National Energy Marketers Association

Quarterly Regulatory Review
October - December 2001

Federal Restructuring

Daschle-Bingaman Introduce "Energy Policy Act of 2002": Senators Daschle and Bingaman introduced S.1766, the "Energy Policy Act of 2002." The bill provides that: 1) FERC must establish and enforce mandatory standards to ensure the reliability of the transmission system; 2) FERC must establish an electronic system to provide information about the availability and price of wholesale electric energy and transmission services; 3) transmitting utilities must provide service for intermittent generators at rates and terms that do not penalize the generator for scheduling deviations by use of imbalance penalties; 4) states must consider a standard for real-time pricing of electricity, standards for competitive access to the distribution grid, and simplified standard contracts for interconnection of distributed generation; 5) electric suppliers must provide net metering services for on-site generators fueled by renewable energy resources and fuel cells; 6) the FTC must issue rules providing for the disclosure to consumer of price, additional charges, the type of electric generation and environmental emissions produced in generating the electricity sold as well as rules protecting the privacy of consumer information obtained in connection with sale or delivery of electricity; and 7) the FTC must prohibit slamming and cramming in electricity sales to consumers.

Barton Introduces "Electricity Supply and Transmission Act": Congressman Barton introduced H.R. 3406 - the Electricity Supply and Transmission Act. The bill provides that: 1) uniform interconnection standards for interconnection with distribution and transmission facilities should be established; 2) minimum federal standards for net metering programs should be established; 3) FERC shall develop and implement price-responsive demand programs designed to reduce the nation's peak annual electricity demand by 5 percent by 2004; 4) FERC is authorized to issue rules requiring open access transmission service by public utilities on a not unduly discriminatory or preferential basis, such as Order 888 and to provide for wholesale stranded cost recovery; 5) FERC is authorized to issue rules requiring access to transmission service by transmitting utilities that are not public utilities to provide transmission services at rates that are comparable to those each transmitting utility charges itself that are not unduly discriminatory or preferential, and on terms and conditions that are comparable to those required by public utilities; 6) FERC has authority to order transmission of electric energy to retail electric consumers served by local distribution facilities subject to open access, consistent with State law; 7) FERC is authorized and directed to order each transmitting utility to form or participate in an operational RTO within 12 months; 8) FERC is authorized and directed to establish and enforce uniform market rules, including "seams" regulations; 9) FERC shall certify an electric reliability organization to develop enforceable reliability standards, and FERC shall approve reliability standards and enforce compliance; 10)

FERC has the authority to issue permits to site or modify transmission facilities in instances where States have failed to act; 11) FTC shall issue rules for obtaining the consent of a retail electric consumer, for assessing penalties for rule violations, and for the disclosure of consumer information in connection with the sale or delivery of electric energy to retail electric consumers; and 12) retail electric consumers are authorized to designate entities to aggregate purchases of electric energy on their behalf if the consumers are served by local distribution companies whose local distribution facilities are subject to open access.

FERC

Proposed Revisions to Market-Based Rate Tariffs: FERC proposed revising all market-based rate tariffs to include language prohibiting a seller from engaging in anti-competitive behavior as a condition of market-based rate authority. The Commission defined anti-competitive behavior to include behavior that raises the market price through physical or economic withholding. Physical withholding occurs when a supplier does not offer its output to the market during periods when the market price exceeds the supplier's full incremental costs. Economic withholding occurs, for example, during periods of high demand and high market prices when generation capacity whose full incremental costs do not exceed the market price are not producing energy or supplying operating reserves. Those that engage in prohibited behavior would be subject to increased Commission scrutiny, potential refunds, prospective revocation of market-based rate authority for the seller or its affiliates, or conditions precluding the seller from selling at market-based rates to an affiliate. The Commission also discussed a future rulemaking proceeding on new methods for assessing markets and market power.

Interim Market Power Screen and Mitigation Policy: FERC set forth a new generation market power screen applicable to market-based rate applications on an interim basis pending the review of new methods of analyzing market power. The new Supply Margin Assessment (SMA) screen builds on the previous hub-and-spoke method by considering transmission constraints and whether the applicant is pivotal in the market. An applicant is considered pivotal if its capacity exceeds the market's surplus of capacity above peak demand. An applicant that fails the SMA screen must offer uncommitted capacity for spot market sales in the relevant market priced under a split-the savings formula (a form of cost-based rates). The Commission reasoned that applying mitigation to spot market transactions will result in mitigation of longer-term transactions by creating a "standard offer" service for customers. Applicants will be required to post hourly incremental cost data and decremental cost data for the next trading day. In order to mitigate the size of pivotal suppliers, the process of evaluation of generation interconnection applications of unaffiliated entities is to be revised so that the output of proposed projects will be modeled without having to designate a particular load and without having to be selected as a designated network resource at the time of interconnection. Optimum areas for locating prospective generating facilities must be posted on Applicant websites. All sales into an ISO or RTO with FERC-approved market monitoring and mitigation will be exempt from the SMA.

RTO Filings: FERC provided guidance on how it will proceed with RTO filings and related efforts. There will be two parallel tracks, the first of which will involve addressing issues of geographic scope and governance of RTOs in the pending RTO dockets. The second track will be a rulemaking to reform open access tariffs to standardize market design rules. The rulemaking will address business and process issues necessary to accomplish Order 2000 functions. The resulting tariff will be required to be filed by RTOs and other public utilities that own, operate or control interstate transmission facilities.

Standardized Generation Interconnection: FERC has delineated a two-phase NOPR process that will be used for standardized generation interconnection agreements and procedures. The first phase will entail an early 2002 NOPR on terms and conditions of interconnection services. The second phase will entail an April 2002 NOPR on pricing issues associated with interconnections. FERC believed that an early resolution of the pricing issue will aid in resolving RTO issues.

NYISO Virtual Bidding Proposal: FERC accepted NYISO's proposal to implement virtual bidding effective November 1, 2001. The proposal provides that market participants are now able to bid non-physical (virtual) generation and load into the day-ahead market and settle the bids in the real-time market.

Appeals Court Opinion on Order 2000: The U.S. Court of Appeals for the D.C. Circuit issued its opinion on challenges to FERC's Order 2000. The Court ruled that the requirements of Order 2000 are voluntary and that the Utilities failed to demonstrate that they were harmed by Order 2000. The Court therefore dismissed the Utilities' petition. The Court also dismissed petitions challenging FERC's failure to address the costs and benefits of RTO formation and FERC's refusal to forbid passive ownership of an RTO by market participants.

State Restructuring

Georgia

Review of Retail Gas Markets: The Commission directed Staff to initiate a review to determine whether uncollectible revenue is the reason that retail natural gas rates are not tracking wholesale rates. NEM has opposed a requirement that the four leading marketers in the state be required to provide information pertaining to total uncollectibles and bad debt for all customers, monthly operating reports, balance sheets, income statements, annual reports, a description of gas supply contract terms, monthly average weighted cost for supplier contracts, and pricing methodologies for the twenty-two month period prior to October 2001. Staff is also to analyze the impact of deregulation on customers and compare Georgia’s retail natural gas prices with prices paid in other states. The National Regulatory Research Institute will perform an analysis of whether marketers are able to exercise market power in Georgia.

Illinois

Commonwealth Edison Delivery Services Tariff Proceeding: ComEd filed proposed delivery services tariffs for residential and nonresidential customers with rates based on a marginal cost methodology. NEM has argued that delivery services rates, single bill option credits, and metering service credits should be based on ComEd's fully embedded costs. NEM has also urged approval of customer enrollment via telephone and the Internet.

Small Volume Gas Transportation Programs of Peoples and North Shore Gas: The terms of small volume gas transportation programs for Peoples and North Shore Gas are being examined. NEM has urged implementation of supplier single billing, use of electronic signatures for customer enrollment, elimination of proposed aggregation charges and switching fees; allowing suppliers to utilize storage flexibility; making delivery imbalance tolerances and penalty and imbalance charges less onerous for suppliers; and allowing cash-out procedures for the carryover of consumption imbalances.

Maryland

Commission Examines Authority to Order Gas Utilities Out of the Merchant Function: The Commission is examining its authority to authorize a gas company to discontinue its provider-of-last-resort function. NEM and Staff filed Briefs supporting the Commission's authority to order the utilities out of the merchant function pending a Commission determination that it is in the public interest, and NEM has argued that no new grant of statutory authority is required for the Commission to take such action.

Michigan

Mid-Sized LDC Gas Choice Programs: The Commission approved mid-sized LDC gas choice programs as follows: 1) customer enrollment will be phased in for MGU at 10%, 20%, 40% and 100% levels beginning in 2002, and all customers should be able to participate by June 2005. Customer enrollment for SEMCO will be phased in at 40%, 60% and 100% levels beginning in 2002, and all customers should be able to participate by April 2004. Customers will be able to enroll at any time during the year; 2) a customer must stay on a choice tariff for at least 12 months before returning to sales service, although the customer should be permitted to switch between Suppliers. If a Supplier defaults, the customer should return to the LDC’s sales tariff, but the customer should have 60 days to find and switch to another Supplier before being required to remain on the sales tariff for 12 months; 3) LDCs should provide supplier of last resort services to non-transportation customers within their service territories; 4) buy/sell agreements should be utilized; and 4) suppliers on SEMCO's system should not be required to demonstrate firm capacity only that they retain pipeline capacity sufficient to meet their customer requirements. MGU should be permitted to assign capacity at its actual cost. If MGU sheds pipeline capacity by not renewing existing contracts, Suppliers should have to demonstrate via an affidavit that they possess firm primary capacity to MGU city gates for the five winter months equal the capacity turned back by MGU.

Slamming and Cramming Rules: The Commission adopted slamming and cramming rules for electric suppliers providing that: 1) supplier transfers are to be accomplished in writing, telephonically with independent third party verification, telephonically via customer voice response unit, via internet, or through a three-way call initiated by a prospective new supplier with the customer and the old supplier; 2) customers and suppliers being replaced shall receive notification within seven days of a request for change in service from a new supplier by internet, fax, letter or telephone; 3) suppliers shall not bill a customer for a service without the customer's prior consent authorizing the provision of the service; and 4) disputes should be resolved through informal dispute resolution if possible. Otherwise formal dispute resolution will be utilized. Penalties that may be imposed include fines, issuance of refunds to customers and authorized suppliers, and supplier license revocation.

Code of Conduct: The Commission clarified Code of Conduct requirements finding that the Code should only apply in instances where both regulated and unregulated services are provided and should not apply to those relationships involving only regulated services or only unregulated services. The Commission also clarified that application of the Code should not be limited to retail open access activities but rather to all relationships involved in both regulated and unregulated services among electric utilities or to alternative electric suppliers offering regulated services in Michigan and their affiliates.

New Jersey

Basic Generation Service: The Board approved the Utilities proposal for the provision of Basic Generation Service (BGS) in year 4 of the transition period to run from August 1, 2002, through July 31, 2003. The proposal entails use of a simultaneous, multi-round descending clock auction for the procurement of supply to meet the full electricity requirements (energy, capacity, ancillary services, transmission, etc.) of retail customers that have not chosen a Third Party Supplier. The BGS loads of all the electric distribution utilities, perhaps as large as 18,000 MW, are to be bid in the same auction.

New York

Unbundling Proceeding: The Commission ordered utilities to file streamlined embedded cost of service studies on or before March 15, 2002. Thirty days following the submission of the studies, the utilities are to file proposed unbundled rates for competitive services, and the rates are to be effective on 90 days notice. The utilities are further required to file fully allocated embedded cost of service studies with their next major rate filings. Utilities have opposed the implementation of unbundled embedded cost-based rates because the Commission has not simultaneously provided a mechanism for recovery of transition costs. NEM has argued that it is imperative that unbundled embedded cost-based rates be implemented as soon as possible to provide consumers with accurate price signals and permit an accurate computation of revenue losses and whether costs that are unavoidable are properly allocated to the costs of providing POLR service or fully bundled sales service.

Distributed Generation Pilot Program: The Commission approved a three-year RFP pilot program for the use of distributed generation in the utility distribution planning process to begin in the 2001-02 planning season. Criteria for the consideration of distributed generation proposals include: 1) RFPs should only be issued for system needs that require at least 18 months to satisfy from the date they are recognized; 2) satisfaction of the system need by distributed generation must be technically feasible; 3) distributed generation is to be considered as a means of satisfying load growth or the need for expansion or construction of a unit substation or area substation or, at the utility's discretion, for projects on a radial distribution feeder on which load may be temporarily islanded; and 4) distributed generation is to be considered only for projects above specified threshold costs. Each utility must issue a maximum of 2 RFPs in each of years two and three of the pilot, except that ConEd must issue 4 RFPs in year three. Up to one-half of these required projects may be satisfied with utility-owned distributed generation. The Commission decided to require the parties to continue negotiations on standardized core contract terms. It also delayed consideration of arguments pertaining to costs and benefits of distributed generation-related system enhancements and fair allocation amongst customers pending a review of the pilot program.

Standby Rate Guidelines: The Commission approved Standby Rate Guidelines providing that standby delivery service is sufficiently different from full delivery service to justify some difference in treatment, but that insufficient data exists to justify creation of a separate service classification(s) for standby service at this time. Applicable service classes are to be determined based on customers' maximum potential, or contract, demand. Standby customers unique usage characteristics are to be reflected in rate design through the use of a fixed demand charge to recover the cost of local facilities and a daily, as-used, on-peak demand charge to recover the cost of shared facilities. Interval metering is required of all standby customers with contract demands of 50kW or greater. The Commission found that there are no limits to a state's design of standby delivery service rates under FERC's PJM Order once unbundling of energy is accomplished, and therefore, wholesale generators may be charged the standby delivery rates set forth in the Guidelines.

Changes to Uniform Business Rules: The PSC is considering changes to the New York UBP to reflect recommendations arising from the national UBP effort. The PSC is considering replacement of the provisions identified in the Definitions, Customer Information, New Delivery Customer Requirements, Switching Requirements, Slamming Prevention Process, Discontinuance of Service, and Dispute Resolution Process sections of the current New York UBP with provisions entitled Glossary, Customer Information, Customer Agreement and Switching, Customer Inquiries, Disputes Between Distribution Utilities, ESCO, Direct Customers, Default Providers, and Registration Agents, and ESCO Eligibility.

NIMO-National Grid Merger Approved: The Commission approved settlement of the NIMO-National Grid merger that provides for delivery rate reductions, institutes a 2 mill credit for demand metered and residential customers and a 4 mill credit for non-demand metered customers, and extends the gas delivery service rate freeze through December 31, 2004. The settlement also: 1) institutes a distributed generation pilot program; 2) replaces Rule 12 with the rules recently established in the standby rate proceeding; 3) retains Rule 44, allowing NIMO to recover non-commodity lost revenues if a customer changes voltage levels; and 4) modifies Rule 52, that imposes exit fees on individual customers leaving the NIMO system, to allow an exemption for customers receiving service from a third-party generator if the generating capacity is installed after the effective date of the settlement, is located on the customer's property or is immediately adjacent, and is used to serve that single customer.

Ohio

Gas Supplier Rules Adopted: The Commission issued final rules for competitive retail natural gas service. The rules pertain to supplier certification, financial security requirements, opt-out aggregation, customer enrollment procedures, marketing and solicitation rules, and customer billing.

Uniform Interconnection Service Requirements: The Commission approved uniform interconnection service requirements including a Pro Forma Interconnection Tariff, an Application for Interconnection and Parallel Operation with a Company Distribution System, Technical Requirements for Interconnection and Parallel Operation of Distributed Generation, and the Interconnection Request Screening Process.

Pennsylvania

Investigation of PJM Installed Capacity Market: The Commission ordered an investigation into the PJM installed capacity market. The investigation was prompted by a Report issued by PJM finding that an unnamed entity engaged in economic withholding during the period of January 1 through April 30, 2001. The PJM Report concluded that subsequent changes in PJM rules have corrected the market design flaws that allowed this exercise of market power. The Commission noted that to the extent there was an exercise of undue market power in the PJM ICAP market, there was probably a corresponding effect for the PJM retail market. The Commission is seeking comments on the PJM Report, suggested remedies for the reported conduct, and whether changes to the competitive safeguard regulations are warranted.

Full copies of all of the above Orders, tariffs, rules and procedures are available on the NEM Website www.energymarketers.com or by calling NEM headquarters at (202) 333-3288.