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Dueling filings map out FERC's FIT dilemma in California

FERC will have to decide whether or not the Federal Power Act (FPA) supersedes a California state law on feed-in tariffs (FITs), with dueling requests from the California PUC and the state's three big IOUs. Unless properly worded, FITs can clash with the Public Utilities Regulatory Policies Act (PURPA), too, by requiring utilities to buy power at a rate above avoided costs.

While the case is based on a California law, it drew interventions last week from national associations plus entities on the opposite side of the country.

Feed-in tariffs -- that have been used abroad to promote renewable energy -- dictate an above-market payment for renewable resources. Saying what a generator will get paid in interstate commerce brings up questions on how it relates to the FPA -- that gives FERC sole authority over such rates.

The PUC wants FERC to let it make the utilities buy energy from combined heat and power (CHP) systems that meet stringent environmental limits at a price the state sets. The state commission recently issued a rulemaking on the subject that was prompted by Assembly Bill 1613.

In its petition, the PUC cited global warming as the main reason FERC should not usurp the California law, arguing that at its core it deals with environmental issues that FPA and PURPA ignore.

Pacific Gas & Electric, Southern California Edison and San Diego Gas & Electric want FERC to use the supremacy clause of the Constitution and use its powers under the FPA to throw out the CHP feed-in tariff.

The three IOUs argued that the PUC failed to directly present before FERC this clear and precise legal question -- "can a state, in furtherance of its own policy interests, demand that wholesale power be purchased from public utilities at a price set by the state, or does the FPA preempt such action?"

The utilities noted that states have other actions they can take to promote renewable energy such as ordering them to buy renewable generation, or encouraging through tax incentives and direct subsidies. A state cannot advance its objectives by setting the price for wholesale power sold by public utilities, they added.

But California is trying to do that with the CHP law and in other ones. Senate Bill 32 includes a provision requiring utilities to buy power from 3 MW or smaller renewable generation plants and

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Ohio lawmakers pass tax break for green power

Called a wind energy bill by proponents, Ohio lawmakers passed Senate Bill 232 last week to bring the effective tax rate for renewable energy project in line with other states in an effort to attract more projects. Gov Ted Strickland, D, can now sign it or kick it back but lawmakers probably aren't worried since the governor called for a bill doing what SB 232 does when he supported the elimination of what he called the uncompetitive tax in his 2010 state of the state address.

"The elimination of this tax improves Ohio's competitiveness and will spur job creation in the growing energy production industries," said Strickland Friday.

"I appreciate the legislature's commitment to growing the advanced energy industry in Ohio. I look forward to signing this bill as soon as it reaches my desk."

SB 232 eliminates Ohio's tangible personal property tax on generation for advanced energy project that start building before January 2012, produce energy by 2013 -- 2017 for nuclear, clean coal and cogeneration projects -- and create Ohio jobs.

[Comments]

NEM addresses Pennsylvania's look at least cost purchase standard

The Pennsylvania PUC is looking at changing its default service rules, particularly in how they pertain to the "least cost" standard for IOU purchases but NEM wants to make sure regulators keep their eye on competition. The "least cost to customers over time" standard should be consistent with the competitive power market principles adopted for the Commonwealth in the Customer Choice & Competition Act, said NEM in comments to the PUC.

Competitive market forces rather than regulatory intervention should be allowed to identify and meet the need for new capacity resources. PJMs reliability pricing model was implemented to work that way, noted NEM President Craig Goodman.

This would seem consistent with the PUCs own stance back in 1996 when it put choice in place. At the time, regulators pointed out that "competitive market forces are more effective than economic regulation in controlling the cost of generating electricity."

NEM wants regulators to keep in mind that the least cost procurement standard should be implemented consistently with competitive market policies in implementing a "least cost procurement requirement and that the policies in the choice law should be integrated into the PUC's interpretation."

NEM believes the "least cost to customers over time" standard should not only be consistent with the competitive market principles adopted in 1996, but the standard has to be implemented in a way that promotes the availability of competitive market choices to consumers.

"By this, we mean that a least cost procurement standard must be based upon and yield market-based utility default service pricing," said NEM President Craig Goodman.

"The commonwealth has already experienced the impact of prolonged rate freezes followed by significant price increases when utility rates catch up to the market. The harmful impact to consumers in terms of budgeting for utility price increases, delaying the availability of energy choice options, and general confusion caused by utility rates that are not transparent, can be avoided and should not be repeated."

The PUS is looking at whether the default service regulations should be revised to include rules that ensure the building of generation capacity in Pennsylvania. Legislators and consumers throughout the nation have learned that cost-plus regulations that rely on vertically integrated energy monopolies to provide otherwise competitively-available energy supplies, services and technologies raises both the costs and risks associated with such investments, said NEM.

"NEM is very concerned that a return to utility-integrated resource planning and long term contracting represents a huge step backward toward the vertically integrated energy monopoly model," said Goodman.

"The restructuring of the natural gas and electricity industries was initiated in large part because the historical cost-of-service approach to energy supply and demand facilitated a steady increase in the costs for energy to the ultimate consumer, even in times of declining wellhead prices. Likewise, it was recognized that regulated rates are a poor proxy for the efficiencies, innovations and potential price savings yielded by competitive markets."

[Comments]

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Assembly Bill 920 requires payments to customers with DG and net metering. The PUC has yet to implement those two laws.

The PUC does not dispute FERC's exclusive authority over wholesale rates. It argued that making utilities offer contracts at specific rates to encourage CHP -- that those systems do not have to accept -- does not clash with federal authority. In the FPA, Congress preserved state authority over how utilities provide retail service as long as it is not in conflict with FERC and the commission has let states have authority over discretionary procurement decisions.

In a protest to the utilities' request, filed Friday, State Attorney General Jerry Brown's office argued that FITs that represent offers to buy developed as part of the process for retail procurement.

The tariffs provide a baseline standardized offer for excess power from eligible CHP units and fit within the state's traditional retail procurement role, said the AG. The PUC is not setting the rate for the wholesale generator but is setting a price that the IOU has to offer the generator to meet environmental goals of the state law.

An EEI filing last week disagreed, urging FERC to throw out the FIT, though it took no position on the PUC's objective of promoting advanced generation technology to cut greenhouse gases. It did argue making utilities pay a fixed rate clashes with the FPA.

While the AG and PUC argued that the FIT is a "requirement on retail sales service," EEI shot back that the contracts are for the wholesale power sales -- the rates, terms and conditions of which are subject to exclusive FERC jurisdiction.

California is trying to use economic regulation to promote its environmental agenda and that intrudes on FERC's exclusive jurisdiction of wholesale rates, said EEI. The issues being weighed by FERC in the California proceeding could be taken up by Congress. Rep Jay Inslee, D-Wash, introduced a FIT bill last Congress but it died in committee and he has yet to resubmit it.

[Comments]

New York starts work on offshore wind power in great lakes

The New York Power Authority (NYPA) is starting the process of looking at five proposals to build the Great Lakes Offshore Wind (GLOW) project or projects in the New York State waters of Lake Erie and/or Lake Ontario. The next phase is scheduled to take place in late 2010 or early 2011 when the NYPA trustees will evaluate the staff recommendations and select a preferred developer. Once a contract is signed, the NYPA expects construction to start two to three years later.

"Our area is a bi-national location. We have proximity to major markets, an existing base of suppliers and transportation infrastructure, as well as the strong wind patterns off the Great Lakes," said State Assemblyman Dennis Gabryszak, D-Cheektowaga. "This initiative has the potential not only to provide power but also to support many green-collar jobs for the construction, operation and maintenance of wind power facilities."

While wind project is very different from the oil rig disaster causing havoc in the Gulf of Mexico, some of the conversation around it touches on the oil spill.

"The devastation caused by our shortsighted energy decisions has never been more apparent than with the oil release still gushing in the Gulf," said Brian Smith, WNY program director for Citizens Campaign for the Environment. "Fortunately, today we are taking a step in the opposite direction, toward a cleaner, safer energy future in our great lakes."

The mayor of Niagara Falls -- basically located between Lake Ontario to the North and Lake Erie to the South -- came out in

Report describes using gas, storage to balance wind's variability

Combining wind generation with gas power and storage can create highly dispatchable systems that still carry many benefits of the renewable resources, said a paper by the Carnegie Mellon Electricity Industry Center released Friday. Wind generation presents variability on every time scale that has to be accommodated by the grid -- though the systems can be set up to cut that factor to 0.5%, said "Compensating for Wind Variability Using Co-Located Natural Gas and Energy Storage," by Eric Hittinger, JF Whitacre and Jay Apt.

The paper describes a system designed to produce near constant baseload power at a reasonable cost while still delivering significant environmental benefits. It can get to the 0.5% variability with 30% of the energy coming from wind at a cost of about $70/mwh.

Coupling wind generation with just gas smoothes out variability over longer time periods but since the fossil generation takes longer to ramp up than wind ramps down, it is rather bumpy over shorter periods.

Throwing storage into the equation takes care of the short-term reliability since it can respond to grid signals faster.

[Comments]

support of an offshore wind project, again with a reference to the Gulf of Mexico.

"We have to look no further than today's headlines to see that the future of our long-range energy needs rests not on fossil fuels but on clean, renewable energy from wind, solar and hydroelectric," said Mayor Paul Dyster. "Making the transition is a task of historic proportions but we cannot shy away. There is no alternative and as the environmental crisis in the Gulf shows, failure is not an option."

[Comments]

3 stories in 2 minutes

FirstEnergy, Allegheny ask for Virginia's OK: FirstEnergy and Allegheny Energy continued filing paperwork to get their proposed merger approved with a filing made with the Virginia State Corporation Commission (SCC) Friday. The firms need SCC approval since Allegheny Energy owns transmission assets in Virginia through Potomac Edison and the Trans-Allegheny Interstate Line Co (Trail). The SCC earlier this month approved Allegheny Energy's sale of Potomac Edison's distribution service territory and facilities to Rappahannock Electric Co-op and the Shenandoah Valley Electric Co-op. In their application, FirstEnergy and Allegheny said the proposed merger would not negatively impact the service offered by Potomac Edison and Trail. The merger is expected to close in the first half of 2011. The firms have filed applications with FERC, the Pennsylvania and West Virginia PUCs and the Maryland PSC.

Michigan to speed up Consumers' refunds: Consumers Energy has been a bit slow to issue refunds to customers and now the Michigan PSC plans to move things along. The refund was estimated initially at about $39.6 million plus interest. Eventually the PSC came to a number of $32.1 million while Consumers Energy believes $11.7 million is better. Consumers filed a refund proposal in January but still has the over-collected ratepayer money. To get the refund moving, the PSC will read the record in the refund proceeding, dispensing with the need for a proposal for decision by the ALJ in this case. Regulators told all of those involved in the case to file briefs by July 16 and reply briefs July 30, as originally provided for by the ALJ then the PSC will take up the matter.

Gas futures rise 55¢ in 3 days: NYMEX July natural gas futures tested $5/MMBTU Friday but failed to settle near there, analyst Jackson Mueller reported. The contract closed up 10.7¢ to hit $4.797 after hitting a high of $4.977. Despite not closing near its high, the contract added 55¢ the last three days of last week. Aggressive buying Friday turned to another rally in gas futures, with the market still finding support in EIA's 88 BCF storage report issued the day before. The rate of the build was slower than historical numbers.

[Comments]

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Abbreviations: To see a glossary of *Restructuring Today*'s abbreviations, go to www.restructuringtoday.com/glossary.

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