Energy Choice Matters

February 3, 2010

Pa. Suppliers Seek Summary Judgment on Disconnection Under POR

Interstate Gas Supply, Shipley Energy Company and Dominion Retail filed a motion for summary judgment in Columbia Gas' POR proceeding regarding the ability of an LDC to terminate customers for non-payment of supplier charges under a purchase of receivables program (P-2009-2099333, Only in Matters, 4/6/09).

The natural gas suppliers argued that, "[t]he Pennsylvania Public Utility Commission ('Commission') already has decided that termination of customers in an approved POR program is permitted, and that utilities are permitted to terminate a customer based upon the customer's failure to pay the full amount of a purchased receivable."

The Commission has also permitted, as a condition of reconnection, that a utility may demand that a customer pay the full unpaid balance of an account, even if the balance includes amounts that were purchased in a POR program, the suppliers noted.

"The [suppliers] submit that the Commission's recent determination on these issues is controlling and should be applied in a similar fashion here. Simply put, there is no genuine issue as to any material fact concerning these standards - the issue and all the facts have been before the Commission before. Accordingly, because judgment can be made as a matter of law, there is no basis to litigate this issue and the question can be finally resolved as a matter of law," the suppliers said.

In Columbia's most recent base rate case (final order issued in 2008), the PUC rejected part of a settlement that would have implemented a revised POR program because the Commission agreed

Continued P. 5

Mich. PSC Reports Load of Competitive Electric Suppliers

Competitive electric load in Michigan as of December 31, 2009 was 1,558 MW, the Michigan PSC said in an annual report on electric choice.

The migration was entirely within the Detroit Edison and Consumers Energy territories, and represents an increase from 770 MW in 2008. As of December 31, 2009, there were 5,424 commercial and industrial customers on competitive supply, up from 3,717 customers in 2008. The PSC reported that the number of residential choice customers in the Detroit Edison and Consumers Energy service territories is negligible.

Both utilities hit their 10% choice caps in 2009, though since that time Detroit Edison, per its online cap tracking system, is showing some 460,172 MWh (1%) of space available under the cap. There are currently 387,567 MWh from 785 customers in Detroit Edison's retail access queue. The level of each choice cap for 2010 was exclusively reported in *Matters* yesterday (Matters, 2/2/10).

The Commission said that in 2009 there were 10 suppliers actively serving customers at Detroit Edison, with six active suppliers at Consumers. A breakdown of individual suppliers' customer count and load is on page 2.

The PSC said that it has no recommendations for new or modified legislation at this time.

Michigan Electric Supplier Load, Customers at Year-End

Detroit Edison

	Customers		Load (MW)	
	2008	2009	2008	2009
CMS ERM Michigan	4	4	53	53
Just Energy (Commerce)	507	374	13	9
Constellation NewEnergy	1,579	1,284	234	285
Direct Energy Business	488	718	29	111
FirstEnergy Solutions	44	119	8	36
Glacial Energy	0	979	0	71
Integrys Energy Services	401	456	62	82
MidAmerican Energy	1	59	<1	23
Sempra Energy Solutions	35	337	27	82
Wolverine Power Marketing	2	2	13	13
Totals	3,061	4,332	438	765

Consumers Energy

	Customers		Load (MW)	
	2008	2009	2008	2009
Constellation NewEnergy	402	602	90	275
Direct Energy Business	133	46	15	4
Integrys Energy Services	50	165	19	88
Sempra Energy Solutions	49	252	39	217
Spartan Renewable Energy	1	1	10	10
Wolverine Power Marketing	21	26	161	200
Totals	656	1,092	334	794

As reported by Michigan PSC. Data reflects rounding, which negligibly affects totals

FERC Approves MISO Changes to Increase Ability of Type I Demand Response to Offer Spinning Reserves

FERC generally accepted the Midwest ISO's tariff changes to increase the extent to which Demand Response Resources - Type I (DRR - Type I) may be offered and used as Spinning Reserves, which will allow DRRs - Type I to offer either Spinning or Supplemental Reserves, as well as Energy (ER10-386, Only in Matters, 12/7/09)

The Commission rejected, however, the Midwest ISO's proposal to subject hourly curtailment offers and energy offers of DRR-Type I resources to mitigation for economic withholding, without prejudice to MISO re-filing a mitigation proposal in the future. "We continue to believe that a robust monitoring and mitigation program is critical to ensuring a well-functioning market. In this case, however, Midwest ISO did not explain its proposal or provide any facts to support its proposed tariff revision. In the past we have acknowledged the difficulty inherent in designing a reference level to use to mitigate demand resources using the conduct and impact approach. Midwest ISO does not show how its proposal contains an appropriate reference level for applying mitigation to demand resources for economic withholding," FERC said.

FERC affirmed MISO's proposal to impose a

limit of ten percent on the participation of demand response resources as spinning reserves, dismissing a protest from steel producers.

AReM, CLECA Call LTPP Issue "Third Rail" for New Generation in Calpine, GWF Novations

The California PUC's long-term procurement planning (LTPP) decision is a "third rail" which compels rejection of the new generation contained in applications to novate to Pacific Gas & Electric existing contracts between the Department of Water Resources and Calpine and GWF Energy, the Alliance For Retail Energy Markets and the California Large Energy Consumers Association said in a post-hearing brief. However, Calpine and the Independent Energy Producers Association downplayed any connection between the novation and the LTPP guidelines (A. 09-10-034 et. al.).

In two cases now consolidated, PG&E is seeking to replace DWR as the counterparty to the Calpine and GWF contracts. The novations, however, are packaged with contracts for new capacity, extended term lengths, and other revisions (Only in Matters, 10/21/09.

AReM and CLECA argued that the new generation portions of the applications exceed the new generation procurement authority granted to PG&E pursuant to D.07-12-052. Moreover, the PUC's order permitting novations (D.08-11-056), "does not authorize avoidance of the competitive procurement process," AReM and CLECA argued. Rather, D.07-12-052 still controls procurement, which, "plainly contemplates a competitive solicitation for long term procurement," AReM and CLECA added.

"It is also notable that the reply testimony of [California Unions for Reliable Energy], GWF and Calpine, all of whom naturally support the Applications, make no reference whatsoever to the PG&E LTPP. Neither the words 'procurement plan' nor the acronym 'LTPP' appear in any of their testimonies. The reason for this is obvious. Namely, the lack of LTPP compliance is clearly a 'third rail' in this proceeding that they dare not touch," AReM and CLECA contended.

"[W]hile PG&E was encouraged by D.08-11-056 to pursue the novation of DWR contracts from which it receives power, it was not directed to use the novation process to engage in superfluous power purchase agreements that exceeded the utility's authorized procurement levels, nor was the DWR contract novation process authorized as a proceeding through which PG&E could seek to circumvent the procurement authority established in the LTPP," AReM and CLECA concluded.

However, Calpine countered that the question regarding the interaction of the LTPP proceeding and DWR novations has already been, "asked and answered."

"In Decision 08-11-056, the Commission rejected requests to combine the DWR novation process with the utilities' long-term procurement process," Calpine said.

The Independent Energy Producers Association similarly said that D.08-11-056 authorizes, "expansive revisions to the DWR contracts that create mutual benefits and ... new agreements that are more beneficial to ratepayers than the existing DWR agreements."

"IEP does not view these consolidated applications as procurement cases that implement the Commission's determinations in D. 07-12-052."

"D.08-11-056, which encouraged the novation of the DWR contracts and acknowledged that parties could mutually negotiate a new agreement that is more beneficial to ratepayers compared to the existing agreement, was issued nearly a year after D.07-12-052, presumably with full awareness of the provisions of D.07-12-052. Yet there is no indication in D.08-11-056 that the Commission was concerned that these new replacement agreements might conflict with D.07-12-052," IEP added.

"The Commission should not be distracted by efforts to frame this proceeding as something other than a consideration of contracts that were renegotiated as part of the Commission's efforts to remove DWR from its role as a market intermediary for the IOUs," IEP said.

Financial Marketers File New Complaint Over PJM Marginal Losses to Set New Refund Date

EPIC Merchant Energy, SESCO Enterprises, and Coaltrain Energy filed a new complaint at FERC over the allocation of marginal loss surpluses at PJM to initiate a new refund effective date which would apply if FERC determines that the refund period for a 2007 complaint from several financial marketers expired in March 2009.

The 2007 complaint, in docket EL08-14, alleged that PJM's imposition of marginal losses on virtual transactions, combined with its prohibition of refunding marginal loss surpluses to virtual transactions in most circumstances, is unjust and unreasonable.

FERC has issued an order, an order on rehearing, and an order on PJM's compliance filing regarding the complaint. However, rehearing of FERC's order on PJM's compliance filing is still pending before the Commission. The Federal Power Act provides that refund periods under complaints brought under Section 206(b) are generally limited to 15 months, but may be extended under certain circumstances if FERC's review of a case exceeds 15 months. If FERC found that the 15-month limit applied to the complaint in EL08-14, the refund period would cover December 3, 2007 through March 3, 2009.

The financial marketers filed the new complaint to initiate a new refund effective date of February 1, 2010, should FERC hold that the 15-month limit applies to the complaint in EL08-14.

FERC's various orders on the 2007 complaint found that only virtual transactions that contribute to the fixed cost of the transmission system should be allocated a portion of any marginal loss surplus (see Matters, 9/18/09). For example, up-to congestion transactions shall receive a share of the marginal loss surplus, FERC said.

In their new complaint, the financial marketers again noted that virtual transactions do not cause transmission line losses, unlike physical transactions. "They, therefore, should be exempt from transmission line loss charges. To the extent virtual transactions are made subject to transmission line loss charges, they are entitled to receive an equitable share of the line loss surplus distributions," the financial marketers said.

"It is unjust, unreasonable, and unduly discriminatory to say on the one hand that virtual transactions must be treated like physicals for purposes of assessing line loss charges, but then to say that they must be treated differently for purposes of distributing line loss surpluses," the financial marketers added.

The financial marketers said that PJM's over-collections of transmission line losses have exceeded $2.4 billion, which is two to three and a half times the original estimate. "The evidence also now shows that approximately 40 percent of this amount is paid by virtual transactions," meaning virtual transactions have been subject to over-collections of approximately $1 billion in just over two years since marginal line loss pricing was implemented, the financial marketers said.

"Financial Marketers and others are suffering severe and ongoing financial harm as a consequence of this unreasonable and unduly discriminatory method of assessing transmission line losses and distributing transmission line loss overcollections ... Statistics provided by PJM show that the discriminatory allocation methodology in place has increased the cost of virtual transactions by as much as $1.11 per MW. This imposes not only an unwarranted competitive barrier but prevents many virtual transactions because the increased charge means they are no longer economically viable. Financial Marketers and others are also foregoing other trading in the PJM markets, because necessary capital needed to trade has been depleted by the required payment of transmission line losses they do not cause," the financial marketers added.

The financial marketers have sought relief from the Commission's prior orders on the 2007 complaint from the D.C. Circuit Court of Appeals, but the Court has held the case in abeyance pending resolution of PJM's compliance filing.

Briefly:

AEP Retail Energy Partners Receives Ohio License

The Public Utilities Commission of Ohio granted AEP Retail Energy Partners LLC an electric supplier license (Only in Matters, 1/1/10).

U.S. Harvest Postal Protection Services Seeks Md. Gas Broker License

U.S. Harvest Postal Protection Services Corporation (d/b/a/ United States Ethane Gas Corporation) applied for a Maryland natural gas broker license to serve commercial and industrial customers at Baltimore Gas and Electric, Washington Gas Light, and Columbia Gas of Maryland. It recently received a Maryland electric broker license (Only in Matters, 1/27/10).

The Eric Ryan Corporation Resubmits Md. Broker Application

The Eric Ryan Corporation submitted a second application for a Maryland electric broker license, reporting that it has operated as a consultant in Maryland since October 2007 (Only in Matters, 9/12/08). Total Maryland revenues to date have been $850. The Eric Ryan Corporation is seeking authority to broker commercial customers at the four investor-owned utilities.

Maine PUC Grants U.S. Sun Energy Broker License

The Maine PUC granted U.S. Sun Energy an electric aggregator/broker license to serve non-residential customers throughout Maine (Only in Matters, 12/16/09).

Champion Energy Services Signs Contract with Carbon County, Pa.

Champion Energy Services has won a contract with Carbon County, Pa. for a 23-month agreement covering 2.7 million kilowatt-hours annually. Champion said that it was selected through an auction which included nine total bidders. The contract includes a 10% renewable component. Champion separately announced that it is sponsoring Houston's KILT 610 AM on Radio Row 2010 for pre-game press activities during Super Bowl XLIV week.

ERCOT Says Only One Garland Unit Needed for RMR Service

ERCOT said yesterday that only one of the City of Garland's two Spencer units, for which Garland has submitted a Notice of Suspension of Operations (Unit 4 and Unit 5), is needed for Reliability Must Run (RMR) Service in 2010 (Only in Matters, 1/8/10).

Entergy Nuclear Earnings Lower on Taxes, Non-Fuel Operation Expenses

Entergy's Nuclear unit reported lower fourth quarter earnings of approximately $168 million, versus $215 million a year ago, due to higher income tax and non-fuel operation and maintenance expenses, partially offset by higher net revenue and other income. Entergy's Non-Nuclear Wholesale Assets reported improved quarterly earnings of approximately $36 million versus earnings of $25 million a year ago, due to lower income tax expense.

Columbia POR ... *from 1*

with the Office of Consumer Advocate that a 1999 PUC order prevented the termination of a customer for non-payment of supplier charges.

However, after that rate case order was issued, the suppliers noted that, in docket M-2008-2068982, the PUC issued interim natural gas POR guidelines in December 2008 which allow for the termination of a customer for failure to pay supply charges purchased under POR programs. Still, the interim guidelines left open the question of whether the LDC could disconnect a customer if the supplier charges exceeded the otherwise applicable default service supply charge, or if the customer is protected against disconnection by paying at least the otherwise applicable default service charges.

While Columbia's POR plan "remained unexplainably in scheduling limbo" from its filing in March 2009 until November 2009, the suppliers noted that during such time the PUC addressed the question of termination under POR programs in its *PPL* order.

"[I]n *PPL* the Commission permitted termination for the full amount of purchased receivables. In that case, the Commission approved a POR program that is remarkably

similar to that proposed by Columbia in this case," the suppliers said, noting that the *PPL* order was not appealed.

"In short, the Commission has determined that a program virtually identical to that proposed by Columbia in this case was satisfactory and approved termination for the entire receivable purchased by an EDC," the suppliers said, further arguing that the ALJ should grant summary judgment finding that the *PPL* precedent controls in the Columbia matter.

"Consideration of this issue by the Presiding Administrative Law Judge and the Commission should serve to expedite this proceeding, because it is the significant issue that will otherwise impede settlement," the suppliers said.