Energy Choice Matters

February 1, 2010

NiMo Files to Modify Electric Commodity Pricing Mechanism, Implement MFC

Niagara Mohawk (National Grid) has applied at the New York PSC to modify its electric commodity rate mechanism effective January 1, 2012 so that a monthly forecast of New York ISO prices are used, and that hedging costs are only borne by bundled service customers who benefit from the hedges. As part of its new electric rate case, NiMo also proposed replacing the current customer service backout credit with a Merchant Function Charge (Case 10-E-0050).

NiMo proposed changing the basis for calculating the commodity rate for mass market customers (Service Classes 1, 1C and 2) so that these customers will be charged a rate based on a monthly forecast of New York ISO day-ahead prices in each Load Zone, rather than using an average of hourly prices in the NYISO market. This monthly forecast would be derived using monthly forward trading market prices, such as NYMEX or other similarly available public prices, three days prior to the forecast month. If forward trading market prices are not available for a particular zone, NiMo would set the forecast prices based on historical data and relationships to zones for which there are forward trading prices.

NiMo said that this change to monthly forecast pricing, "will better align monthly hedging costs or benefits with commodity rates," as such hedging costs and benefits are calculated based on monthly forecasts. "Therefore, using similar forecasts to set commodity rates will help reduce month-to-month bill volatility for mass market customers," NiMo noted.

NiMo also proposed creation of a new Commodity Adjustment Mechanism (CAM) that would reconcile overall commodity costs and revenues for all customer classes. Specifically, the CAM would reconcile actual monthly revenues received pursuant to electric supply charges with actual monthly expenses incurred to procure electric supply. The CAM would also allow NiMo to pass through to mass market customers the benefits of, and collect the costs associated with, any new

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PUCT Debates Role in Reviewing Variable Contracts, and Relation to REPs' Cost of Power

After considerable debate, the PUCT approved a preliminary order defining a list of issues for a dispute between Gexa and three customers, ultimately deciding that the State Office Of Administrative Hearings should be instructed to develop a factual record regarding whether Gexa had a contractual obligation to, "set its commodity price in a manner reasonably related to the contemporaneous wholesale price of electricity such that the commodity price charged to complainants would increase or decrease based on wholesale prices."

As only reported by *Matters*, the case involves a complaint filed by three customers who were on variable rate plans. Complainants have raised several arguments that, if adjudicated, would have market-wide impacts, such as the extent to which generic claims on a REP's website are incorporated into a REP's terms of service, and whether the term "variable rate plan" constitutes a commitment that the price will vary with the wholesale market (see Matters, 12/10/09 and 11/18/09). Gexa has said that the contracts never linked the variable rate to wholesale market prices (37569).

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PUCT Weighs Implications of More Frequent Transmission Cost Updates

The PUCT approved for publication and comment Staff's proposal that would allow Transmission Service Providers to file for interim updates to their transmission rates twice annually, versus the once annual interim update permitted under current rules (37519, Only in Matters, 1/25/09).

Commissioner Kenneth Anderson, while voting to approve the proposal for comments, expressed concern about giving REPs enough time to implement potentially more frequent Transmission Cost Recovery Factor changes which may be prompted by more frequent transmission rate updates (which are not addressed in the instant proposal but in project 37909).

Anderson and Commissioner Donna Nelson also expressed concern that more frequent transmission rate updates, along with other changes to wires charges that are allowed to be passed through even to customers on fixed rates, may frustrate customers who believed that with a fixed rate they would avoid such variability in their rates. Anderson suggested reviewing whether various TDSP rate changes (TCRF, energy efficiency factor, stranded costs, etc.) can be timed so that several are implemented at the same time to reduce the amount of times the rate is changed for customers on a fixed product.

N.Y. Transmission Owners Protest Suggestion for RMR Contracts

The New York Transmission Owners protested a petition made by Saranac Power Partners, L.P. and Shell Energy North America, who had asked FERC to direct the New York ISO to enter into Reliability Must Run (RMR) contracts to address situations where the NYISO's proposed extra-tariff mitigation measures would "strip" generators needed for reliability of a source of revenue needed to recover fixed costs (Matters, 9/7/09).

Saranac and Shell's petition came in an unredacted compliance filing required by FERC (ER09-1682, Matters, 1/22/10).

Specifically, Shell and Saranac said that, "Merchant generators must rely primarily on two sources of revenue from the wholesale markets to recover their costs, which include a return on and of their respective past investments -- energy payments and capacity payments. In this proceeding, the NYISO has proposed new mitigation measures that effectively strip a supplier of one source of these revenues without ensuring that an adequate avenue exists to otherwise secure its needed revenues in total. Even if, arguendo, the NYISO had the authority to exclude fixed costs from the category of costs that are properly recoverable within the thresholds over a facility's reference price that can be bid into the market, the NYISO cannot then simply ignore these costs. Thus, at a minimum, the NYISO must be directed to submit a compliance filing with a corresponding rule change that allows the NYISO to enter into reliability must run ('RMR') type contracts to address these type of circumstances."

The RMR mechanism is required, "to ensure that, when a supplier located outside New York City is the sole unit that can meet an identified reliability need, it can recover its costs," under the proposed mitigation NYISO is seeking, Saranac and Shell said.

The Transmission Owners called the request "completely inappropriate," asking FERC to summarily reject it. Transmission owners said that the RMR proposal was outside the scope of the extra-tariff mitigation proceeding, and argued that the RMR proposal was completely unsupported. "Saranac and Shell Energy have also not explained why the proposed RMR mechanism is necessary given the NYISO's Commission approved Reliability Planning Process," the Transmission Owners said. Transmission Owners further argued any RMR proposal should be vetted first through the stakeholder process.

Constellation Rebuts Arguments Against Pooling at Consumers

Consumers Energy, "should not be allowed to thwart pooling through claims of non-existent obstacles that many other utilities are able to overcome in order to provide their transportation customers with the benefits derived from pooling," Constellation NewEnergy said in a post-hearing brief in Consumers' current rate case (U-15986).

However, Michigan PSC Staff, echoing testimony from Consumers, said that pooling would only benefit marketers and not customers, and may even be detrimental to customers on both transportation service and sales service (Only in Matters, 11/17/09).

As only reported by *Matters*, Constellation proposed that the Commission:

(1) Require Consumers to accept pooled nominations from marketers;

(2) Modify Consumers' tariff to assess charges, including load balancing charges, authorized and unauthorized gas usage charges, and excess pipeline costs surcharges, based upon 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.

"Although Constellation's proposed pooling changes would undoubtedly benefit the marketers on Consumers' system, it is not apparent how these changes would truly enhance the current system in place for Consumer's [sic] transportation customers," Staff said in its brief. "Consumers' transportation tariffs are, by definition, for its transportation customers, but Constellation's proposed tariff changes would be for the greater benefit of the marketers serving these transportation customers and to the detriment of the transportation customers themselves," Staff said. While Constellation provided examples of the various efficiencies associated with pooling, Consumers argued that any savings would accrue only to the supplier.

Constellation, however, countered that, "[c]ompetitive forces assure that efficiencies and costs savings ultimately flow through to the end-use customer for, if they do not, the marketer will eventually lose its customer base."

Staff also joined Consumers in opposing pooling because it would interfere with customers' current ability to take service from multiple marketers on the same day.

Constellation dismissed such concerns because allowing some customers to pool does not require limiting other customers to service from a single marketer during a month. Approximately 2% of Consumers' gas transportation customers purchase gas from more than one supplier during the month.

Constellation said that the flexibility to take service from more than one supplier could be preserved while still implementing pooling by using a simple "if, then" provision. If a customer purchases gas from more than one supplier in any given month, then that customer is excluded from any pooling during that month. Such a rule has been successfully employed in Illinois in order to address similar concerns, and is explicitly included in the North Shore Gas and Peoples Gas tariffs, Constellation noted.

Consumers and Staff further argued that pooling could increase costs to sales customers because pooling would allow a marketer to combine the Maximum Daily Quantities (MDQs) of each individual customer and nominate up to that level on any given day. Given that Consumers has monthly balancing, Staff said that pooling, "could create major gas supply surpluses or deficiencies on key business days like a peak day," as marketers could nominate fewer supplies on cold days where gas is more expensive, leaving Consumers to purchase additional supplies to balance the system with such higher costs absorbed by sales customers.

However, Constellation said that such a scenario is inherent with monthly balancing, and pooling does not change the potential scale of any problem. "The scale of the problem remains the same, since the number of transportation customers and their respective MDQs remains constant whether they are pooled or not. Only increases to the number of transportation customers or the value of their MDQs could increase the scale of this problem," Constellation noted.

Briefly:

Dominion Retail Lowers Duke Energy Ohio Residential Electric Offer

Dominion Retail had updated its offer to residential electric customers at Duke Energy Ohio, lowering its price to 6.55¢/kWh, versus the

6.88¢/kWh price it had been marketing in the fall. Dominion Retail's price, which is fixed through the December 2011 meter read, is 30% lower that Duke's price to compare of 9.36¢ for Residential RS customers. Dominion Retail's offer ends March 12, 2010 and is limited to the first 15,000 customers who enroll. Dominion Retail's product includes a $50 early termination fee.

Reliable Power Alternatives Seeks Pa. Broker License

Reliable Power Alternatives Corp. has applied for a Pennsylvania electric supply license as a broker/marketer serving all sizes of non-residential customers.

Maine Public Service Exploring Merchant Line Linking Northern Maine, ISO-NE

Maine Public Service said Friday that it is exploring the development of a merchant 345 kV transmission line from Houlton, Maine to Haynesville, Maine, that would link Maine Public Service to the New England electric power grid, and interconnect wind generation in northern Maine. MPS said that the project would allow the utility to remain in the New Brunswick Balancing Authority, eliminating the impact on northern Maine ratepayers associated with MPS joining ISO New England, while improving northern Maine's access to competitive energy resources, "resolving the lack of market liquidity that has plagued the region." The line, MPS said, would provide northern Maine generators a direct path to the New England market.

NYISO Reports Decrease in Price Corrections

The New York ISO reported that it corrected prices in less than 0.3% of hours in 2009, compared to 0.7% in 2008, and 16% back in 2005 (FERC Docket ER06-1014). The overwhelming majority of price corrections occur in the real-time market, NYISO said. NYISO also evaluated the impact of price corrections on zonal LBMPs for the period July through December 2009. NYISO said that the average zonal price changes were driven by three large price corrections, on August 16, 2009, November 1, 2009 and December 31, 2009, which averaged -$575. Given the limited number of price corrections, the impact of these three corrections was substantial. Excluding these three corrections, NYISO said that the average zonal price change was $7.16.

PUCT Approves New REP Reporting Form on Interim Basis

The PUCT approved for publication and comment Staff's proposed new REP annual report form, and approved use of Staff's draft on an interim basis (37053, Matters, 1/25/10).

NiMo ... from 1

hedges that the NiMo acquires in order to meet the New York PSC's volatility management goals.

The new hedge component of the CAM would be calculated each month prior to the billing month, based on the contract costs of the new hedges less their market value. Unlike the current Delivery Charge Adjustment (DCA) and Commodity Adjustment Clause (CAC), the CAM would be reflected on the commodity portion of customers' bills. "By including the cost of new hedges in the commodity portion of the bill, customers will be better able to compare Company commodity charges to energy service company commodity charges, thus facilitating educated customer choice," NiMo said.

NiMo also proposed that the New York Power Authority reconciliation mechanism should operate using a methodology similar to the CAM mechanism for new hedges. "This modification will allow the benefits of the NYPA hydropower to continue to be provided to residential customers with additional monthly bill volatility reduction," NiMo said.

Legacy hedges would still be allocated to both bundled service and competitive supply customers, through a new Legacy Transition Charge (LTC) applicable to the delivery portion of the bill. Legacy hedges are defined as all power purchase supply contracts prior to June 1, 2001, excluding certain NYPA contracts. The LTC charge, which would collect the costs currently included in the Over-Market Variable Costs portion of the Competitive Transition Charge (CTC), would be a monthly rate equal to the sum of the net market value of all legacy hedges.

For new hedges, whose costs would only be

NiMo Proposed Merchant Function Charge

		Non-Demand (SC-1, SC-1C, SC2ND) $/kWh		Demand (SC2D, SC3,SC3A) $/kWh		Streetlighting $/kWh
Uncollectible factor	$	0.00183	$	0.00027	$	0.00003
Credit & Collections	$	0.00053	$	0.00053	$	0.00044
Electric Supply Procurement & Administration	$	0.00016	$	0.00016	$	0.00016
Electric Purchased Power related Working Capital	$	0.00029	$	0.00029	$	0.00029
Total Merchant Function Charge	**$**	**0.00281**	**$**	**0.00124**	**$**	**0.00092**

applicable to mass market (SC-1, SC-1C and SC-2ND) bundled service customers, NiMo proposed to create, "a managed portfolio with a sufficiently diverse mix of contract types and contract lengths for mass market customers who procure power commodity from the Company to accomplish the goal of managing price volatility." The contracts, however, will not extend to 100 percent of the power supply costs, "as the strategy will continue to be based on the concept of passing through a portion of the customer supply at market prices," NiMo said.

Among the metrics NiMo will use in supply procurement is limiting the quantity of real-time NYISO purchases to +/- 10% of the total commodity load. Additionally, NiMo will limit the net cost of real-time NYISO purchases to <3% of the total energy (LBMP only) costs.

Merchant Function Charge

NiMo currently has a Customer Service Backout Credit (CSBC) and unbundled rates for competitive billing, meter data services, meter services, and meter ownership. In its rate case, NiMo proposed creating a Merchant Function Charge levied on only bundled service customers obtaining commodity supply from NiMo, and bypassable for ESCO customers, rather than using the backout credit to refund certain commodity-related costs to competitive supply customers. The MFC would include costs associated with the commodity-related ports of credit and collections charges, uncollectible expenses, electric supply procurement costs, and working capital for electric supply.

Under NiMo's rate plan, the credit and collections charge in the MFC is equal to $0.00053/kWh for non-demand and demand customers, and $0.00044/kWh for street lighting customers.

The bad debt percentages in the MFC are equal to 2.68% for non-demand, .40% for demand and .05% for street lighting. There is no bad debt associated with NYPA and Flex Rate customers.

The rate for electric supply procurement in the MFC is equal to $0.00016/kWh for all classes, and the working capital percentage in the MFC will be equal to 0.425%.

Based on forecasts, the proposed total MFC is listed above.

NiMo would also update the discount rate applicable to purchased receivables to reflect the commodity uncollectible percentage and the commodity credit and collections rates that have been developed as a result of its embedded class cost of service study and applied to the MFC.

Furthermore, NiMo proposed updating its charge for billing customers. Currently, if NiMo issues a consolidated bill on behalf of a ESCO for both electric and gas services, NiMo charges the ESCO a fee of $0.53 for each bill generated and credits the customer $0.53 per bill. NiMo proposed updating the charge to $1.15 to incorporate the results of the recent cost of service studies for electricity and gas.

NiMo also plans to eliminate the Standard Rate Service and Market Rate Service classifications under its tariff, and eliminate the option for a NiMo mass market customer to choose to receive commodity at a market price from NiMo. If a mass market customer desires market-priced service, they will be required to choose an alternative energy supplier.

Variable ... *from 1*

The Electricity Facts Label provided that the product, which was offered prior to new PUCT product definitions, was variable, but that the commodity charge will not change more than once per month and will not cause the average price per kWh to increase more than 25% per month from the amount stated on the Electricity Facts Label. The terms of service further stated that, "Gexa Energy reserves the right to assess a surcharge to recover costs associated with the procurement of electricity. Any surcharge assessed would be in addition to changes in the commodity price and is not included in the 25% price adjustment."

Commission Donna Nelson was most concerned about the list of issues in the preliminary order, because she questioned the Commission's role to evaluate the propriety of a variable retail rate charged by a REP in light of its wholesale cost of power. Nelson also said that she had a problem with the provision in the terms of service that allows surcharges related to procurement that are not included in the 25% commodity price increase limit, because the provision was not listed in the EFL.

Commissioner Kenneth Anderson stressed that, if a REP makes commitments in its terms of service or Electricity Facts Label to set its retail price based on the movement of wholesale prices, then the Commission must exercise its jurisdiction to determine the appropriate retail rate when disputes arise under such circumstances, so that customers have an appropriate remedy. The threshold question in the instant case is whether Gexa's contract provides such a commitment to the customer, Anderson noted.

Nelson encouraged the parties to bring that question as a certified issue before the Commission early in the SOAH process so that discovery and related efforts are not expended on the question of what Gexa's wholesale cost of power was if the Commission rules that the contract does not link the retail rate with changes in wholesale prices.

Chairman Barry Smitherman said that he was "uncomfortable" with the idea of the Commission investigating a REP's wholesale cost power and using it to determine the appropriate retail rate in a dispute.

The contract in dispute was executed prior to the Commission's new definition for variable and indexed products, and rights and obligations under the old variable rate definition were not as explicitly defined as in the new Substantive Rules. Additionally, Gexa's contract incorporates certain provisions of the Uniform Commercial Code, which, aside from any PUCT rules regarding price changes under a variable rate contract, potentially invoke other customer protections. For example, Staff said that a factual record should be developed at SOAH regarding whether, due to the UCC, Gexa was obligated to a "duty of fair dealing" which would require Gexa follow an "industry standard" regarding pricing, and whether any such standard exists with respect to variable electric contracts.