Energy Policy Update

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Welcome to Constellation's Energy Policy Update. This publication is designed to provide Constellation customers and channel partners with an overview of recent and relevant regulatory and legislative matters affecting competitive energy markets.

Since the inception of retail competition in California in 1995, Constellation has been an active participant in regulatory and legislative matters affecting the development of competition, competitive markets, and customer choice.

NRC Approves Waste Confidence Rulemaking; Resumes Licensing Actions

The Nuclear Regulatory Commission (NRC) last week approved a court-ordered rewrite of its finding that used nuclear fuel from reactors can be safely managed indefinitely. The so-called "waste confidence" finding is required for the Commission to approve applications for new licenses or license renewals. A federal court had thrown out the previous rule, finding that Commission had failed to adequately consider the possibility that a permanent disposal site may not be available.

Obama Nominates Honorable to Become FERC Commissioner

President Obama nominated Colette Honorable to become a Commissioner at the FERC. If confirmed, Honorable would fill the seat vacated on 8/20 by John Norris (D). Honorable, a Democrat, has been frequently rumored as a candidate for FERC commissioner. She currently chairs the Arkansas Public Service Commission and is president of the National Association of Regulatory Utility Commissioners.

Previously, Honorable served in various roles for now Governor of Arkansas, Mike Beebe (D) and in private law practice, among other positions. The exact timing for her to begin serving as a Commissioner is not yet clear - formal paperwork related to her appointment must be submitted to the Senate Energy and Natural Resources Committee, which will consider her application prior to full Senate consideration.

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Inside this Issue

STATE UPDATES

CALIFORNIA

Over the weekend, California's legislative session ended. The following summarizes the action on some of the key energy-related bills:

AB 2145: Community Choice Aggregation (CCA). This bill started with a requirement that CCA become opt-out programs, which would have likely ended any new CCAs from forming. That provision was eliminated in early amendments, due to massive lobbying against the bill by the pro-CCA advocates. Subsequent amendments sought to limit the growth of any one CCA to no more than three contiguous counties. However, in the final hours, the bill failed to get the votes it need to move to the governor's desk, so it is now dead.

SB 1139: Geothermal bill: This bill would have mandated 500 MW of new geothermal to be contracted by all California Public Utilities Commission (CPUC) jurisdictional load serving entities (IOUs, ESPs, and CCAs). The bill did not receive enough votes to pass.

SB 1414: Demand Response bill. This bill requires the CPUC to determine how to integrate demand response into the resource adequacy requirements. This bill did pass and is on its way to the governor's desk. Since it is expected that the Governor will sign the bill, a new regulatory proceeding will likely be initiated at the CPUC to determine the regulations through which demand response will become a mandated element of the state's resource adequacy program, and the extent to which the utilities will be allowed to procure demand response resource on behalf of competitive suppliers and their customers.

AB 69: Transportation fuels in cap and trade. This bill would have deferred the addition of the transportation fuels into the cap and trade program, significantly reducing the scope of cap and trade. This bill failed to pass out of the legislature largely because of the desire of many legislators and the Governor to capture the additional cap and trade revenues that inclusion of this section will create, so transportation fuels will be part of the cap and trade program.

Distributed Generation Rulemaking - The CPUC initiated a rulemaking that requires Southern California Edison, Pacific Gas & Electric and San Diego Gas & Electric to submit Distributed Resource Plans (DRPs) to increase use and deployment of distributed resources. This effort is required as a result of AB 327, which became law in California in 2013 and required these plans to be developed by July 2015. AB 327 also required the Commission to evaluate distributed generation rate design issues, and specifically to address the issue of whether departing residential solar load should pay additional charges to cover utility stranded costs.

To date, the CPUC, in a separate rulemaking, has authorized the utilities to charge residential solar customers approximately $10 per month in 2014. Fees beyond 2014 have not yet been established.

ILLINOIS

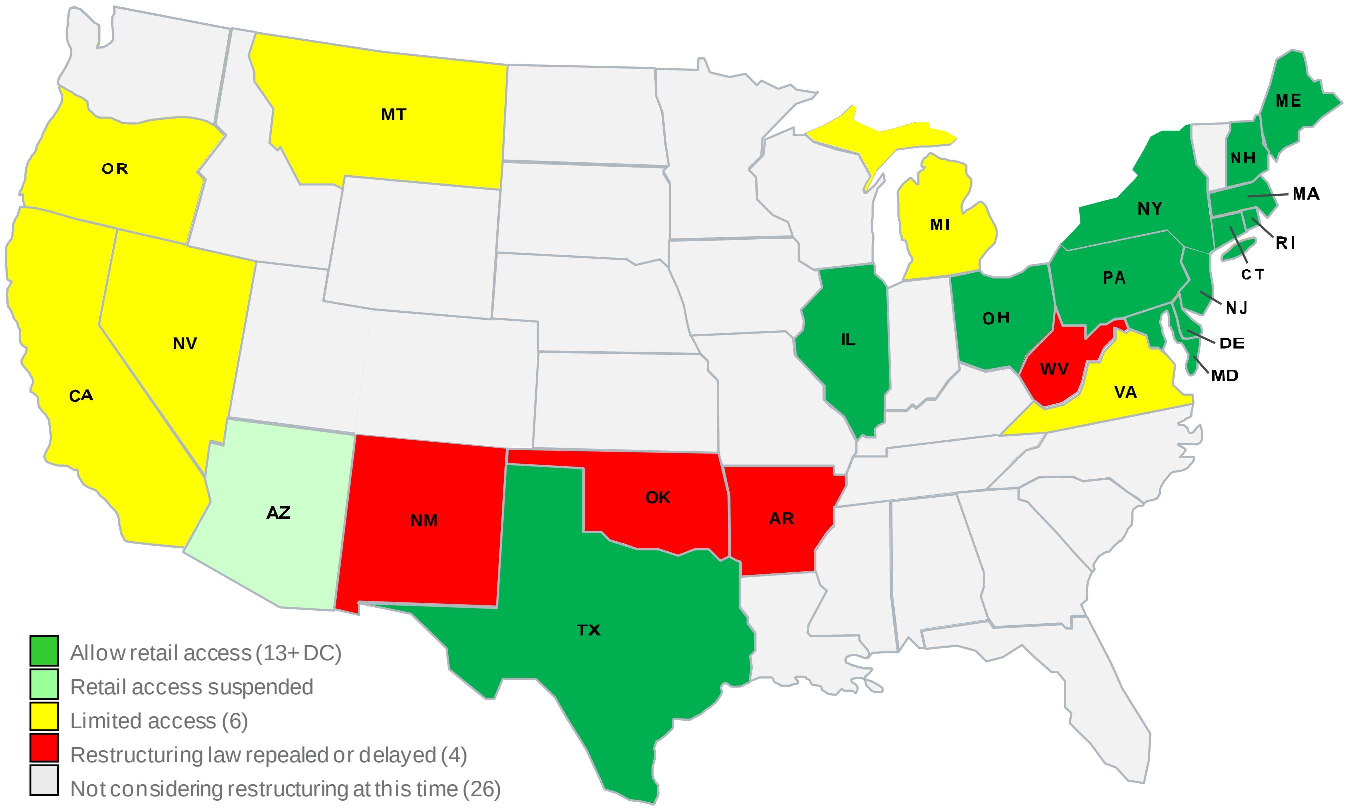
Illinois Power Agency (IPA) Releases 2015 Draft Procurement Plan for Utility Customers - On 8/15, as required under Illinois law, the IPA posted its annual Draft Power Procurement Plan for the five-year period (June 2015 through May 2020) for the eligible retail customers of Ameren Illinois Utilities (AIU) and ComEd that are not being served by a competitive retail electric supplier. The Draft Plan, consistent with past IPA Plans, will utilize a three-year laddered, block and spot, approach.

Constellation has consistently opposed the use of the block and spot approach and has long advocated for the use of full requirements, load following (FR) products. In last year's proceeding, the Illinois Competitive Energy Association put forward a detailed analysis and report from the Northbridge Group to support the recommendation to serve a portion of the load via FR products. This was supported by the Retail Energy Supply Association.

While the Illinois Commerce Commission rejected that recommendation, workshops were ordered and held a few months ago. Unfortunately, the IPA continues to favor the block and spot approach, along with its own hedging program as opposed to reliance upon FR products. The Draft Plan also continues the same proposal for the purchase of renewable energy certificates to satisfy ComEd and AIU's requirements under the renewable portfolio standard in Illinois.

The Draft Plan also proposes for the first time a new procurement of energy efficiency as a supply resource. Comments on the Draft Plan

Competitive US Retail Electricity Markets



are due 9/15. During that time period, the IPA will hold two public hearings to hear public comments and answer questions. The IPA's deadline for filing a final plan with the Commission is 9/29. The parties then have until 10/6 to file Objections to the filed plan.

Governor Signs Natural Gas Competitive Report Legislation - On 8/26, Governor Quinn signed Senate Bill 3437, the Natural Gas Competitive Report legislation, into law. The legislation directs the Illinois Commerce Commission's Office of Retail Market Development to monitor existing natural gas competitive conditions, identify barriers and propose solutions to overcome barriers to natural gas competition. Annually starting 10/1/15, the report must include an assessment of natural gas market development in Illinois.

▶ MARYLAND

Offshore Wind Regulations - The Maryland PSC finalized and adopted regulations to implement the Maryland Offshore Wind Act of 2012. While most of the regulations apply to projects that would apply to the PSC for approval, some apply to competitive suppliers, and how they must meet the Offshore Wind Renewable Energy Certificate (OREC) requirements. After a project is approved by the PSC, the PSC will set an OREC schedule: a 20 year schedule of OREC prices set at least 3 years in advance of suppliers having to fulfill their OREC obligations.

Compliance begins after a project is approved but no earlier than 2018. Other details include an OREC price cap of $190 per MWh (2012 levelized dollars); quarterly compliance requirements (as opposed to annually as is the case for other RPS compliance requirements in MD); and an administrator to facilitate payment to and from the developer.

NEW YORK

NY Prize Microgrid Competition - Governor Cuomo announced a competition to support innovative resiliency and clean energy projects across New York. The $40 million NY Prize Competition will launch this fall and be administered by the New York State Energy Research and Development Authority. It challenges New York businesses, entrepreneurs, and electric utilities to design and implement community-based microgrids. Microgrids are local energy networks that are able to fully separate from the larger electrical grid during extreme weather events and emergencies, providing vital public services and power to residential customers and critical operators such as hospitals, first responders and water treatment facilities.

OHIO

FirstEnergy Holds Technical Conference on PPA Proposal – Last week, FirstEnergy's Ohio utilities held a technical conference to discuss their Electric Security Plan filing which will commence 6/1/16 and last three years until May 2019. The most controversial aspect of the ESP filing is the Economic Stability Plan which lasts 15 years through May of 2031.

The Economic Stability Plan consists of the FirstEnergy Utilities buying, via a purchase power agreement, about 3,200 MW of output from power plants owned by its affiliate FirstEnergy Solutions (FES), including the Davis Bessie nuclear facility, and selling that power into the PJM markets. FirstEnergy will collect from all customers, shopping and non-shopping, the difference between the cost of the FES power (including a return on equity for FES) and the revenues from the sales of power to PJM.

These charges will be imposed via a non-bypassable rider. FirstEnergy has asked that the Commission render a final decision in the case by April 2015 so FirstEnergy can fully participate in the PJM Base Residual Auction and conduct their Standard service procurement auctions. The proposed schedule from FirstEnergy asks for Intervenor Testimony to be filed by 12/5 and a hearing on 1/20/15. The Administrative Law Judge indicated that she would rule on the procedural schedule soon.

OREGON

Re-entering Portland General Electric Market – Constellation is hosting a webinar on September 10th to apprise potential customers in the Portland Generation Electric (PGE) territory of their shopping opportunity. The webinar will cover energy supply products that Constellation offers and steps required for customers to take competitive retail electric service. The shopping window for eligible commercial and industrial customers in the PGE territory is the month of September. For customers in PacifiCorp's territory, the shopping window is mid-November through mid-December. If you are interested, register for the webinar at energy.constellation.com/2014Portland or contact your Constellation BDM.

FEDERAL REGULATORY

FERC

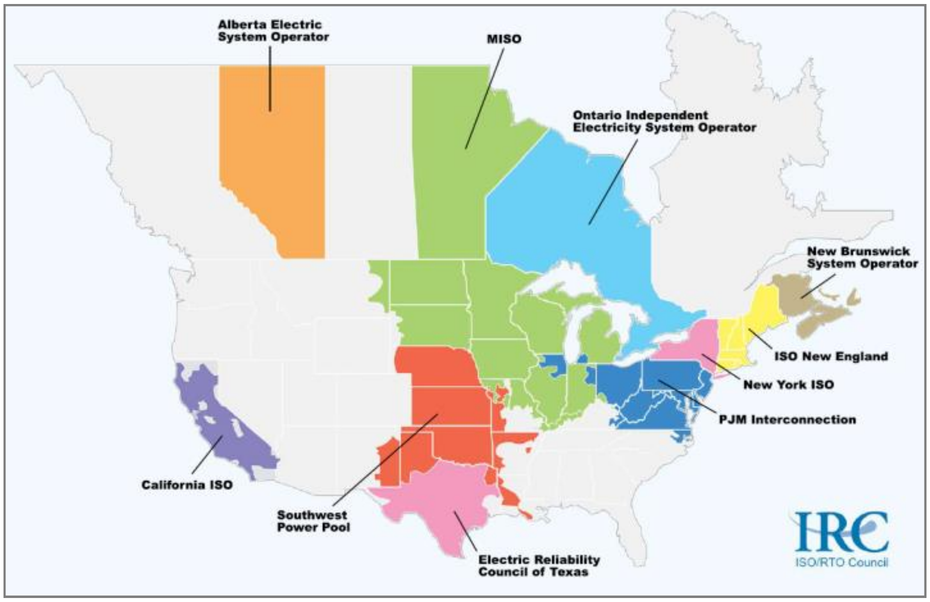
Request for Comment on Information Collection - On 8/26, FERC requested comment on its intent to collect performance metric information from ISOs, RTOs and public utilities in regions outside ISOs and RTOs. The data collected by FERC on performance metrics would be used to evaluate reliability and system operations performance.

NYISO

Market Reforms – Last week, the NYISO presented proposed changes to the shortage and scarcity pricing provisions in their energy market. NYISO is proposing to: (1) model Southeast NY reserve region which includes the Lower Hudson Valley, NYC and Long Island, (2) revise the NY control area total reserve requirement, (3) identify and define Critical Operating Days, and (4) revise reserve, transmission and regulation shortage pricing.

NYISO proposes to increase the reserve requirement from 1,965 MW to 2,620 MW. Additionally, the ISO proposes to increase the reserve deficiency price from $250 to $750 during Critical Operating Days (COD). CODs may be declared either in the Day Ahead or in real time. Conditions/factors which contribute to a COD declaration include forecasted load levels and reserve deficiencies and Special Case Resource day (DR) ahead activation.

NYISO will bring the proposal through the stakeholder process with the goal to implement comprehensive shortage (shortage of reserves) pricing reforms for Q2/2015 and comprehensive scarcity (dispatching of DR) pricing reforms by Q2/2016.



ISO-NE

Forward Capacity Auction #9 (FCA 9, 2018/19, Feb. 2015 Auction) - ISO-NE released its proposed Installed Capacity Requirement (ICR) and Local Sourcing Requirement values for Forward Capacity Auction (FCA) #9. A few items of note:

- NEMA/Boston and Connecticut appear to have surplus existing capacity relative to their Local Sourcing Requirements but this could change if there are retirements (or resource terminations) in these zones. The existing resource total shown for NEMA includes the 674 MW Footprint Power unit (a planned combined cycle unit that cleared as a new resource in FCA #7 (2016/17) but has been delayed in reaching commercial operation). With Footprint, the NEMA Zone is long by 296 MWs. The ISO filed a rule change at FERC that would permit Footprint to defer its Capacity Supply Obligation by a year. FERC has yet to approve the rule change, although the ISO asked for an immediate adoption and we expect FERC to do so. Under the proposed rule, Footprint would be required to seek a waiver at FERC;
- The Local Sourcing Requirement for the new SEMA/RI zone is about 500 MW higher than the existing capacity there so this zone will need new capacity in FCA #9.
- The Net ICR value of 34,189 MW is about 1,300 MW higher than the existing resources in New England, suggesting that the clearing price in FCA #9 will be set by a new capacity resource. Note, imports are considered as a new resource every year. Historically, between 1700 MWs and 2200 MWs of imports have been offered in every year.

Of note is the fact that the FCA 8 results have not been approved by FERC. A FERC modification to the FCA 8 results could impact the planning parameters. The ISO has stated that the failure of FERC to certify the FCA 8 results by 10/20 could push back the FCA 9 auction date.

ERCOT

Ancillary Service Market Redesign - ERCOT continues to provide information regarding the anticipated redesign of the ancillary service market, which is supposed to provide the region with an improved ability to respond to a drop in frequency or loss of a resource.

As part of that process, ERCOT hosted a workshop to discuss the new framework. Based on the presentation and the magnitude of the changes, it is now not expected that any elements of the proposal will be implemented until mid-2018 (three years from the expected tariff language change approval). The next major step in the process will be the release of a detailed cost/benefit analysis which should be completed around March of 2015.

Demand Response - ERCOT is searching for ways to better align the existing Demand Response (DR) procurement methodology for one DR product - Emergency Response Service (ERS) - with the actual operating conditions during the winter peak. Currently, ERCOT procures ERS in three separate four-month terms as well as procuring separate amounts for business hours and non-business hours.

ERCOT provided two proposals for stakeholder review. The first option would alter the length of time for the Winter contract period by one month, with the winter period extending from October through February (winter period is currently Oct-Jan). The second option keeps the contract period the same, but alters the definition of business and non-business hours.

The Demand Side Working Group will continue to review the options again next month alongside a potential third option which is a hybrid of the first two. In either case, ERCOT does not anticipate implementation until the end of 2015, at the earliest, to allow ERS providers time to alter customer contracts.

▶ MISO

IMM Evaluates ELMP Parallel Operations – Last week MISO distributed the Independent Market Monitor's (IMM) memo detailing his evaluation of Extended Locational Marginal Pricing (ELMP) Parallel Operations. The IMM stated that ELMP is made up of two components. The first allows on-line, inflexible resources, such as on-line fast start resources and demand response, to set the LMP if the inflexible unit is economic, the second allows off-line fast start resources to be eligible to set prices during transmission or energy scarcity conditions.

The IMM contends that while the first portion appears to be working as intended, he believes that the second is not. He agrees that it is efficient for offline resources to set the price when they are both feasible and economic for addressing the shortage, but "when units that are either not feasible or not economic to start are allowed to set energy prices the resulting prices will be inefficiently low." He suggested that MISO either make a tariff filing to disable price-setting from offline units for the initial implementation, to be introduced at a later time after improvements can be made to the offline methodology or to modify the tariff language so that only units that are truly economic are available to the ELMP dispatch.

MISO and OMS to Testify at FERC - MISO and the Organization of MISO States (OMS) have been requested to testify before FERC at its 9/18 Open Meeting regarding the OMS Survey. The OMS RA (RA) Survey is a survey of MISO Load Serving Entities (LSE) to assess the zonal RA needs over the next 10 years.

The most recent version of the OMS RA Survey shows a forecasted shortage as early as the 2016/17 planning year, as well as a forecasted expectation that MISO would not be able to meet its "1 day in 10 years" standard in that year.

▶ CFTC

CFTC Extends Dodd Frank Exemption for SPP Transactions - The CFTC issued an extension of a No-Action letter to the Southwest Power Pool to continue to provide exemptive relief for certain transactions, including: (1) contracts, agreements, and transaction for the purchase or sale of certain "transmission congestion rights," "energy transactions," and "operating reserve transactions, if such transactions are offered or entered into pursuant to a FERC-approved tariff; and (2) certain preliminary activities related to SPP's transmission congestion right market necessary to the launch of its Integrated Marketplace.

As a result of the No-Action relief the SPP transactions will not be considered "Swaps" subject to CFTC regulations under the Dodd Frank Act. The No-Action relief will expire the earlier of 2/28/15 or the date on which the Commission takes final action on SPP's previously filed request for a full exemption.

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COMPETE

Electricity Competition Drives Innovation and Consumer Benefits

The COMPETE Coalition is 763 electricity stakeholders, including customers, suppliers, traditional and clean energy generators, transmission owners, trade associations, technology innovators, environmental organizations and economic development corporations – all of whom support well-structured competitive electricity markets for the benefit of our country

Competition in electricity markets fosters innovation, clean energy solutions, green jobs, and competitive rates. It also enables retail customers to shop for innovative energy management solutions and helps lower costs and preserve jobs.

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