Energy Choice Matters

May 24, 2010

FERC SECA Order Restores Certain Revenue; Finds Green Mountain Not Liable for Charges

FERC released a long-awaited order on an Initial Decision regarding the allocation of Seams Elimination Charge Adjustments in the Midwest ISO and PJM that, among other things, reverses the Initial Decision's finding that allocates SECA charges to Green Mountain Energy, and reverses the shifting of certain Quest Energy (Integrys) SECA liabilities to Mirant Americas Energy Marketing. The Initial Decision also restores some lost revenue to transmission owners originally struck by the Initial Decision (ER05-6 et. al.).

The Commission, in its 186-page order, first finds that, "the burden of proof concerning the lost revenue amounts [recovered via SECA] is a shifting one: the onus is first on the transmission owners to provide and support their claimed lost revenue amount with information in their possession; once they have met that burden, the onus shifts to the transmission customers to provide and support adjustments to that data." For this reason, FERC overturned the Initial Decision's rejection of the transmission owners' claimed lost revenues for failure to make adjustments for known and measurable changes and hubbing adjustments. "We will also reverse the Initial Decision's finding that claimed lost revenue amounts are invalid because witnesses failed to independently verify every data point used in determining the lost revenues and because certain transmission owners failed to sponsor witnesses that individually supported the transmission owners' level of lost revenues, as

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West Penn Power Reports Results from May Default Service Procurement

West Penn Power (Allegheny) reported that its recent auction for default service supply for a portion of the period beginning January 1, 2011 produced an average weighted retail generation price of $59.39/MWh for residential customers.

Included in the average weighted retail generation price are energy, capacity, Pennsylvania gross receipts taxes, line losses, renewable energy requirements, ancillary services, and other provisions.

For residential customers, whose load was mostly bought in earlier auctions as the PUC granted Allegheny's request to accelerate procurements to take advantage of what were believed to be favorable prices, only one 17-month and one 29-month contract were procured in the May auction. This front-loaded acceleration in power procurement has, similar to PPL, proven to be a loss for customers, as the prices for residential power have steadily declined over the staggered auctions:

Residential Auctions

Date	MWh Procured	Price ($/MWh)
April 17, 2009	2,300,000	$72.80
June 5, 2009	4,600,000	$71.64
October 16, 2009	960,000	$65.29
January 22, 2010	960,000	$62.27
May 21, 2010	960,000	$59.39

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REPs Oppose Lost Revenue Adjustment in CenterPoint Energy Efficiency Rider

CenterPoint Energy's petition to include lost revenues in the calculation of its energy efficiency cost recovery factor (EECRF) is contrary to PURA, Reliant Energy, TXU Energy, and the Alliance for Retail Markets said in a brief at the PUCT (38213).

"If CenterPoint is allowed to recover those amounts through its EECRF, a customer will in effect pay transmission and distribution delivery charges for a level of service not actually provided by CenterPoint. These 'phantom' charges would be in addition to CenterPoint's expenditures in administering and implementing the energy efficiency programs also borne by customers through base rates and/or the EECRF. Nothing in PURA § 39.905 authorizes the inflation of CenterPoint's rates in this manner," the briefing REPs said.

"Additionally, the Briefing REP Parties note that CenterPoint is requesting a bonus of $5,069,095 in its 2011 EECRF application. If this amount is approved, CenterPoint will receive a bonus payment that is 250% more than the $1,436,550 of 'lost revenues' it attributes to implementation of energy efficiency programs," the REPs added.

The REPs also argued, from a policy perspective, that allowing recovery of lost revenues is contrary to one of the stated goals of the energy efficiency statute, which is to, "reduce ... energy costs."

Md. PSC Conditionally Approves WGL Hedging for Two-Month Period

The Maryland PSC has conditionally approved Washington Gas Light's proposed interim hedging plan for the months of June and July 2010, but the Commission withheld further approval of the entire plan until a July 8 hearing, at which time it will review the hedging results to date (Case 9224).

The Commission said that it "tentatively" agrees with WGL's stated policy of providing "price insurance" to customers against catastrophically high future natural gas prices (Only in Matters, 5/10/10). "This insurance, however, must be procured in a prudent manner, at a reasonable premium, and with sufficient safeguards and reporting to protect customers from even greater ills," the PSC said. "The sole purpose of any utilized hedging instruments shall be to use any profit from trading to potentially offset any increase in the market price of physically delivered natural gas or to 'lock in' physically delivered gas at a known price or price range," the Commission ordered.

"[A]pproval of the Proposed Interim Plan shall not be used to speculate in derivatives solely for the purpose of maximizing incremental profits. The Commission expressly reserves the right to revoke its conditional approval of the Proposed Interim Plan at any time," the PSC added.

At the July 8 hearing, the Commission will consider, among other things, whether to extend its approval for the remainder of the summer 2010 storage injection season and for the winter 2010-2011 heating season. WGL must provide the PSC with monthly reports, as well as a market price risk management policy which describes WGL's goals and strategies, including hedging objectives; risk identification and assessment including risks associated with exposure to gas price fluctuations and counter-party credit risk; and scenarios of various hedging strategies.

"This conditional approval should not be interpreted as authorization for future hedging programs," the Commission stressed.

Calif. Draft Would Defer AMI Data Access Question

A proposed decision by the California PUC on requirements for future smart grid deployment plans would decline to set policies regarding access to customer data, or a demarcation point for utility investments (R. 08-12-009).

"Based on a review of the comments, replies and the information provided at the workshop, it is clear that issues concerning access to information and privacy protections contain subtleties and complexities that prevent their resolution without further deliberation and comments," the draft states.

The proposed order further says that, after its adoption, the proceeding will focus on information access and privacy protections needed to implement access to price and consumption data. "Our goal remains the development of a decision that resolves these matters in time to meet the deadlines and goals for providing consumers with access to data adopted in D.09-12-046, namely a policy objective for the provision of retail and wholesale price information by the 'end of 2010;' access to usage data through an agreement with a third party by the 'end of 2010;' and access to usage information on a near real-time basis for customers with an Advanced Metering Infrastructure (AMI) meter by the 'end of 2011.'"

The draft decision also declines to adopt a demarcation point for utility investment (such as the meter as advocated by some non-utility providers) at this time. "The Commission is certainly aware of the concerns raised by parties advocating for a demarcation point, but this is not the proper vehicle to address those concerns. The Commission does not have a sufficient record to make a decision on this topic at this time. The Commission will consider parties' arguments at the time the utility proposes investments in these devices, be it in an application or in a GRC [general rate case]," the draft states.

"Nevertheless, the Commission is fully supportive of a competitive and innovative market for customer-owned technology and devices. Should a utility request ratepayer funds for a device or technology that it anticipates owning and operating and that is placed inside a customer's home or establishment, we will expect the utility to fully explain and justify why such an investment is needed, and explain why such devices or technologies have failed to be adopted widely. The Commission has generally supported the contention that costs should be borne by those who will benefit from the product rather than by the ratepayers, and we will expect the utility to justify why the Commission should veer from this preference," the proposed decision adds.

Briefly:

BlueStar Releases PPL Residential Pricing

BlueStar Energy Solutions is offering residential customers at PPL Electric Utilities a 12-month fixed contract for 9.30¢/kWh. The product includes an early termination fee of $10 per remaining month. BlueStar's PPL entry was first reported by *Matters* (3/21/10).

Hess Protests Pa. Application of HES Energy LLC Citing Similar Name

Hess Corporation has protested the Pennsylvania electric broker application of HES Energy LLC, arguing that, "HES is not legally fit to operate because HES' use of the legal name infringes on the 'Hess' trade name and trademark." Hess further said that, "[i]f HES is permitted to operate as an EGS as it currently proposes, HES' likeness to Hess will, no doubt, cause confusion among consumers," and thus conflict with the PUC's standards of conduct for suppliers which are designed to avoid customer confusion in the offering and provision of electric supply (Only in Matters. 5/12/10).

The Loyalton Group Undergoes Rebranding

The Loyalton Group has undergone a corporate rebranding, including a fully-redesigned logo and website designed to, "magnify Loyalton's comprehensive energy management solutions, which include utility expense management, energy procurement, facility optimization, and sustainability consulting." Loyalton said that it manages over $1 billion in annual utility expenditures for more than 6,000 commercial, industrial, and educational facilities.

Calif. PUC Draft Would Find EV Charging Stations Not Public Utilities

A proposed decision by the California PUC would find that the ownership or operation of a facility that sells electricity at retail to the public for use only as a motor vehicle fuel, and the selling of electricity at retail from that facility to the public for use only as a motor vehicle fuel, does not make the corporation or person a public utility within the meaning of Pub. Util. Code § 216 solely because of that sale, ownership or operation (R. 09-08-009).

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administrative proceedings do not impose such requirements," FERC said.

FERC affirmed the Initial Decision's rejection of in-out transactions in the average rates of certain PJM transmission owners, finding that the SECA is not the appropriate vehicle for PJM transmission owners to recover lost revenues associated with the elimination of regional through-and-out rates for in-out transactions because PJM voluntarily eliminated rate pancaking for such transactions and was not directed to do so by the Commission. However, FERC reversed the Initial Decision and accepted the inclusion of out-in transactions as part of the revenue which transmission owners are entitled to via SECA. "We will also affirm the Initial Decision's adoption of the proposed hubbing adjustments for generation-only control areas," FERC said, and the order also addressed other proposed hubbing adjustments raised on exceptions.

The Commission reversed the Initial Decision's finding limiting the SECA to inter-RTO lost revenue recovery. FERC said that its prior orders provided for the recovery of certain intra-RTO lost revenues through the SECA, "and the intra-RTO lost revenues included in the proposed SECA charges are compliant with these requirements."

The Initial Decision, FERC said, incorrectly finds that affiliate transactions should be excluded from the SECA calculations, and found that the inclusion of these revenues, "is necessary to prevent immediate cost shifting with the replacement of rate pancaking with license plate rates and to keep the transmission owners revenue neutral."

With some modifications, FERC accepted the proposed subzonal SECA charges, and reversed the Initial Decision on this issue. "We also disagree with the finding in the Initial Decision that using subzones produces unjust and preferential results between the Classic PJM and New PJM regions. Having subzones in the New PJM region but not in the Classic PJM region does not result in cost shifts between the two regions," FERC said.

Denying exceptions from marketers such as Quest Energy (Integrys) and Strategic Energy (now Direct), FERC affirmed that that parties should use NERC tag data to calculate SECA charges to create subzones in the Midwest ISO and New PJM notwithstanding the fact that such tag data cannot be used to create subzones in Classic PJM. "We also find that the proposal to allocate the SECA to load within the Classic PJM region on a load-ratio share basis is just and reasonable. While not as precise as using tag data to create zones or subzones, the SECA charges are still calculated based on transactions during the test period that can be traced to the Classic PJM area. We find that no methodology would perfectly align those that benefit due to the elimination of regional through-and-out rates, and using North American Electric Reliability Corporation tag data where possible and a load-ratio share where such tag data would not work is a reasonable compromise and one that is reasonably consistent with cost-causation principles," FERC concluded.

Furthermore, "[c]ontrary to the Initial Decision, we will not reject the use of average rates because they could shift costs from parties with low load factors to parties with high ones." While marketers opposed such average rates, FERC said that, "[r]emedying any such cost shifts would entail the evaluation of how individual loads make use of their transmission reservations, and as noted above, the Commission previously rejected the use of actual invoices when determining the SECA."

The Commission reversed in part the Initial Decision with regard to the Initial Decision's finding that contracts terminating prior to the transition period are not SECA eligible. "However, we will affirm the findings in the Initial Decision with respect to certain discrete claims that test-period load is not reflective of load served during the transition period, and thus, SECA obligations should be adjusted accordingly. As we explain, load-serving entities are assigned a SECA obligation based on test-period imports that utilized through-and-out service, unless such entities can demonstrate known and measurable changes have occurred such that they do not benefit due to the elimination of rate pancaking. We find that the fact that an entity's test-period contracts expired prior to the transition period and were not replaced with new contracts that cross the boundaries that were previously subject to rate pancaking is not dispositive as to whether the entity benefits due to the elimination of rate pancaking. Rather, as the Commission previously found, the elimination of rate pancaking will result in more remote generation becoming economic for import, which will put downward pressure on market prices where the importing load is located, resulting in lower costs for purchases from local generation as well as imports," FERC said.

However, FERC agreed that certain parties' SECA obligations should be adjusted to reflect reductions in load served between the test period and the transition period. "Unlike load-serving entities claiming that contracts terminated prior to the transition period and are, thus, not SECA eligible, adjustments to SECA obligations are appropriate for load-serving entities with reduced load during the transition period to accurately align the benefits realized due to the elimination of regional through-and-out rates to the level of load served during the transition period. Where the load served by the load-serving entity during the transition period has been reduced since the test period, or is no longer served by the load-serving entity during the transition period, it is reasonable to conclude that the load-serving entity will not benefit due to the elimination of regional through-and-out rates for the load no longer served," FERC found.

FERC used such reasoning to ultimately affirm that Quest Energy's SECA obligation associated with the Northwest Ohio Aggregation Coalition contract and deliveries to North Star should be eliminated, as Quest did not serve these loads during the transition period. "The load-serving entity that replaced Quest as the supplier to such loads should be responsible for the SECA charges applicable to such loads, not Quest. However, rather than shifting the Quest SECA obligations for such loads to the new supplier ... the new suppliers should pay the generally applicable zonal SECA charge, applicable to entities without subzone obligations, under section II.B of Schedule 22 of the Midwest ISO tariff for the newly acquired load," FERC said.

However, the Commission reversed the Initial Decision's finding that Quest may shift a portion of its SECA liability to Mirant Americas Energy Marketing (MAEM). "It is undisputed that there was no bilateral contract between Quest and MAEM, and in the absence of such an agreement, MAEM cannot be liable for a shift-to-shipper claim. We are also not persuaded that a binding contract existed merely because a contract existed between Quest and WPS Energy. We find no case, and the Initial Decision cites none, permitting our reliance on a so-called contract. While it is settled law that a binding contract may be oral or implied, rather than expressed in writing, the fundamental elements of such a contract (such as offer, acceptance, and consideration) are not evidenced here," FERC said.

FERC reversed the findings of the Initial Decision and concluded that Green Mountain Energy is not responsible for the payment of SECA charges. "We disagree with the Initial Decision's finding that '[s]ince the procurement of network transmission service was for the benefit of Green Mountain and its financial responsibility, Green Mountain is the entity that paid transmission costs and should pay SECAs.' Thus, we will reverse the Initial Decision's conclusions that Green Mountain is a 'customer' under the Midwest ISO tariff and that Midwest ISO properly filed unexecuted service agreements on Green Mountain's behalf pursuant to Schedule 22. Consequently, we will also reverse the Initial Decision's conclusion that Midwest ISO properly assessed Green Mountain SECA charges as a customer within a designated subzone under Schedule 22," FERC held.

FERC said that any charges related to Green Mountain's load should be paid by its supplier, BP Energy, as BP Energy was the entity taking transmission service under the arrangement, while Green Mountain only transacted at retail. "[W]e find that BP Energy is responsible for the SECA charges here. BP Energy and Green Mountain negotiated a business arrangement in which the rights and responsibilities of the parties were established by contract. Under its contractual arrangement, if BP Energy failed to pay Midwest ISO for network transmission service, Midwest ISO would have had no recourse against Green Mountain. Likewise, if Green Mountain failed to pay BP Energy under their separate Energy Services Agreement, BP Energy was still obligated to pay Midwest ISO for network transmission service. Accordingly, we will reverse the Initial Decision's finding that Green Mountain should pay SECA charges based on its contractual arrangements," the Commission stated.

"In addition, we find that any claim that we should impose SECA charges on Green Mountain because it provided retail electric service in Ohio is insufficient. We note that the parties here do not dispute the Initial Decision's finding that the Commission directed that load-serving entities be assessed SECA charges. However, we agree with Green Mountain that the mere fact that it made retail sales cannot justify imposing SECA charges. We find that, although Green Mountain qualifies as a load-serving entity because it sold power at retail to customers in Northeast Ohio, as we discussed above, the transmission service in this instance was taken by BP Energy instead of Green Mountain. Thus, we find that Green Mountain is not subject to SECA charges. Furthermore, we find that BP Energy is the entity properly responsible for SECA charges here and not Green Mountain. The SECA as originally proposed and adopted by the Commission is a surcharge to each RTO's license plate zonal rates, and as such it should be assessed to transmission customers taking transmission service under the RTO tariff that pay the license plate zonal rates. Therefore, in this case, since BP Energy is the entity that took transmission service on behalf of Green Mountain through December 2005, BP Energy is responsible for paying SECA charges."

In a separate rehearing order on SECA charges, FERC denied a myriad of arguments against SECA implementation, including several from retail suppliers which protested the impacts on load serving entities.

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Some 70% of residential load for 2011 has been procured. The average residential price from all procurements to date is $69.35/MWh. An October 2010 auction, and some spot purchases, remain to fill residential supply for 2011.

For small and medium commercial customers, the May 2010 auction produced an average weighted retail generation price of $63.38/MWh. The small commercial auction procured four 17-month contracts and one 29-month contract, totaling 1,440,000 MWh. The average price from all small commercial procurements to date is $66.19/MWh. More than two-thirds of small commercial supply has been procured for 2011.

The winning suppliers in the May 2010 auction were selected from among seven competitive bidders.