COMMONWEALTH OF MASSACHUSETTS

DEPARTMENT OF PUBLIC UTILITIES

Investigation by the Department of Public Utilities	**)**	
On its Own Motion into the New England Market,	**)**	**D.P.U. 15-37**
Including Actions to be Taken by the Electric	**)**	
Distribution Utilities	**)**	

COMMENTS OF THE
NATIONAL ENERGY MARKETERS ASSOCIATION

The National Energy Marketers Association (NEM)[1] hereby submits its comments in the Department's investigation into the means by which new natural gas delivery capacity may be added to the New England market, including potential actions to be taken by the electric distribution companies (EDCs). These comments are submitted pursuant to the Department's April 27, 2015, Vote and Order Opening Investigation.

The instant Investigation was opened in response to a Petition filed by DOER citing high winter electricity costs in Massachusetts related to constrained natural gas delivery capacity. DOER's Petition urged that the Department examine whether there is a mechanism, including EDC purchase of natural gas delivery capacity, which could alleviate the natural gas delivery capacity constraints and thereby mitigate electric prices. DOER opined that the, "mismatch between the availability of long-term commitments needed to stimulate necessary gas pipeline expansion and

[1] The National Energy Marketers Association (NEM) is a non-profit trade association representing both leading suppliers and major consumers of natural gas and electricity as well as energy-related products, services, information and advanced technologies throughout the United States, Canada and the European Union. NEM's membership includes independent power producers, suppliers of distributed generation, energy brokers, power traders, global commodity exchanges and clearing solutions, demand side and load management firms, direct marketing organizations, billing, back office, customer service and related information technology providers. NEM members also include inventors, patent holders, systems integrators, and developers of advanced metering, solar, fuel cell, lighting and power line technologies.

the willingness and/or ability of gas-fired generators to supply those commitments is the essential problem that is in need of a solution." (DOER Petition at 4).

NEM is concerned that there are a number of issues associated with the proposed EDC purchases of gas delivery capacity that argue against the Department authorizing EDC purchases of natural gas delivery capacity for the purpose of releasing such capacity into the market. Adopting this state-specific plan to a regional issue will force Massachusetts ratepayers to bear the cost burden of a regional problem, and the plan is likely to be saddled with legal and jurisdictional challenges. NEM recommends that a joint New England States-FERC technical workshop be convened about the gas capacity shortage in recognition of the fact that this truly is a regional problem that requires a regionally-developed and regionally-implemented solution.[2]

NEM submits that the following are representative issues associated with the proposal to permit the EDCs to purchase gas delivery capacity, the impacts of which require thorough consideration by the Department, and in NEM's view, disfavor adoption of the proposal:

1) Section 94A May Not Be a Proper Legal Basis for Approval of the EDC Natural Gas Delivery Capacity Contracts

As an initial matter, it is not clear that General Laws c.164 § 94A unequivocally permits an electric utility to file for approval of the purchase of a gas delivery capacity contract. The statutory language in Section 94A relied upon by DOER in its petition provides in relevant part that, "No gas or electric company shall hereafter enter into a contract for the purchase of gas or electricity covering a period in excess of one year without the approval of the department, unless such contract contains a provision subjecting the price to be paid thereunder for gas or electricity

[2] For example, the lack of incentive for generators to firm up capacity created by FERC Market Rule 1.

to review and determination by the department in any proceeding brought under section ninety-three or ninety-four." NEM suggests that the statutory language is constructed in *parallel*, referencing a "gas or electric company" and each utility's respective, "purchase of gas or electricity," not with the order of the words "gas" and "electric" capable of being used on an interchangeable basis as DOER argued. (DOER Petition at 4). In other words, it is not clear that the legislature would have contemplated an electric utility entering into a contract for natural gas delivery capacity any more than it would have contemplated a gas utility entering into a contract for electricity. As such, Section 94A may not be a proper basis upon which to approve the proposal and could lead to subsequent legal challenges.

2) The Ultimate Use of the EDC Contracted-For Capacity Cannot be Guaranteed

The natural gas delivery capacity the electric utilities contract for may not end up being put to its intended use by electric generators, and therefore, cannot be counted on to solve the problem of high electricity prices. Indeed, when the electric utilities would release the capacity into the market, it could not be earmarked specifically for the electric generators. The electric utilities could sell the capacity to some other entity or entities, besides the electric generators, as they deem appropriate in view of then-current market conditions. As such, the intended benefit of affecting electric prices through increased availability of gas capacity may not be realized. Nor will this proposal address the electric generators preference and practice of relying on secondary firm capacity.

3) Regional Solutions to Capacity Constraints are Being Developed

Alternative, targeted solutions to the gas capacity constraints and the resultant impact on electricity prices should be examined in the context of the New England region energy markets and on-going efforts to address capacity constraints.

- The main point that the lack of excess capacity into New England becomes problematic is during the limited, design day, critical peak times.
- As noted by DOER, "it is not clear how much capacity may be needed to address these issues." (DOER Petition at 2). Additional pipeline capacity into the New England market is expected to come on line by the end of 2016. Moreover, building new pipeline infrastructure is capital-intensive and requires a long time horizon to build. Additional investments in downstream facilities are often also required to link the generators with the capacity expansions on the interstate pipelines.
- ISONE implemented a Winter Reliability Program to mitigate winter reliability risks whereby selected generators were paid to secure fuel inventory and fuel-switching capability, compensated for unused fuel inventory and were subject to nonperformance charges.
- In addition, ISONE's Pay-for-Performance Program will go into effect for the June 2018 to May 2019 capacity commitment period. The Program will penalize underperforming resources through the effective forfeiture of capacity payments and reward performing resources with the capacity payment instead. This is intended to incentivize generators to firm up their fuel supplies and may incentivize fuel storage or pipeline infrastructure development.

The combination of these factors at play in the New England market is still evolving and the full impact is not known. In the interim, as additional pipeline capacity comes on line and the ISO-NE programs achieve full implementation, the need for an additional program in the form of Massachusetts electric utility contracts for gas delivery contracts is unclear. Particularly since the problem of electric price volatility is limited to certain windows in time, during critical design peak days, it may be more prudent to examine limited, localized and less costly solutions that can be brought to bear, such as peak-shaving storage.

4) The State-Level Proposal May Impermissibly Interfere with FERC's Exclusive Jurisdiction Over Wholesale Electric Markets

The intended effect of having the electric utilities enter into natural gas delivery capacity contracts is to regulate wholesale electricity prices outside of the FERC-approved ISONE programs and could constitute an impermissible intrusion into FERC jurisdiction. For instance, the desired consequences of ISONE's Pay-for-Performance (PFP) Program are to improve the reliability of generator performance, incentivize the development of pipeline infrastructure and storage, and thereby mitigate wholesale electricity prices. It could be argued that the proposal for Massachusetts electric utilities to enter into natural gas delivery capacity contracts is meant to undermine or supplant the ISONE PFP Program that FERC approved as part of the overall scheme of ISONE's capacity market. As such, the electric utility contracts could run afoul of FERC's exclusive jurisdiction over the interstate wholesale electric markets.[3]

5) If the EDC Contracting Were Permitted, the Impacts on Competitive Retail Market Development Must Be Considered

If, notwithstanding the concerns cited above, the Authority were to authorize the EDCs to contract for natural gas delivery capacity as proposed, it is critical that the impacts on the competitive retail electric market being taken into account. The retail electric market in Massachusetts has become increasingly robust with more competitive suppliers seeking to serve more customers of all sizes in the Commonwealth. Particularly at this moment in market development, the implementation of the proposal may have significant negative consequences. For example, a competitively neutral means of EDC cost recovery for the contracts must be

[3] Courts of Appeal have found that state programs to promote building of generation through a scheme of capacity payments outside of the PJM capacity construct were preempted by FERC's exclusive authority to set interstate wholesale electric rates. See, e.g., PPL EnergyPlus v. Solomon, 766 F.3d 241 (3d Cir. 2014); PPL EnergyPlus v. Nazarian, 753 F.3d 467 (4th Cir. 2014).

utilized. No recovery mechanism for such costs exists. Without a change, these costs could not be included in EDC revenue requirements. Shopping customers should not be saddled with those costs. Nor should the cost recovery mechanism artificially distort market pricing signals.

Conclusion

For the foregoing reasons, NEM cautions against Department authorization of the proposal for the Massachusetts EDCs to purchase natural gas delivery capacity. The proposal puts Massachusetts ratepayers in the position of paying for capacity that will benefit everyone else in the region. In recognition of the regional nature of this problem, a joint New England States-FERC technical workshop should be convened to examine the natural gas capacity shortage and to identify beneficial solutions that can be implemented on an equitable basis and that complement the programs already adopted for ISONE.

Respectfully submitted,

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