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Retailers oppose New York PSC straw man on DERs

Comments flooded the New York PSC this week on its staff's straw-man proposal for the "Reforming the Energy Vision" (REV) rules (RT, Aug-26). The proposal argued the broad concept of REV, expanding distributed energy resources (DERs) and integrating them into the distribution system, would bring about big benefits and it left the utilities as market makers and market players.

The staff found that creating an independent "distribution system operator" would avoid the market power issues that having utilities also play in the market creates, but it would also duplicate costs and functions that the wires firms already perform.

The National Energy Marketers Assn (NEM) believes any cost savings are outweighed by the negative impacts having the utilities make and compete in the market would have. "It would be a system ripe for market-power abuse and create inherent conflicts of interest for the utility," NEM wrote.

"If the commission were to institute the utility as DSP [distributed system platform], it is imperative that the utility be limited to its pure monopoly distribution and reliability functions and not be permitted to engage in the DER market and offer competitive energy-related, value-added services."

The Retail Energy Supply Assn (RESA) argued that keeping the utilities as market makers and players would depart from the PSC's original vision of relying on "free and fair competitive markets to meet the identified needs of consumers." Relying on the market means that customers should be the locus of decision-making and the center of control.

Instead, the straw-man would have utilities as the driving force behind the DER market, said RESA.

"Under this construct, the utility will control access and entry to the DER market, act as policeman of the market, compete directly with competitive DER providers and be in control of all planning," the group added.

The straw proposal would expand the scope of the utility business model by letting the firms assume expansive powers and controls over areas that were not previously part of utility operations, RESA said.

Wal-Mart does not want the utilities to be allowed to make and compete in the market because that would "allow for the re-monopolization of competitive markets and opportunities and introduce monopoly-related inefficiencies into the DER space."

Former FERC Chairman Jon Wellinghoff, now a partner at Stoel Rives, filed comments earlier urging the commission to set up an independent distribution system operator. But now, with staff endorsing utilities for that role, he argued they needed strong rules to prevent harm to the competitive market.

The third-party oversight of utilities' role as market makers needs to be stood up immediately, Wellinghoff said, adding that FERC lacks adequate enforcement staff and in 2000-01 the results of too little enforcement staff became "legend." Enforcement turned around since then, he added, but the PSC should enter the REV era with adequate oversight.

The PSC should require utilities to set up contingency plans to turn over the DSP role to an independent third-party if the current system does not work as planned, Wellinghoff added.

The joint utilities of New York wrote they generally support the straw proposal and are ready to assume the responsibilities of the DSP. Utilities have an important role to play in growing the retail markets due to their singular knowledge and understanding of their respective distribution systems and their existing relationships with customers.

"Utilities are uniquely positioned to help customers engage in REV technologies and to expand interest of all customers in DER, whether through the utility or through a third party," said the joint utilities. "The efforts of utilities to increase DER will facilitate the state's ability to meet its near-term objectives of enhancing resilience, promoting clean energy adoption, increasing system efficiency and building robust competitive markets."

NRG Energy argued regulated utilities cannot be allowed to make "regulated investments" in the DER market because that would crush competition. The firm has issues with the utilities being the DSP in the first place, but if that is to happen it has to be accompanied by strict and enforceable measures that prevent utilities from abusing market power.

The straw proposal appeared to recognize the need for a "mini-ISO" with similar functions and expensive software designed to centrally control DERs. Some similarities with ISOs might be appropriate, but NRG argued the PSC should not go too far in adopting that model because innovative DERs could become more and more capable of automation and decentralized optimization.

NYISO shares concerns

DER providers could end up functioning in NYISO markets along with the DSP ones overseen by the PSC, the ISO said. It plans to work closely with the PSC and relevant stakeholders to develop rules that facilitate a robust market for retail DERs.

The staff proposal noted that more DERs would mean a lower installed capacity requirement and thus lower capacity costs overall for consumers. NYISO believes the impact DERs will have on the requirements depends on many factors such as their resource type and the ultimate design of any programs.

Lessening the need for expensive peaking plants will require a uniform understanding of the performance of DERs, said NYISO. DER integration will take coordination between distribution and bulk-system planning processes.

The resources might end up pushing the requirements for ancillary services so grid operators can call on enough quick-start, centralized generation to balance any shifts in DER output, noted NYISO. The ISO will also need to have good visibility into DER deployment, which would likely take place on a quicker time scale and without the same notices to it as central station plant development.

Idea is to grow DERs

A major reason DERs have not taken off in New York is retailers' lack of access to customer use data, which would let them offer DR type products. NEM argued that fixing that situation should be one of the commission's first goals in the REV proceeding.

Staff proposed setting up a bi-directional data exchange on use where customers could opt in and providers would have to sign agreements not to abuse the information released. But NEM argued the data collection should be done on an opt-out basis and privacy concerns could be dealt with by aggregating the data by zip code and limiting access to licensed suppliers who are overseen by the PSC.

AARP and the Public Utility Law Project (PULP) urged the PSC not to get ahead of itself in the process, which set real-world costs and benefits for "Track 2" while the current "Track 1" deals with policies that can jumpstart the DER market. The straw proposal often said DERs would bring consumers benefits, but that has not been backed up by any actual analysis, said the two consumer groups.

The PSC should actually count the dollars and cents before instituting any major policy changes, AARP and PULP urged.

Wellinghoff shares strategies for Order 745, beyond

The District of Columbia Circuit Court of Appeals ruling last week denying an en banc rehearing for a panel's decision vacating Order 745 was not unexpected for the rule's main backer. "However, it was disappointing in the sense that we do believe that there are substantial financial benefits to the efficiencies that demand response brings to the organized wholesale markets," former FERC Chairman and Stoel Rives Partner Jon Wellinghoff told us yesterday.

Getting an en banc rehearing from an appeals court is very rare and happens less often than getting a petition for a writ of certiorari from the Supreme Court where that body decides to review a case, said

Wellinghoff. He is also the strategic counsel for the DR group the Advanced Energy Management Alliance.

"We're hoping to see if this can be appealed to the US Supreme Court," Wellinghoff said. "We're also hoping to see if there can be some mechanism to work out with the states to have some sort of a coordinated jurisdictional effort between the states and FERC to continue on in the energy markets."

DR saved consumers in PJM about $10 billion in each of the last few capacity auctions and if the circuit's ruling stays in effect, FERC will have to decide whether it impacts that market. Wellinghoff hopes the ruling does not impact capacity markets because that is where the bulk of the savings from DR has been.

"If not, it's going to be a huge loss and tragedy for consumers from an economic perspective," he added. "And it's certainly going to be something that we're going to have to rectify going forward because demand response has aptly demonstrated its ability to provide efficiencies in the market."

But if the decision stands through any Supreme Court action and its impact gets expanded to the capacity markets, the states will have to step up and regulated DR, Wellinghoff said. The resource saves consumers tens of billions of dollars/year so it makes sense that states would want to preserve its role.

FERC would have to take a back seat in such an arrangement, but the impact of DR on the wholesale markets would not go away and Wellinghoff suggested that federal and state regulators could work together to make sure its value is reflected and allocated back to providers.

2 stories in 1 minute

Coming heat not moving gas futures: NYMEX October natural gas futures moved near even for most of yesterday's trading session as the calendar limited weather support and traders looked forward to another large storage injection this week, analyst Jackson Mueller reported. The contract fell 3.4¢ to close at $3.816/MMBTU. Heat is forecasted to blanket the bulk of the country in the next few days, so some cooling demand is expected to linger and push back the return of triple digit storage injections, Mueller said. Early expectations for this week's EIA storage report have it coming in around 91 BCF.

Pepco shareholders OK Exelon merger: Pepco Holdings' (PHI) shareholders yesterday voted to approve the firm's proposed merger with Exelon. The IOU is very pleased with the results, PHI CEO Joseph Rigby said, because the deal is in the best interests of its customers, communities, stockholders and employees. The deal still needs the approval of FERC and state regulators in Delaware, the District of Columbia, Maryland, New Jersey and Virginia. The firms expect to close the transaction in Q2 or Q3 next year.

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