Energy Choice Matters

November 30, 2009

Retail Suppliers Warn of Harm from Rebilling for NYSEG, National Grid Metering Errors

FERC should refrain from directing the New York ISO to rebill market participants to correct 10 years' worth of NYSEG and National Grid metering errors because rebilling would disrupt the finality of settlements and damage the retail market, the Retail Energy Supply Association and Consolidated Edison Solutions said in briefs at FERC (EL09-26).

As first reported by *Matters* last year, the case concerns National Grid and NYSEG metering errors dating back to 1999 which resulted in an overstatement in NYSEG's subzone Unaccounted for Energy (UFE) and an understatement in National Grid's subzone UFE, resulting in loads in NYSEG's territory overpaying by about $20 million (Only in Matters, 12/31/08). A settlement among several parties would prescribe the methodology for any potential rebilling of the affected subzones, leaving to litigation the question of whether rebilling should occur (Matters, 10/7/09).

RESA said that, as calculated in the settlement methodology, ESCOs would be responsible for 16% of the amounts owed.

RESA and ConEdison Solutions noted that the NYISO tariffs limit rebilling to a period of 24 months after invoicing, to provide market participants with certainty and finality. "Certainty of invoicing, billing and assessment of charges is especially critical to retail marketers/ESCOs offering services in the retail markets," RESA said.

Rebilling would be particularly harmful to retail suppliers, RESA and ConEdison Solutions added,

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Retail Suppliers Say Proposed Order Gives Free Pass to North Shore, Peoples Gas

The Illinois Commerce Commission should not reward North Shore Gas and Peoples Gas' lack of action on proposals in their rate cases from retail suppliers to remove barriers to competition, three retailers said in exceptions to a proposed order (09-0166 et. al., Only in Matters, 11/20/09).

As only reported in *Matters*, a proposed decision from two ALJs would order workshops to address the various concerns raised by retail suppliers, but declined to adjudicate any retail market issues in the instant case. While the ALJs found that the retail suppliers provided "compelling evidence" to show that the North Shore/Peoples' Choices for You (CFY) program is not functioning as well as it could, the ALJs refused to decide any arguments in the case due to the lack of a developed record -- with the thin record resulting from, as the ALJs acknowledged, the LDCs' decision to not seriously respond to the suppliers' proposals.

Such a finding essentially gives the LDCs an "unfair free pass" for failing to engage parties on the issues, Dominion Retail, Interstate Gas Supply, and Nicor Advanced Energy said in a joint brief on exceptions.

As the LDCs did not respond to the suppliers' proposals to remove competitive barriers, "[t]he evidentiary record is replete with unrebutted facts about the state of the CFY program and ways to improve it to benefit customers," the suppliers noted.

As previously reported in our 6/12/09 story, suppliers are seeking, among other things:

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More Credible Buyers than Sellers in Retail Provider M&A Space

For about the last two months, there have been more credible buyers than credible sellers in the retail electric provider merger and acquisition space, Rob Potosky, Executive Vice President and Chief Legal Counsel for AEG Affiliated Energy Group, told *Matters*.

That's a reversal from most of the past year dating back to the credit market collapse of the fall of 2008, after which the only retailers for sale were distressed assets with few willing buyers, as potential buyers were most concerned with conserving cash.

Potosky reported that AEG, which is typically retained by potential sellers, is now being contacted more often by prospective buyers looking to get a sense of what books may really be for sale. As the capital markets have thawed, Potosky said that potential buyers are starting to loosen up and have concluded that the sky isn't falling, and that they can pursue judicious acquisitions without endangering their capital positions.

The sale of Reliant Energy's ERCOT operations to NRG Energy can be seen as a watershed event, Potosky said, because of the value NRG has obtained from what was a distressed sale. That has prompted other retailers to stay on their feet and look for opportunities to buy the right books, lest they be left behind.

Indeed, NRG has said that it remains interested in acquiring additional customer books, particularly to drive Reliant's residential customer growth (Only in Matters, 11/23/09). Just Energy continues to cite M&A potential during its earnings calls as well (Only in Matters, 11/9/09).

Turning to commercial and industrial sales, Potosky said that long-term contracting between retailers and customers has returned to about 60% of its pre-Lehman bankruptcy activity. Although large risk premiums are still embedded in contracts for certain credit-risk customers, even that is a change from the end of last year where retail providers generally would not even entertain such business and not even quote a premium-laden price. Retail providers, Potosky added, also seek to place more risk for various charges on end users though pass-throughs, to limit their hedging and collateral requirements.

Pooling at MichCon Required if Penalties Raised, Constellation Says

Michigan Consolidated Gas Corp. should be required to implement transportation customer pooling as a condition of raising the excess usage charge applied to unauthorized usage during a curtailment period, Constellation NewEnergy - Gas Division said in testimony in MichCon's current rate case (U-15985).

Currently, MichCon's tariff includes an excess usage charge of $1.00/Ccf for any gas used by a customer that is in excess of its authorized volumes during a curtailment period. MichCon has proposed adding, in addition to the $1.00/Ccf charge, language that would permit it to also impose the highest price reported by Gas Daily for any of three specified market indices during the curtailment period.

"This additional tariff language has the potential to significantly increase the existing penalty rate. For example, as recently as 7/2/08, the highest Gas Daily price reported for these indices was $13.70/MMBtu," Constellation noted.

While not opposing the higher excess usage charge, Constellation said that it is "essential" that transportation customer pooling be implemented as a condition of raising the charge. Specifically, Constellation said that MichCon should be required to accept pooled nominations, imbalances, and storage.

"Without pooling, a utility stands to accrue penalty dollars from transportation customers when the net position of these customers does not result in the actual use of any unauthorized excess gas by transportation customers," Constellation noted, due to the imposition of mathematical or paper imbalances that may not result in physical imbalances due to the netting effect that a marketer's over- and under-imbalances have on the system.

Aside from promoting efficiencies, reducing administrative burdens, and reducing the costs associated with transportation service, Constellation said that pooling would partially mitigate the current inequity in storage cost allocation under which transportation customers are allocated approximately 15% of direct storage related costs (excluding the cost of the commodity), but only account for 9% of the cyclic volume available. "Transportation customers bear an inordinate share of the cost burden compared to their opportunity to utilize the storage assets for which they pay tariffs," Constellation said.

Constellation opposed MichCon's petition to extend to November the current limit of 1.43% of Annual Contract Quantity (ACQ) on storage injections which applies in September and October. Constellation called the proposed change unsupported, noting MichCon has not cited any problems prompting this change. Constellation reported that during the month of November in 2006, 2007, and 2008, there were no end-use transportation storage injections.

DPUC Draft Would Require Electric Suppliers to File Monthly Accident Reports

The Connecticut DPUC has proposed requiring electric suppliers to file monthly reports on accidents connected with or due to the operation of the company's property, under draft new Sections 16-16-1 to 16-16-4 of the Regulations of Connecticut State Agencies.

Most of the types of accidents defined by the proposed regulations (in docket 08-09-02) relate to physical plant such as distribution wires and poles and would not implicate electric suppliers, which are expressly included in the regulations.

However, one of the minor accidents listed in the rules which must be reported is, "Any accidents to employees or to members of the public that are connected with or due to the operation of a utility's property or facility, including traffic accidents, resulting in personal injury or property damage that are not considered a major accident pursuant to subsection (a) of this section." The term "utility" as used here includes competitive electric suppliers.

For suppliers, this regulation may be relevant insofar as any supplier uses a company-owned vehicle in solicitation or promotional efforts. The term "utility property" is not defined in the proposed regulations but ostensibly would not include vehicles owned by independent contractors and not owned by the supplier itself.

The above regulation would also ostensibly extend to any workplace accident at a supplier's Connecticut office, regardless of whether it is leased or owned (as the accident is defined as arising due to the use of property or “facility”). However, "[m]inor personal injuries on utility property unrelated to utility system operations, such as paper cuts, bee stings, muscle strains or routine slip and fall type events," are expressly excluded as accidents defined under the proposed rules.

Regardless of whether the supplier experiences any accidents as defined by the regulations, the supplier would be required to file a monthly report by the tenth day of each month listing any accidents, or stating that none were experienced.

NRG, Others Propose Transition to Higher-of Pricing for MISO Firm Redirects

DTE Energy Trading, Allete, Cargill Power Markets, and NRG Energy have proposed to FERC a transition period for the effective date of the implementation of "higher-of" pricing for short-term changes in Receipt Points and Delivery Points on a firm basis (firm redirects) in the Midwest ISO (ER09-1543, Only in Matters, 10/12/09).

The four market participants argued that due to the uncertainty of the replacement pricing mechanism applicable to firm redirects, which was not resolved until an October Commission order and November MISO compliance filing, higher-of pricing should not be implemented until January 1, 2010, rather than August 12, 2009 as FERC originally ordered. The market participants argued that MISO's initial filing to institute higher-of pricing, which was supplemented within days, did not provide clarity to market participants as to how they could mitigate the impact of the new pricing on their existing contracts, contending that such information was not available until FERC's order and the compliance filing.

Additionally, the market participants asked

FERC to define a "short-term" redirect as any redirect with a duration of a single month, or any period less than a single month; and to specifically exclude from the definition of "short-term" redirect all redirect transactions that extend beyond a single monthly reservation (i.e., two or more consecutive redirects for monthly transmission service, or annual redirects).

Briefly:

Additional Brokers File for Illinois Licenses

The following brokers have applied for an Illinois electric ABC license:

- Alternative Utility Services, Inc.
- Comprehensive Telcom Services Inc.
- Cost Containment International, LLC
- East Gate Energy Inc.
- Optimal Facility Management Solutions, LLC
- Rapid Power Management

Loyalton Group Seeks Md. Broker Licenses

The Loyalton Group, Inc. filed applications for Maryland natural gas and electricity broker licenses.

Calif. Draft Carbon Regulations Maintain Obligation on Generator, First Deliverer

The California Air Resources Board (ARB) released a draft rule to implement cap and trade regulation of carbon, which, for the electric industry as recommended by the PUC, places the compliance obligation on electric generators and not load serving entities. To the extent power marketers are the first importers of out-of-state electricity, however, they will assume a compliance obligation related to the underlying imported electricity if such electricity has associated emissions that meet or exceed 25,000 metric tons of equivalent carbon dioxide (CO_2e) per year. Furthermore, natural gas end users that receive natural gas directly from an interstate or intrastate pipeline if their delivered gas meets the threshold of 25,000 metric tons of CO_2e per year would have a compliance obligation. ARB said that a final proposed draft regulation will be available for the summer of 2010 with a final draft to be voted on at its October 2010 meeting.

Publication Note:

Energy Choice Matters published every weekday last week. If you were out of the office, check your inbox for our issues containing the following stories, and more:

November 27

- N.Y. Staff: ESCO Customers Inappropriately Avoiding Costs Under Central Hudson MFCs
- IPPNY Suggests Long-Term Contracts to Repower Generation with Reduced Emissions
- Supplier Interest in Md. Residential Market May be on Hold Until End of 2010 Session
- Acclaim Energy Market Entries Represent Judicious Growth Strategy

November 26

- PUCO Staff Raises Concern on Nonbypassable Rider GCR in FirstEnergy MRO Application
- United Illuminating Revises GSC Rates for 2010
- Direct Seeks DPUC Confirmation of Right to Terminate Supply to C&I Gas Customers
- REPs Request that Customers Be Allowed to Use Password to Verify Account Access

November 25

- PECO Applies to Implement Electric, Gas POR Programs With Little to No Discount
- Proposed Order Would Allow 20-Year Renewable PPAs for Illinois Default Service
- ConEd Would Implement Rate Ready Collaborative under Electric Joint Proposal

NYISO Rebilling ... *from 1*

for several reasons.

First, unlike traditional utilities, a competitive supplier's customer base is not fixed. A supplier's customer base today is likely very different from its base in 1999 when the errors began. Suppliers also cannot simply recover any rebilling from their customers, as they have no right to pursue such amounts either from customers under fixed contracts, or from former customers.

"Thus, requiring the NYISO to recalculate and then re-bill UFE charges ten years after the fact will cause significant financial harm to

[ConEdison Solutions] and the other retail LSEs that are unable to recover the costs of this rebilling from its customers and have a deleterious effect on the competitive retail electricity market by throwing in an element of major uncertainty and arbitrariness that does not exist today," ConEdison Solutions said. Competitive suppliers, "cannot compete and remain financially viable if they have to absorb the costs of retroactive re-billings such as the one of this settlement before the Commission in this case," ConEdison Solutions added.

Even if suppliers sought to recover any rebilled amounts through higher rates prospectively, that obligation would place them at a competitive disadvantage to new suppliers who were not in the market at the time of the meter errors, are not required to pay for any corrected UFE charges, and thus do not need to raise their current prices to reflect 10-year old costs, RESA noted.

Rebilling, "would send a message to [ConEdison Solutions] and other retail LSEs that they can never count on a NYISO bill being final, which would have a disastrous impact on the competitive electric market," ConEdison Solutions added.

"It would be inappropriate for the Commission to re-open NYISO bills that are up to ten years old to correct for a persistent meter error to benefit one market participant, NYSEG," ConEdison Solutions continued.

Additionally, RESA and ConEdison Solutions noted that the meter errors were not caused by ESCOs, nor did ESCOs have any way to verify the meter data so that the problem could have been addressed sooner. "As an entity without responsibility of the management of tie-line meters, end-use consumption of the energy or the ability to pass the UFEs to the end-users, the Commission should exempt all ESCOs from such charges," ConEdison Solutions argued.

The Independent Power Producers of New York agreed that no extraordinary circumstances are present in the case which warrant rebilling of the UFE.

"Should the Commission order invoices reopened in this case, the inevitable result would be the encouragement of lax oversight and the undercutting of the incentive and obligation of market participants to exercise due diligence in reviewing metering data and resulting invoices within the timeframes set out in the Tariff. It is likely that more metering errors will appear as technology improves and replacement equipment becomes necessary. If old invoices are to be revised each time an error is found, the incentive to pursue such improvements will be substantially impacted," IPPNY noted.

Peoples ... *from 1*

- Changes to the allocation of LDC-owned storage, transportation, and related assets;
- Collection of the administrative costs of the choice program from all distribution customers, not only customer on competitive supply;
- A 10 business day rescission period per SB 171 as opposed to the 19 calendar day period proposed by the LDCs;
- The ability for customers to choose competitive supply at service initiation, and
- The transfer of outstanding customer credits to competitive suppliers (to be applied to the customer's account) when the customer migrates from utility billing to supplier consolidated billing.

The suppliers noted that the LDCs made a "tactical choice" not to respond to any of the evidence presented by suppliers, arguing that the LDCs, "should live with it - certainly, they should not be rewarded for it."

The suppliers noted that they have, "made a serious proposal in this proceeding, with the goal of improving the CFY program to benefit all customers."

"The Proposed Order correctly concludes that the CFY program is broken, and that the Utilities failed to seriously address [the suppliers'] proposals, but nevertheless would allow the Utilities to continue their existing anticompetitive activities while they go through a workshop process," the suppliers said.

Suppliers had recommended implementing many of the mechanisms now in place at Nicor for asset allocation and cost recovery of choice administrative expenses. Staff, the suppliers noted, supported the suppliers' recommended changes to storage asset allocation, with Staff finding "compelling" evidence in the record to justify the change. Staff only mentioned workshops as an alternative proposal, suppliers said.

Should the ICC order workshops, suppliers argued that the final order should set a 90-day deadline, and be explicit that the LDCs' positions have been rejected, and that the workshops are meant to work out tariff language related to the suppliers' proposals, and not policy debates.

The proposed order accepted the LDCs' petition to charge a higher customer charge to bundled service customers versus transportation customers, with the lower transportation charge reflecting the removal of uncollectibles related to commodity service to sales customers. The Illinois Attorney General opposed such a change, arguing that the LDCs can charge bundled and transportation customers different uncollectible rates through the use of different uncollectible riders, and that the customer charge should be equal regardless of the customer's supply option.