

Energy Choice

Matters

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Nstar Seeks to Prohibit Constellation from Operating NEPOOL Assets, Retail Book Together

Claiming that such action is needed to "prevent anticompetitive injury," Nstar Electric Company has petitioned FERC to impose certain code of conduct conditions on the proposed acquisition of several Boston Generating assets by Constellation Energy (EC10-85), including a requirement that the, "Constellation generation business should be operated separately from the Constellation retail marketing business."

Constellation currently owns no physical assets in ISO New England, and is seeking to purchase nearly 3,000 MW from Boston Generating. Nstar did not cite any precedent for placing a restriction on a competitive generator from operating its generation in concert with its competitive retail load obligations.

Nstar also sought a FERC order holding that there should be no direct sale of power between the Constellation generation and retail marketing businesses without a Section 205 filing, and that the Constellation generation and retail marketing businesses should be precluded from sharing market information with each other.

"In this case, the proposed Merger would eliminate one of two rival sellers of power, each with a substantial share of the ISO-NE market," Nstar claimed. "This reduction in competition could inure to NSTAR's significant economic detriment since in the past NSTAR has transacted with Constellation for service to its ultimate consumer 'Provider of Last Resort' load."

Nstar specifically asked FERC to impose on Constellation a code of conduct with the same

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Calif. Draft Would Expand CCA Re-entry Costs to All Bundled Customers After 6 Months

A proposed decision by the California PUC would make former Community Choice Aggregator (CCA) customers initially responsible for any re-entry fees caused by their involuntary return to utility supply, but would make all bundled customers responsible for such re-entry costs if any costs remain uncollected after six months (R.03-10-003).

The proposed order addresses CCA bonding levels, re-entry fees, and related issues implicated during an involuntary mass transition of CCA customers to utility supply.

Pub. Util. Code § 394.25(e) states that the CCA is to be responsible for, "any reentry fee imposed on that customer that the commission deems is necessary to avoid imposing costs on other customers." While this section alone would suggest that CCA customers should fully bear any costs of an involuntary return to bundled utility service, the PUC noted that the language in §394.25(e) refers to both electric service providers and CCAs in every sentence except the last one. In the last sentence, §394.25(e) states that re-entry fees should be allocated to returning electric service provider customers, but makes no mention of involuntarily returned CCA customers.

Accordingly, the draft finds that the, "Legislature did not intend to make CCA customers solely responsible for any shortfalls in re-entry fees."

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Briefly:

Reliant Energy Applies for Maryland, District of Columbia Electric Supplier Licenses

Reliant Energy has submitted applications for Maryland and District of Columbia retail electric supplier licenses, to serve commercial and industrial customers. As only reported in *Matters*, Reliant has pending applications in New Jersey and Pennsylvania (Only in *Matters*, 8/9/10).

PUCT Staff Seeks Revocation of Clearview Electric REP Certificate

PUCT Staff have filed a petition (38645) to revoke the retail electric provider certificate of Clearview Electric, alleging that Clearview has failed to meet the new financial requirements of Subst. R. 25.107(f)(1). As only reported by *Matters*, Clearview has sought a waiver from the regulation, which Staff has opposed and has been referred to the State Office of Administrative Hearings (Only in *Matters*, 8/19/10).

FirstEnergy Ohio Utilities Accept Current Terms of Modified Electric Security Plan

The FirstEnergy Ohio utilities informed PUCO that they accept the Commission's order which accepted, with modification, the utilities' stipulated electric security plan for the period June 1, 2011 through May 31, 2014 (10-388-EL-SSO, *Matters*, 8/26/10). Though no formal notice of acceptance is required, the utilities provided such notice to avoid unnecessary uncertainty. However, the FirstEnergy distribution companies reserved their right to withdraw the electric security plan if, among other reasons, they do not concur with any change made to the competitive bidding process beyond the scope of the terms and conditions of the electric security plan as filed. In its August order, PUCO reserved the right to alter the competitive procurements as required based on the results of the bidding. Separately, PUCO selected Boston Pacific Company as its procurement monitor for the competitive bidding process.

World Energy Solutions Wins GSA Contract

World Energy Solutions, Inc. said that it has won

a multi-year contract with the General Services Administration to provide supply-side energy procurement and management services to the GSA's Energy Division for its extensive network of federal government agencies. The contract begins October 1, 2010 and runs through September 30, 2015, with an option for an additional five-year renewal.

Maryland Utilities Seek SOS Supplies

Allegheny Power, Baltimore Gas and Electric, Delmarva Power, and Pepco have issued RFPs for Maryland SOS supplies for residential, Type I and Type II customer classes. The utilities are requesting proposals totaling approximately 4,251 MW including:

- 514 MW for Allegheny
- 2,405 MW for BGE
- 341 MW for Delmarva
- 991 MW for Pepco

Constellation Electric Offering 12, 24-Month Products at Allegheny, Delmarva

Constellation Electric (BGE Home) is offering 12 and 24-month fixed electric products to residential customers at Allegheny Power and Delmarva Power as part of its expanded residential marketing in Maryland, first reported by *Matters* yesterday.

At Allegheny, Constellation is offering a 12-month fixed rate of 7.48¢/kWh, and a 24-month fixed rate of 7.38¢/kWh. Allegheny's residential SOS rate effective October 1, 2010 is 7.869¢/kWh (including transmission).

Constellation's marketing material compares the prices to the weighted average SOS price through May 31, 2011 provided by Allegheny, and said that the 12-month offer represents a 7% discount from the weighted average SOS price of 8.071¢/kWh, and the 24-month offer represents a 9% discount. Constellation's marketing materials also provide, less prominently than the weighted average comparison, the actual SOS rate through May 31, 2011.

At Delmarva, Constellation is offering a 12-month fixed rate of 8.93¢/kWh, and a 24-month fixed rate of 8.83¢/kWh. Delmarva's SOS rate

for Rate Class R is 9.40¢/kWh effective October 1, 2010. Constellation said that its prices are 12% and 13% lower, respectively, than Delmarva Power's current weighted average SOS price of 10.17¢/kWh.

All products include a \$150 early termination fee.

Each 12-month product includes a \$50 Wal-Mart gift card, and each 24-month product includes a \$75 Wal-Mart gift card.

The offers are being made through direct mail and are valid through October 15. The offers are supported by a series of print ad buys and radio spots.

First Choice Power Offering Customers OPower Energy Usage Analysis

First Choice Power is offering its residential, home-owning customers a Home Energy Reporting Program at no additional charge under a partnership with OPower. The reports are available to these customers regardless of product type.

First Choice Power will be the first Texas retail electric provider to offer the OPower reports which provide customers with a personalized report designed to help them quickly understand how their home energy bill compares with similar-sized homes in their neighborhood, along with tips and overall recommendations on how they can save on their next bill.

The reports will be mailed to customers on a monthly basis and available online, using the customer's usage data as provided by the TDU.

Citing OPower data, First Choice Power said that customers should save enough energy through the first year of the program to power 10,000 Texas high school football games. First Choice Power has developed estimates of expected kilowatt-hour savings specific to its customer base and the Texas market, but declined to provide such estimates given their proprietary nature.

Similar programs have delivered more than \$15 million in total savings to consumers in California and Minnesota, First Choice Power said.

Md. PSC Grants Elkton Gas Waiver from New Gas Market Rules Under COMAR 20.59

The Maryland PSC granted Elkton Gas a waiver from the provisions of new competitive gas market rules under COMAR 20.59.04 (transfers of service, first-of-month switching) and COMAR 20.59.05 (utility consolidated billing) as each chapter applies to Elkton Gas' commercial and industrial (C&I) customers, due to the cost of implementation and current lack of participation in the Elkton Gas choice program (Only in Matters, 9/15/09).

A waiver of the residential gas market provisions of COMAR 20.59 is not required, the PSC said, since Elkton Gas does not offer residential choice and is under no obligation to do so, and thus the residential sections of COMAR 20.59 are inapplicable.

Elkton Gas had sought a waiver from the requirement to offer utility consolidated billing and other new COMAR provisions to its non-residential customers eligible for choice because not one customer is currently taking service from a competitive supplier. Additionally, Elkton Gas said that the costs to implement these new provisions under COMAR 20.59 would be \$376,000, or approximately \$60.16 per customer. Elkton Gas raised concern that such costs, borne by its small number of ratepayers, could make its gas service uncompetitive with alternative heating fuels.

"[T]he Company has demonstrated that the cost of changing its administrative processes to implement COMAR 20.59.04 and 20.59.05 would far exceed any reasonably anticipated benefit to competitive gas suppliers or to any customer in the Company's Maryland service territory. The Commission concludes that the Company has shown good cause for a waiver of COMAR 20.59.04 and COMAR 20.59.05 under the circumstances described in the Waiver Request," the Commission said in a letter order.

"In the event circumstances should change in any material respect, such as a significant number of C&I customers electing transportation services and an influx of competitive gas suppliers serving these C&I customers and requesting consolidated billing, the Company should notify the Commission and either: (1) file

a renewed request for a waiver; or (2) make a compliance filing pursuant to the then current provisions of COMAR 20.59," the Commission added.

Commerce Maintains Expectation for Georgia Market Re-entry By Jan. 2011

Commerce Energy (Just Energy) still anticipates that it will start marketing to potential Georgia natural gas customers and processing customer enrollments no later than January 31, 2011, it said in a status update to the Georgia PSC on its market re-entry.

As noted last week (Only in Matters, 9/1/10), Commerce has submitted a new license application as part of Phase I of its re-entry. Commerce reported that it is currently working with AGL to update its existing supplier agreement and upgrade the letter of credit currently in place with AGL. Commerce anticipates such activities will be completed before October 15, 2010.

In Phase II, upon approval of Commerce's application, Commerce will complete utility agreements and third-party vendor agreements and will set up internal system requirements. Commerce will also post financial guarantees with AGL and undergo technical testing. Commerce anticipates that this phase will be completed no later than November 30, 2010.

In Phase III, Commerce will finalize marketing materials and submit the materials to the PSC for approval. Upon approval of the marketing materials, Commerce will start marketing to potential customers and processing customer enrollments. Commerce anticipates that this phase will be completed no later than January 31, 2011.

Nstar ... from 1

provisions as contained in 18 C.F.R. §35.39 which apply between regulated utilities and their non-regulated affiliates.

While Nstar is obviously seeking to broaden these rules' reach, the code of conduct under §35.39 is meant to, as acknowledged by Nstar in a 2009 application for a waiver of the rules,

"prevent affiliate abuse and potential harm to captive wholesale or retail customers" (see Docket ER98-1992-006 et. al). Where there are no captive customers involved, FERC has routinely granted waivers from the rules, and it's not clear, even if the applicability of the rules were to be considered to non-regulated entities, why the waiver provision would not immediately be appropriate given that there are no captive customers in Massachusetts.

Indeed, Nstar itself received a waiver of these regulations, with respect to the market based rates of then-affiliate generator Medical Area Total Energy Plant, because FERC found that "NSTAR Electric does not have retail captive customers." Quoting FERC precedent in its application for the code of conduct waiver, Nstar opined that, "retail customers in retail choice states who choose to buy power from their local utility at cost-based rates as part of that utility's provider-of-last-resort obligation are not considered captive customers because, although they may not choose to do so, they have the ability to take service from a different supplier whose rates are set by the marketplace.

A similar finding by FERC was made in FERC's declaratory order approving a design under which Nstar and Northeast Utilities may proceed with a participant funding approach for a 1,200-MW transmission line into Quebec which will transfer hydropower from Hydro-Quebec TransEnergie into New England (EL09-20, Matters, 5/22/09).

Though Constellation owns no assets in NEPOOL, Nstar argued that Constellation is a "large participant" in the market as a server of retail load. Nstar does not know the extent to which Constellation (i) has direct contracts with ultimate consumers to provide them service, and (ii) enters into contracts with local distribution utilities to serve the ultimate consumers in their service areas; however, Nstar approximated Constellation's ultimate consumer load as between 3,000 MW and 4,000 MW, and used 3,500 MW as an estimate.

"NSTAR deduces that to serve its load Constellation participates very extensively as a purchaser in the ISO-NE market. NSTAR surmises that Constellation avoids showing long-term contractual rights to ISO-NE capacity due to a technicality in the relationship between

ISO-NE market structure and the Commission's market power analyses which require capacity information under long-term contracts defined as a year or more in duration. In New England, indirect retail load responsibilities through contracts with local distribution utilities are typically six months in duration. Accordingly, Constellation would be able to satisfy its retail load responsibilities through back-to-back contracts and other contracts defined as 'short-term' for purposes of Commission market power analysis, Nstar said.

According to Nstar, Boston Generating owns approximately 8% of the generating capacity in ISO-NE. Constellation is acquiring 2,653.70 MW from BostonGen under the merger, Nstar said, but Nstar does not present a specific percent of capacity that Constellation would control after the transaction. Nstar only offers the following:

"Constellation's estimated 3,500 MW retail load responsibility would mean that Constellation has load responsibility for a significant share of the ISO-NE retail load and that it would purchase and hold rights to an equivalent amount of generation within the ISO-NE market. Thus, the merger of Boston Generating's ISO-NE generating capacity into Constellation's ISO-NE marketing operation would mean that Constellation could through direct ownership and contract rights exercise control over a very substantial share of ISO-NE generating capacity," Nstar said.

Nstar weakly concedes that it, "is aware of the differences between Constellation's and Boston Generating's market participation and that arguments could be made that their respective participations in the ISO-NE market would not upon consummation of the Merger create the potential for the exercise of market power."

However, Nstar said that, "[t]he Applicants do not have the right to rely on bland and questionable assurances that the Merger will not have anticompetitive impacts on the ground that Boston Generating and Constellation do not operate in the same geographic market when in fact both Boston Generating and Constellation appear to be heavily involved in that market."

CCA ... from 1

The proposed order would adopt a balance in assigning CCA re-entry costs. To the extent that the CCA's bond does not cover all such costs, involuntarily returned CCA customers shall bear initial responsibility for the recovery of any re-entry fees, which are largely caused by the acquisition of additional power to meet the returning customer load. The additional amount to be paid would be limited to the difference between what the bond covers and the Transitional Bundled Service commodity rate revenues collected from returned CCA customers.

The draft is also explicit that the re-entry fee imposed on returning CCA customers shall cease once all costs are collected.

However, payment of this additional amount from returning CCA customers would in no case continue for more than six months. Any unrecovered re-entry fee remaining after six months would be recovered from all bundled customers.

The draft would accept, with one modification, a Bond/Re-Entry Fee Agreement developed through a settlement among the utilities, several local governments, and TURN.

The sole modification to the bond agreement is that the draft would decline to give the utilities a blanket waiver of the three-year period to make up any RPS compliance shortfall caused by an involuntary return of customers to utility supply from a CCA. The settlement had sought approval for providing the utilities with an additional year to correct any RPS shortfall.

"We do not believe such a result is appropriate, as an IOU could use the involuntary en masse return of CCA customers as an excuse for willfully failing to comply with the RPS statute," the PUC said.

Instead, the draft states, while the Commission agrees with the intent of the settlement that the Commission should withhold imposing an RPS penalty for an additional year beyond the three-year flexible compliance window, such a waiver should be sought through an individual application from a utility, rather than through a blanket waiver.

In a waiver application, the utility must make an affirmative showing that the RPS deficit

resulted entirely or predominantly from the involuntary en masse return of CCA customers, the draft says.

The settlement's bond agreement would otherwise be approved without modification under the proposed decision. The bond agreement contained in the settlement provides a calculation for the CCA bonding level which includes a Stressed Bundled Generation Rate when calculating the incremental procurement costs. The Stressed Bundled Generation Rate is based on the actual system average bundled portfolio cost at the time of the bond calculation plus a \$10/MWh "stress adder."

In addition to calculating the bond amount twice annually, the settlement provides for sliding scale factors for implementing the gross bond amount.

The draft would also approve the settlement's Accounts Receivable Offset Agreement which provides a CCA with the option to offset the gross bond amount through the grant to the utility of a first priority security interest under the California Uniform Commercial Code in the CCA's Accounts Receivable.

The Accounts Receivable Offset Agreement is one type of "offset" option which is allowed under the bond agreement to reduce the bonding level, but it is the only one explicitly listed.

While the draft would approve the Accounts Receivable Offset Agreement, the proposed order expresses misgiving that utilities and CCAs may interpret the approval of the agreement as signaling the PUC's desire or intent to review and approve any other "offset" options proposed to reduce the bonding level. "Such micromanagement is not appropriate. We expect IOUs to consider offset proposals, and to accept those that are commercially reasonable, without needing our involvement," the draft states.