ... the situation that would exist is one that must be recognized as potentially dangerous and tempting," Central Hudson said, suggesting that the Commission defer a decision on RESA's petition to the Commission's deliberation on the ESCO contest period.

The National Energy Marketers Association supported both of RESA's proposed changes because they, "would better effectuate the intent of consumers participating in the competitive marketplace."

NEM also took the opportunity to request that the PSC expedite its review of the UBP Phase II Working Group issues.

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(as opposed to being required to do so on a customer-by-customer basis). In contrast, the pooling structure described by Constellation's witness could harm EUT (end-use transportation) customers by restricting their flexibility with regard to managing their gas supply within a particular month because each of them would apparently have to designate a single marketer to coordinate all of that month's service," the ALJ said. Constellation had noted, however, that pooling would not have to restrict a customer's right to choose more than one transportation supplier in the month by allowing (as done in other LDCs with pooling) non-pooled customers to retain this right.

"In addition, Mich Con would be required to incur the cost of (1) restructuring numerous contracts with its EUT customers, (2) tracking various pools' activity, and (3) making all software coding changes necessary to allow its gas nomination and billing systems to function under the proposed pooling program. Moreover, most – if not all – of those incremental costs would ultimately be borne by its ratepayers," the ALJ added.

The ALJ further adopted MichCon's position regarding the LDC's proposed storage injection limitation. Under the proposed decision, MichCon would add the month of November to the period during which the utility's end-use transportation customers are barred from injecting more than 1.43% of their respective annual contract quantity into load balancing storage (versus the current period in which the restriction applies of September and October).

The ALJ agreed with MichCon that the month of November has become "critical" for procuring and storing gas for sales customers as September and October traditionally have been. Since EUT customers balance on a monthly basis, they can inject substantial quantities during the first half of November when MichCon's storage balances are near or at their maximum physical capacity limits, the ALJ noted.

"Mich Con's most recent experience in November 2009 perfectly demonstrates the importance of implementing this requirement. Significantly warmer than normal temperatures in early November combined with low EUT [customer] consumption resulted in EUT injections during the first twelve days of the month. As operator of the system, Mich Con is proposing the extension of the injection limitation period to include November as a means to protect system integrity by ensuring that EUT customers coordinate their gas supplies to match the operations of the system," the ALJ added, quoting MichCon testimony.

The ALJ rejected Staff's proposed cost of service study which MichCon and ABATE said would have shifted approximately $7 million from sales to transportation customers, due to Staff's use of actual 2008 peak day throughput rather than the design peak day volumes in its study.

Furthermore, Staff's recommendation to include in the MichCon gas customer choice (GCC) tariff a prohibition on participation in choice by customers who are in arrears with the LDC was denied by the ALJ. The ALJ agreed with MichCon that the requirement would be burdensome and would not appreciably lower uncollectibles, since, "it is indeed doubtful that a customer's desire to participate in the GCC program would provide adequate incentive to immediately pay its outstanding arrearages."