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.

Senate Finance Debates Energy Taxes

The Senate Finance Committee held a hearing on energy tax policy that featured former Senator Don Nickles (R-OK), who laid out a strong case against the wind PTC; retired Northrup Grumman CEO Norm Augustine, who promoted the research and development tax credit and more government R&D spending; and Tufts University Professor Gilbert Metcalf, who urged Congress to pass a carbon tax.

Members were generally supportive of passing extenders legislation in December, but the path forward remains unclear and will largely depend on who controls the Senate after the November elections.

Senate Confirms NRC Nominees

As expected, the Senate confirmed the nominations of Stephen Burns and Jeffrey Baran to serve as NRC commissioners. Burns will serve a five year term, while Baran will serve out the remaining year in former Commissioner Bill Magwood's term.

STATE UPDATES

▶ CALIFORNIA

SONGS Settlement - Parties to a Settlement Agreement that is intended to resolve a number of cost recovery issues associated with the purchase of replacement power during the San Onofre Nuclear Generating Station (SONGS) outage have agreed to accept all the Settlement Agreement modifications recommended by assigned California Public Utilities Commissioner (CPUC) Michel Florio and the assigned Administrative Law Judge (ALJ). The recommended modifications (1) allow Southern California Edison (SCE) and San Diego Gas & Electric

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(SDG&E) to retain only 50% of the insurance proceeds and (2) require SCE and SDG&E to pay 95% of the outage replacement power costs, both of which make the settlement more favorable to ratepayers and less favorable to utility shareholders.

Agreement by the Settling Parties (SCE, SDG&E, The Utility Reform Network, Office of Ratepayer Advocate, the Coalition of California Utility Employees, and Friends of the Earth) to these modifications is expected to pave the way for full Commission adoption of the Settlement Agreement.

Energy Storage Proceeding - An ALJ at the CPUC has issued a proposed decision that approves the applications by the three investor owned utilities (Southern California Edison, Pacific Gas & Electric, and San Diego Gas & Electric) for investment in energy storage projects to meet recently imposed energy storage mandates. If adopted, the utilities will procure 110 MW of energy storage over the 2014 to 2016 time period. The Proposed Decision lacks clarity, however, with respect to whether the costs of these utility investments will be part of the non-bypassable charges that retail customers who take electricity supply service from competitive suppliers will have to pay.

Should non-bypassable charges be imposed on retail choice customers, there will also be an allocation of a share of the energy storage quantity and that allocation may reduce the quantity that the retail customers' suppliers must procure to meet their share of the overall energy storage targets.

CPUC Issues Whitepaper and Ways to Address Ongoing Cost Allocation Issues - The Planning and Strategy Division of the CPUC has issued a whitepaper that is intended to offer ways to address cost allocation issues associated with utility investment and procurement of generation, energy storage, and demand response. At issue is the ongoing and growing practice of allowing the utilities to recover costs of that procurement from retail choice customers.

While the paper clearly recognizes that the allocation of these costs on retail choice customers limits their flexibility to work with competitive suppliers to devise customer specific supply portfolios, the whitepaper suggests that an appropriate solution could be for competitive retail suppliers to become subject to higher levels of CPUC jurisdiction over their procurement to allow the CPUC to be better assured that they are fully resourced, commensurate with the oversight that the CPUC has over utility procurement. A coalition of customers and retail suppliers is preparing a response to the whitepaper to discuss the problems with the proposed solutions, and present alternatives.

Governor Speaks at the United Nations - California's Governor Jerry Brown spoke on 9/23 at the United National Climate Summit, signaling that in the next six months, action will be taken in California to set a new goal for emission reductions by 2030, to build on the current legislatively mandated 2020 reductions. The new goals will focus on increased renewables, continuation of cap and trade, increased efficiency measures, and high speed rail. The speech also coincided with his signing climate change memorandums of understanding with Quebec, British Columbia, Mexico, and states in China.

Community Choice Aggregation Symposium - Constellation is co-sponsoring a "Business of Local Clean Energy" Symposium on 10/23. The Symposium will bring together city and county leaders who have formed community choice aggregation (CCA) programs and those considering doing so. The discussions will focus on the steps necessary to form a successful CCA and the increasing role that renewables, emission free energy, and demand response play in the CCA's procurement strategies.

Community Choice Aggregation - A forum was held on 9/17 that brought together political leadership in the counties and towns of Silicon Valley to discuss the benefits and process of establishing community choice aggregation (CCA). This type of forum demonstrates the growing interest in CCA for local governments to have increased local control over their energy spending, find ways to lower energy costs for their constituents, and reduce the carbon footprint in their jurisdictions. The forum focused on lessons learned about CCA formation by the two existing CCAs, Marin Clean Energy and Sonoma Clean Power. Constellation is Sonoma Clean Power's energy supplier.

Silicon Valley Leadership Executive Roundtable - The Silicon Valley Leadership Group (SVLG) sponsored an Executive Roundtable meeting with Mary Nichols, chair of the California offerings. The second proceeding (Docket 14-07-20) is on marketing standards and sales practices by electric suppliers. Issues in this proceeding will include switching practices, renewals, hiring and training of sales representatives, marketing practices and consumer disclosures. Comments in both proceedings are due 10/14.

ILLINOIS

ICEA and IIEC Seek Illinois Supreme Court Review of ICC Authority on Clean Coal Sourcing - On 9/9, the Illinois Competitive Energy Association (ICEA) and the Illinois Industrial Energy Consumers (IIEC) jointly filed a Petition For Leave to Appeal (PLA) to the Illinois Supreme Court. ICEA and IIEC are seeking to appeal the Illinois Appellate Court opinion upholding an Illinois Commerce Commission (ICC) decision authorizing ICC to require Alternative Retail Electric Providers (ARES) to enter into sourcing agreements with clean coal facilities, specifically FutureGen 2.0.

ICEA and IIEC are asking that the Illinois Supreme Court consider whether the ICC exceeded the bounds of its statutory mandate, infringed upon ARES' fundamental right to freedom of contract, undermined the continued existence of a competitive electricity market in Illinois, and unconstitutionally discriminated against interstate commerce. This week both the ICC and the FutureGen Industrial Alliance filed Answers to the ICEA and IIEC PLA, relying mainly on the same successful arguments used before the Illinois Appellate Court. Absent an ICEA/IIEC request for leave to file reply briefs, no further briefing will occur before the Illinois Supreme Court rules on the PLA.

Illinois Commerce Commission (ICC) Policy Session - On 9/23, Exelon's Kathleen Barrón presented at the second ICC policy session on 111 (d). Chairman Doug Scott and Commissioners Del Valle and Colgan attended in person; Commissioners Maye and McCabe did not attend. Jim Ross from Illinois EPA presented an overview of the proposal's treatment of nuclear. He explained how difficult it will be for the state to achieve its carbon reduction goals if it loses nuclear megawatts. Kathleen explained the proposal would not sufficiently value nuclear and, thus, EPA would be expected to revise the rule, as without those revisions, it could lead to an increase in emissions.

Dr. Paul Sotkiewicz of PJM and Todd Ramey of MISO spoke and highlighted their focus on reliability, including maintaining the nuclear fleet. Sotkiewicz also noted PJM is concerned with the question of who owns zero-carbon generation. Ramey noted MISO plans to take advantage of the comment extension to do additional modeling runs, expected by mid-October, including scenarios with nuclear retirements. Chairman Scott questioned the RTOs on Order 745 and interaction with 111(d). Val Jensen presented on ComEd's energy efficiency programs and potential for additional reductions under 111(d). Additional stakeholders participated, including Illinois Power Authority (IPA) and a variety of wind, solar, and environmental groups. The wind, solar, and environmental interests, as well as the IPA, cited the need to reform the current RPS framework.

Chairman Scott also engaged on previously proposed RPS reforms. Of note, Ameren's representative termed the CPP (111(d)) "illegal and unworkable" before pivoting to a discussion of EE and the need for major revisions to the current EE framework in Illinois.

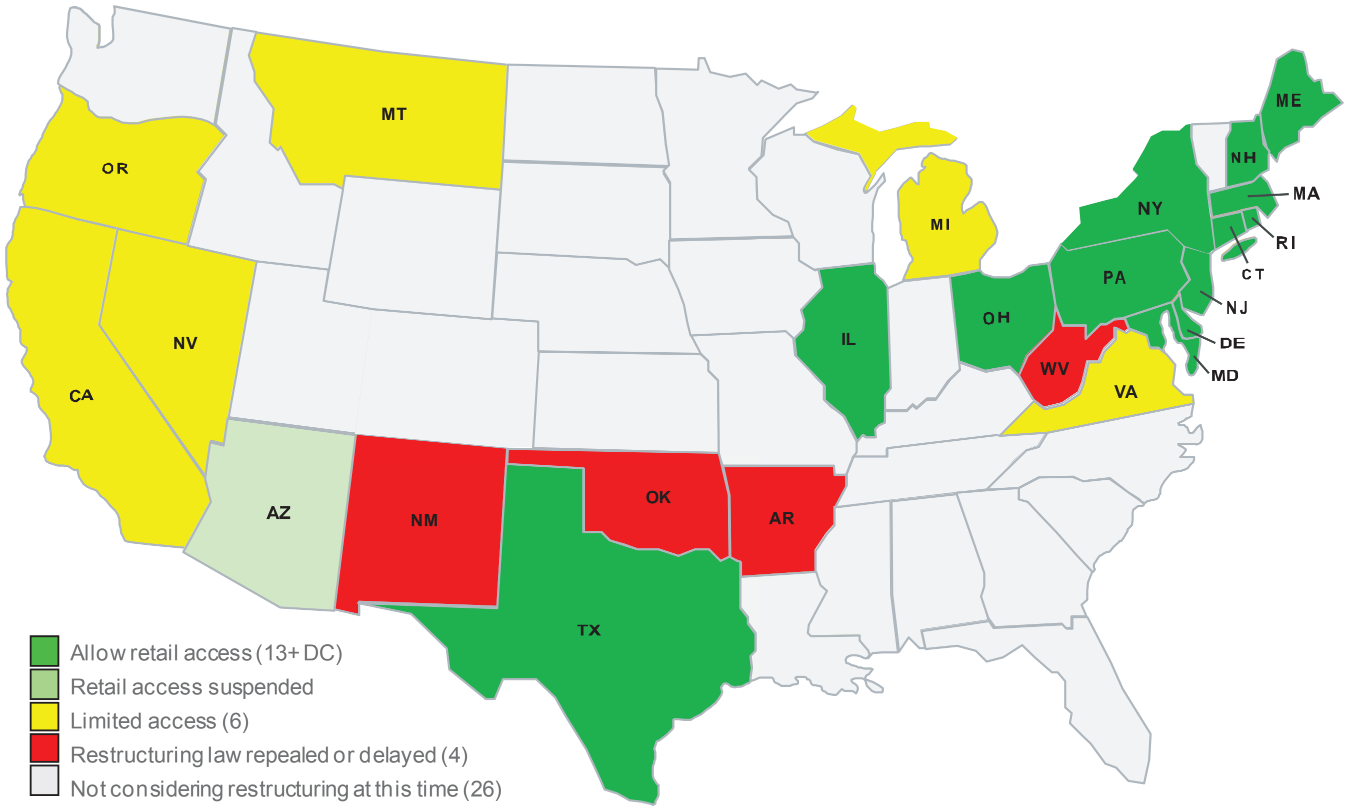
ExGen Submits Comments in IPA Procurement Proceeding - On 9/15, Exelon Generation submitted comments on the Illinois Power Authority (IPA) Draft Power Procurement Plan for default load served by Ameren Illinois and ComEd for the five-year period June 2015 through May 2020. The ExGen comments recommend that the IPA include fixed price full requirements products for a portion of the procurement on a four year trial period basis. The IPA's deadline for filing a plan with the Commission is 9/29. The parties then have until 10/6 to file Objections to the filed plan.

MASSACHUSETTS

Massachusetts Electric Announces Major Jump in Basic Service Rates - National Grid filed revised Basic Service rates for the coming winter with the Massachusetts Department of Public Utilities. Those rates have jumped from a six-month average residential price of 8.3 cents/kwh to around 16.2 cents/kwh, with individual monthly prices for January and February topping 21 cents.

The rate increase is being attributed to market volatility driven by concerns over limited natural gas availability during winter months. A similar jump in default rates has also been announced by Liberty Utilities in New Hampshire and more default service rate increases can be expected.

Competitive US Retail Electricity Markets



Air Resources Board (CARB). At the roundtable, Ms. Nichols expressed overall support for EPA's 111(d) rules for emission reductions from existing resources and her desire to have CARB work with neighboring states to prepare a joint implementation plan. She also noted that she expects California's next legislative session to address the state's post 2020 emission reduction targets.

In addition, she anticipates further attention on how funds from emission reduction programs are used and that there may be some interest in creating a carbon tax that would work in parallel with the cap and trade program. Of course, she noted that these were just her own thoughts and not an indication of any particular ongoing effort at this time.

Impermissible Ex Parte Communications Between the CPUC Staff and PG&E - Three Pacific Gas & Electric (PG&E) executives and the Chief of Staff to the President of the California Public utilities Commission (CPUC) were dismissed from their employment due to revelations of impermissible ex parte communications that focused on the assignments of judges and assigned commissioners for the CPUC's investigation of the 2010 explosion of PG&E's natural gas pipeline in San Bruno, CA that killed eight people. Other parties have also called for the resignation of CPUC President Michael Peevey over the inappropriate communications.

▶ CONNECTICUT

PURA Requests Comments in New Retail Proceedings - On 9/24, the Connecticut Public Utility Regulatory Authority (PURA) issued notices requesting comments as part of the implementation of 2014 retail market legislation. The first proceeding (Docket 14-07-17) will be to develop a standard summary form of material contract terms. The purpose of this is to help consumer understanding and comparison of retail market

MICHIGAN

Detroit Edison Files Application to Modify its Cost Allocation and Rate Design - On 9/17, DTE Electric Company (DTE) filed its Application requesting Michigan Public Service Commission (MPSC) Authority to modify the existing cost allocation and rate design methods that have been used to set existing rates. The DTE filing was made in accordance with the MPSC's 8/5 Order implementing Act 169, which required the MPSC to open dockets for the "sole purpose" of commencing separate proceedings for Consumers Energy (Consumers) and DTE "to examine cost allocation methods and rate design methods used to set rates" for electric customers. The DTE filing alleges that under the new cost allocation methodology, the following classes of customers can expect the following rate impacts on their respective average bills, beginning in 2015:

- Industrial: decrease by approximately 5% per month;
- Commercial: virtually unchanged (plus or minus 1%) per month;
- Residential: increase by approximately 4% per month.

Act 169 explicitly requires the MPSC to "allow any interested person to intervene" in the proceeding.

NEW HAMPSHIRE

Default Service Rates - Public Service Company of New Hampshire submitted revisions to its default service rates to the New Hampshire Public Utility Commission (NHPUC). Among the proposed changes, the most notable is the proposal to place large commercial and industrial customers on monthly variable rates, rather than the fixed rate default service tariffs currently available. These changes have not yet been noticed for intervention.

Code of Conduct - The New England Power Generators Association (NEPGA) submitted a request for the NHPUC to open a rulemaking and establish changes to its affiliate transaction rules to address the relationship between PSNH and the joint venture between PSNH's parent, Northeast Utilities, and Hydro Quebec to develop the Northern Pass Transmission Project. The petition asserts a number of areas of concern, including the use of PSNH staff and PSNH rights of way in a manner which could provide Northern Pass with certain benefits at the expense of PSNH ratepayers.

Divestiture - The NHPUC issued a notice commencing a new proceeding to examine the potential divestiture by PSNH of its generation assets. The proceeding is required under 2014 legislation and the commission has established a 9/29 deadline for intervention and set 10/2 as the date for an initial preheating conference.

New Leadership - Governor Hassan announced that she is appointing the NHPUC chairman, Amy Ignatius, to the bench of the Superior Court. It remains to be seen whether or not the Governor will nominate a successor to the commission before November elections to complete the balance of the chairman's term, which expires June 2015.

NEW JERSEY

Board of Public Utilities (BPU) Nominations - Governor Christie announced the following nominations and re-nomination to the BPU. Richard Mroz has been nominated to serve as the next President of the BPU. Mroz is the former Whitman Administration Chief Counsel (among other positions). Upendra Chivukula, Chairman of the Assembly Telecommunications and Utilities Committee, has been nominated to one of the BPU Commissioner vacancies and existing Commissioner Joseph Fiordaliso has been re-nominated to a third term. Rick Mroz was confirmed by the Senate as President of the BPU and Upendra Chivukula was confirmed as Commissioner. Joseph Fiordaliso's confirmation was held, but it is expected it will be released and he will be confirmed shortly. With these changes, the BPU has pro-competitive markets as well as pro-renewable Commissioners at the helm.

Long Term Capacity Pilot Program (LCAPP) - The U.S. Court of Appeals for the Third Circuit affirmed the District Court's finding in the PPL/PSEG challenge of the LCAPP under constitutionality grounds. While the District Court found that the LCAPP violated the supremacy clause because the state entered into a field of regulation beyond its authority by permitting generators to receive preferential capacity rates, the Third Circuit limited its decision to the field of interstate rates. The Court found that LCAPP effectively set capacity prices and therefore attempts to regulate the same subject matter that FERC regulates.

NEW YORK

Clean Energy Fund Proposal Issued by NYSERDA - The New York State Energy Research and Development Authority (NYSERDA) issued its proposal for a ten-year $5 billion Clean Energy Fund (CEF). Previously, the New York State Public Service Commission (NYSPSC) directed NYSERDA to develop the proposal for stakeholder review. NYSERDA proposes that the CEF replace the current Renewable Portfolio Standard (RPS), System Benefits Charge, and Energy Efficiency Portfolio Standard programs. NYSERDA's proposal indicates that "the CEF will serve as an integral part of a much larger policy framework that includes the New York State Public Service Commission's REV Proceeding, Regional Greenhouse Gas Initiative (RGGI), New York Power Authority's new suite of clean energy activities, and others."

NYSERDA's states the NYSPSC REV Straw Proposal recommends that the RPS's current approach of providing incentives to RPS Main Tier resources solely through NYSERDA's contracting for renewable energy credits (RECs) should transition to bundled contracts for energy and RECs to be procured by utilities from competitively selected projects. NYSERDA's proposal outlines the PSC will conduct an independent proceeding on the matter, with a goal of establishing a new construct by early 2015 for implementation by early 2016.

In competitive markets such as New York, this type of RPS program would require load-serving entities (competitive ESCOs) and utilities (acting in their role as generation service provider of last resort) to meet annual targets; these RPS targets are frequently complemented by long-term procurement policies under which utilities acquire energy and RECs through long-term contracts to enable project financing, while reselling their purchases into the energy and REC markets (or using the RECs to satisfy their own RPS compliance obligations)." NYSERDA's CEF does not propose targets for continued procurement of RPS Main Tier resources, but instead proposes that specific goals and targets for the RPS "should be an active point of consideration in the development of the Final 2014 State Energy Plan."

The Fund's proposed budget allows funding for one more solicitation each in both 2014 and 2015 for the RPS Main Tier; however, NYSERDA does not mention plainly how costs arising from its proposal for utilities to procure energy and RECs from RPS Main Tier resources will be treated.

New York State Business Council (NYSBC) Annual Conference Hosts REV Panel - The NYSBC hosted its annual conference in upstate New York, 9/17 to 9/19, and included a Reforming the Energy (REV) Panel. The panel included Audrey Zibelman (NYSPSC Chair), multiple intervenors, NGRID, Exelon and Senior PSC Staff. Zibelman said that Governor Cuomo is not opposed to nuclear generation, rather he is opposed to the continued operation of Indian Point because of safety/security concerns. She also stated it is clear that nuclear must be part of the long term energy solution because of its emissions-free generation and the fuel diversity it offers. New York currently has a generation ratio of approximately 60% fossil/40% non-fossil. She stressed the state needs to maintain that type of ratio to avoid additional Polar Vortex type outcomes.

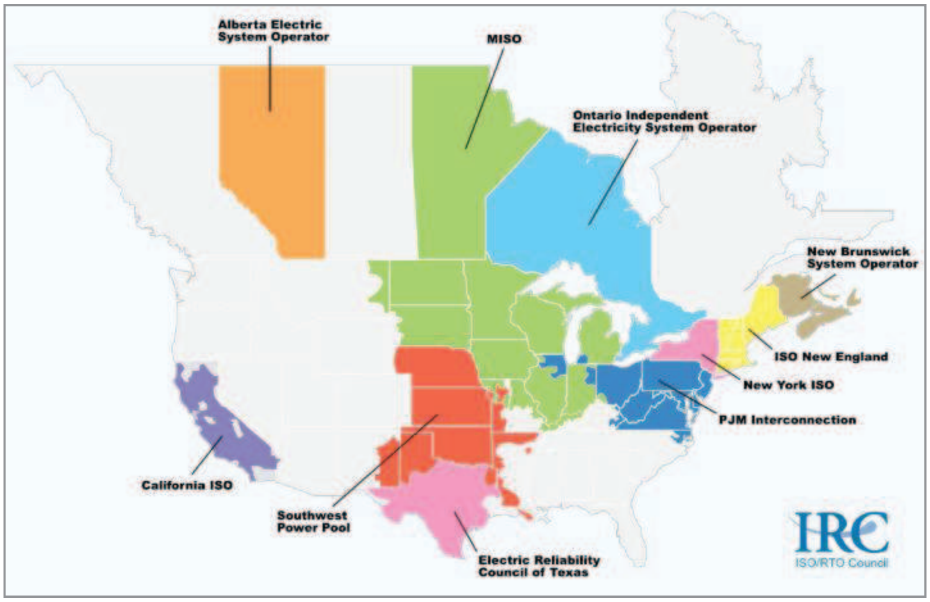
OHIO

ExGen Submits Testimony in Duke Ohio Electric Security Plan Proceeding - On 9/26, Constellation and ExGen filed direct testimony in the Duke Ohio (Duke) proceeding to establish a new rate plan (called an electric security plan or ESP) for the period 6/1/15 through 5/31/18. The primary issue in the case is the proposal by Duke, consistent with other Ohio utilities, to seek non-bypassable riders that would collect a surcharge from all customers to provide full cost recovery on entitlements under Purchase Power Agreements owned by Duke and associated with legacy coal generation (PPA Rider). Also at issue in the case, as it was in the AEP case, is the ability of Duke to unilaterally terminate the ESP one year early.

Exelon Presentation at the OMA Energy Committee Quarterly Meeting - Constellation participated in the Ohio Manufacturers Association (OMA) Energy Committee quarterly meeting on 9/18, presenting on the state of competitive markets in Ohio, and on the various proposals put forth by Ohio utilities to seek non-bypassable riders that would collect a surcharge from all customers to provide full cost recovery on Purchase Power Agreements entered into by the respective utility associated with generation owned by its competitive affiliate (PPA Rider).

OREGON

Retail Choice in Pacificorp Territory - An untimely serious illness of one of the three Oregon Public Utilities Commissioners (Susan Ackerman) has thrown into question when the Commission will issue an order on the retail choice program in the Pacificorp territory. The decision has been scheduled to be available on 9/22. A delay in the issuance of the Order could delay the start of the customer retail shopping window, which had been scheduled to take place from mid-November through mid-December of 2014.



PENNSYLVANIA

Partial Settlement Reached in PPL Default Service Plan Proceeding - On 9/12, parties to the PPL Electric Utilities' default service proceeding agreed to a partial settlement. Under the settlement, default service for residential and small commercial customers would be served under laddered 6 and 12-month full requirements contracts. The settlement would adopt semi-annual reconciliations for small customer default service costs, which, along with the procurement schedule, paves the way for implementation of a 6-month fixed Price to Compare (PTC) for residential and small C&I default service customers.

Under the partial settlement, PPL Electric will issue its PTC 30 days in advance of the effective date of the PTC. The new rate plan takes effect on June 1, 2015. date. PPL's proposal to lower the hourly pricing cutoff to 100 kW is reserved for litigation. Also reserved for litigation is the issue of the party responsible for non-market-based PJM charges and whether these charges should be bypassable or non-bypassable. Initial briefs were also filed on these issues. The new rate plan takes effect on June 1, 2015.

Settlement Reached in Duquesne Light Default Service Plan Proceeding - A partial settlement was reached in Duquesne Light's default service proceeding. Under the settlement, Duquesne Light will supply residential customers primarily through 12-month, laddered full requirements supply contracts. The settlement provides for semi-annual reconciliation of the residential default service costs and revenues. Issues regarding the default service procurement plans for small Commercial & Industrial (C&I), medium C&I and large C&I customers are reserved for litigation.

Also reserved for litigation is the issue of the party responsible for non-market-based PJM charges and whether these charges should be bypassable or non-bypassable. The new rate plan takes effect on June 1, 2015.

House Environmental Resources and Energy Committee 111(d) Hearing - The House Environmental Resources and Energy Committee held a hearing to discuss potential impacts of 111(d) on the state's energy industry. The hearing included testimony from the PA Coal Alliance, PJM, the Electric Power Generation Association (EPGA), PennFuture, the Pennsylvania Chamber, the United Mine Workers of America, and ARIPPA. Of note, former State Senator John Pippy, testifying on behalf of the PA Coal Alliance, commended the committee and the House for its early passage of House Bill 2354.

This legislation would require the both chambers of the state legislature to approve any state implementation plan prior to submittal to the EPA. This bill currently sits in the Senate Environmental Resources and Energy Committee. Additionally, Stu Bresler, testifying on behalf of PJM, mentioned that PJM is conducting a study on the reliability of the grid based on potential 111(d) impacts. This study is expected to be completed prior to the closing of the comment period. Several positive comments regarding the necessity to preserve and expand nuclear energy in order to achieve the GHG goals were made by Jake Smeltz of EPGA and Christine Simeone of PennFuture. Specifically, Simeone said the Extended Power Uprate at Peach Bottom would be a huge factor in helping Pennsylvania meet its goals.

▶ TEXAS

Cost to Integrate Renewable Resources - Comments were filed in a proceeding opened by the Public Utility Commission of Texas (PUCT) to look at the costs to integrate renewable resources. Most of the comments, from both fossil fuel and renewable energy developers were joined in requesting that the PUCT not pursue a path of assigning ancillary service related costs to owners of wind and solar projects. The PUCT originally opened the docket because of concern that the recent growth of renewables in Texas has constrained the transmission system and additional ancillary services would be needed. ERCOT filed comments that stated "A stable, reliable electric grid is in the interest of all market participants," and requested that the PUCT "don't fix what's not broken."

Texas Comptroller Recommends Ending Subsidies to Wind - On 9/23, Susan Combs, Texas Comptroller, issued a report on electric issues that made two major recommendations. First, wind generators "should stand on their own feet" by ending tax credits and property tax exemptions to them. And second, Texas should "maximize the existing transmission system before adding more." These conclusions stem from extensive analyses of the contributions of wind during the peak and notes that wind is not contributing to reliability when it's needed most.

In addition, the report discusses that customers who are paying the socialized cost of the addition of the CREZ transmission lines meant to facilitate the delivery of wind to load centers are seeing limited reliability and pricing benefits. It is unclear what impact this report will have on legislative initiatives, but it would seem to be supportive of the direction that PUCT Chair Donna Nelson had when she began investigating the potential for participant funding of future transmission projects.

▶ WEST (OTHER THAN CALIFORNIA)

Northwest and Intermountain Power Producers Coalition Annual Meeting - The Northwest and Intermountain Power Producers Coalition (NIPPC) held its annual meeting in Union, WA. State commission staff from Oregon, Washington, Idaho, Nevada, Montana, and Idaho attended, as well as Commissioner Moeller and Steve Rogers of FERC. Much of the discussion focused on the implementation of the 111(d) rules issued by EPA and difficulties with how the rule treats imported and exported power.

FEDERAL REGULATORY

▶ FERC

Motions to Stay Issuance of Mandate in EPSA v. FERC and D.C. Circuit Denies En Banc Rehearing of FERC Order No. 745 - On 9/17, the D.C. Circuit Court of Appeals denied all petitions for en banc rehearing of its 5/23 decision. Generally, Order No. 745 had required favorable energy market payments for demand response resources participating in organized markets. The Court found that the FERC had no jurisdiction to mandate payment for demand response as it found demand response to be a retail service subject to state regulation. The mandate was expected to issue on 9/24, at which time the matter will be returned to the FERC for action consistent with the decision. However, on 9/19, FERC and the demand response providers separately filed motions to stay issuance of the mandate.

The stay motions seek to prevent the Court's order from being remanded to the FERC until the FERC determines whether it will petition for certiorari to the Supreme Court. Because these motions for stay were filed before the Court's mandate issued, an administrative stay will automatically go into effect and the mandate will be delayed until EPSA files a response and the Court has an opportunity to resolve the pending motions. EPSA is preparing a response to-be-filed before 10/6.

If the Court denies the stay motions, the mandate will issue 7 days later. At the FERC's 9/18 open meeting, Commissioner Moeller expressed disappointment that FERC lost total jurisdiction over demand response, noting that States will now have to step up to the plate.

FirstEnergy Amends Complaint at FERC Against PJM on Demand Response - On 9/22, FirstEnergy amended a complaint filed with FERC on 5/23 against PJM seeking the "removal of all provisions in PJM's tariff, agreements, and business manuals that authorize or require PJM to compensate demand response resources as capacity suppliers" and requesting the "recalculation of the results of the May 2014 RPM auction." The initial complaint immediately followed the D.C. Circuit decision in the Order No. 745 case, described above. This amendment follows the Court's decision denying en banc review and offers supplemental support for the initial complaint.

Gas Electric Scheduling NOPR – NAESB Executive Committee - On 6/4, the North American Energy Standards Board (NAESB) voted in support of a motion for the Wholesale Gas Quadrant (WGQ) to develop standards for the nomination/timeline schedule (three Intraday cycles but no recommended start time for the Gas Day). While disagreements largely over the timing for starting the gas day in the prior NAESB process prevented it from developing a complete response to the FERC's proposed gas-electric day scheduling rule, NAESB moved forward with developing standards for the number of Intraday (ID) cycles and timing.

On 7/8, the BPS approved a recommendation containing the modified or new standards, which were posted for a thirty-day industry wide comment period. On 9/22, the standards were passed, garnering 95.24% of the votes cast by the WGQ membership. With ratification, the standards are an NAESB final action and will be filed with FERC by 9/29. This indicates strong support from the industry and will likely receive significant consideration from FERC in its final rulemaking on gas-electric timing issues.

FERC Orders on ISO-NE Capacity Auction Results for FCA-8 - On 9/16, FERC issued a notice that the FCA-8 results will take effect by operation of law. Such a notice indicates that the Chairman and three Commissioners were unable to reach a majority consensus. Given the disagreement, the results became effective by operation of law. Concurrent with the issuance of this notice, the Chairman and Commissioner issued statements reflecting their respective positions. Chairman LaFleur (D) and Commissioner Moeller (R) issued separate statements that emphasized the importance that the rules governing the results of the FCA be transparent and that subjecting auction participants to regulatory uncertainty and after-the-fact rulemaking will be harmful to markets.

Further, their statements noted that a high price is appropriate to reflect the supply and demand conditions, and the need for new capacity in New England. Commissioner Bay (D) and Commissioner Clark (R) issued a joint statement arguing that the auction results impose unjust and unreasonable costs on consumers, noting that non-public information indicates the exercise of market power. Bay and Clark noted that they would have directed the Office of Enforcement to issue a public report on what it has found to date in the course of an investigation. It is exceedingly rare that FERC faces a deadlock and a tariff goes into effect by operation of law.

FERC simultaneously issued an order that requires ISO-NE, in 30 days, to either submit tariff revisions to provide for the review and potential mitigation of importers' offers similar to the manner in which other existing resources are reviewed, or show cause why it should not be required to do so. The show cause order notes that a non-public investigation into Brayton Point's bidding behavior found credible justifications for the owner's retirement decision. However, FERCs Office of Enforcement continues to investigate importers resource's bidding behavior in the FCA-8 auction.

Presentation on MISO Resource Adequacy at the FERC's Open Meeting - At the FERC's 9/18 open meeting, Clair Moeller of MISO, Organization of MISO States (OMS) Chairman Calisto, and Michigan PSC Chairman Quackenbush presented the 2016 MISO Resource Adequacy forecast. While Clair Moeller presented the MISO-OMS survey results, concluding that there was a 2.3 GW shortfall in the North/Central Region and a 2.5 GW surplus in the South Region with constraints restricting the delivery between the two regions, he also highlighted the uncertainty underlying the assumptions used in the survey.

Specifically, he noted, among other things, that a potentially inaccurate load forecast may be caused by compiling 142 separate LSE forecasts on when they think they will hit coincident peak. Chairman Calisto emphasized that while there is erosion in reserves in MISO, MISO and the states have had an appropriate response to support reliability, stating that there is no evidence of a shortfall. Quackenbush presented on the resource availability and needs in Michigan, noting that 50% of the Upper Peninsula's generation is under System Support Resource (out-of-market) contracts.

FERC Commissioners asked probing questions regarding the underlying assumptions of the survey and the ability of reliability to be preserved in MISO, specifically asking about the exponential risk to preserving reliability if the assumptions turn out to be even slightly inaccurate. On 8/25, Exelon, Dynegy, and NextEra, jointly filed a motion to expedite FERC's consideration on MISO's Resource Adequacy construct in light of earlier survey results and uncertainties with the underlying assumptions, urging the Commission to take action to improve MISO's capacity construct. While the FERC Commissioners seemed concerned over the potential reliability shortfall in MISO, it is less clear whether they will action on MISO's Resource Adequacy construct or will continue to defer to the states.

Meeting to Discuss Developing an Electronic Information and Trading Platform for Natural Gas - On 9/18, Commissioner Moeller held a meeting at FERC to provide a forum for interested parties to discuss ideas to facilitate and improve the way in which natural gas is traded and explore the concept of establishing a centralized trading platform for natural gas. Moeller made clear that he is not advocating for a particular proposal or for forcing pipelines into an RTO situation.

During the first part of the meeting, the electric and gas sides articulated their thoughts on the natural gas markets. The electric side stated that the gas market is less responsive than needed by natural gas generators and there is illiquidity in the market. Mike Kormos, Executive Vice President of Operations with PJM, argued that certainty is key for PJM and that generators need to be able to obtain the gas and that PJM "is willing to pay." The speakers for the gas side generally thought that the markets are working well, but they are open to changes around the edges.

A few themes resonated throughout the meeting: (1) natural gas is available, but the buyer may not like the price; (2) there needs to be a better way for buyers and sellers to determine what gas is available; and (3) generators need to be able to recover the cost of procuring gas through reforms in the RTO market rules. The second part of the meeting focused on potential changes that can take place without FERC action. Don Sipe (on behalf of the American Forest & Paper Association) proposed a centralized trading platform for natural gas. The high level proposal lacked detail and the panelists had numerous questions and concerns about how it would be implemented, whether it would be voluntary or mandatory, and the level of reporting that would be required.

As for specific proposals, ICE is working on a product that would split the gas weekend package into a Saturday/Sunday and Monday option, but ICE will continue to offer the 3-day package (Saturday-Monday) and let the market decide which it prefers. Many of the panelists advocated for incremental solutions as opposed to global changes. At the end of the meeting, Moeller emphasized that he hopes to anticipate potential problems and fix issues around the edges before they become major problems. Written comments will be limited to no more than five pages and are due by 10/1.

Joint Technical Conference of FERC and the NYPSC on New York Markets and Infrastructure - On 9/17, FERC announced that, on 11/5, it will hold a Commissioner-led technical conference jointly with the New York PSC on the ability of the centralized capacity market in New York to attract investment and ensure resource adequacy and reliability. Few additional details are yet available, but a supplemental notice will be issued in advance of the conference.

▶ PJM

PJM Dynamic Reserve and Interchange - PJM unveiled a new proposal aimed at providing Day-Ahead (DA) and Real-Time (RT) energy LMPs that more closely track prevailing supply/demand fundamentals and decreasing out of market uplift payments. First, PJM proposes to increase the Day-Ahead Sync Reserve (DASR) commitment by the historical difference of DA cleared load and RT forecasted load. Typically, PJM commits resources in the post-market Reliability Assurance Commitment (RAC) to cover this difference, but such commitments are not reflected in clearing prices. Increasing the DASR will allow PJM to co-optimize RAC with the economic resources, increasing the Market price to reflect commitment of additional reliability resources (typically long lead time resources). Second, PJM proposes to dynamically increase the volume of RT reserves to include the additional resources committed intra-day for reliability. PJM will increase the target level of reserves by the sum of the Economic Max of such resources.

Further, PJM proposes to incorporate a new Shortage penalty factor of $300/MWh when insufficient resources are available to fill the desired 'extended' reserves. Third, PJM proposes to cap the hourly interchange volume when PJM commits resources (CTs) in advance of an operating hour to meet expected demand. PJM proposes to cap interchange at the volume of firm schedules, plus an additional 700 MW (half of the largest unit) to allow imports to flow for a contingency. PJM intends to implement this proposal on 6/1/15 so that IT upgrades can be developed.

PJM Capacity/"Capacity Performance" - PJM received 54 sets of comments regarding its draft proposal to institute a fourth "Capacity Performance" product in RPM to encourage commitment of resources with firm fuel to meet both summer and winter peak demand. The comments generally disapproved of PJM's proposal. Buyers complained that the cost for capacity would rise without concomitant benefit.

Most suppliers panned the idea citing concerns about the rigid officer certification, a potential must-offer requirement, and the lack of reliance on incremental steps to improve reliability. Competitive suppliers also noted the risk of capacity price changes in years for which contracts have already been executed based on cleared auctions. Overarching criticisms included the lack of detail in the PJM proposal and the speed and scope of the proposed reform effort.

A number of buy side proponents also lobbied for continued accommodation of demand response. PJM expressed willingness to reform its proposal in light of the comments. However, PJM appeared steadfast in its view that reforms must be made. Yet, PJM offered no further concrete details around its proposal, including the manner of acquiring additional commitments for delivery years 2015/16-2017/18 for which capacity auctions have already occurred. PJM will next publish a "final" proposal on 10/7. Stakeholder coalitions will provide the PJM Board with comments by 10/28 and present their views to the Board on 11/4. We expect PJM to submit reforms to FERC before 12/1 in an effort to institute the reforms prior to the May 2015 RPM auction.

PJM Energy Market Offer Caps - PJM Members rejected proposals that would uncap cost-based energy market offers. PJM proposed lifting the caps on cost-based offers to assure that generators operating at cost would be assured full cost recovery when committed by PJM for reliability. PJM also proposed to escalate the market-based offer caps, although PJM suppliers were less committed to pursuing that reform. Buyers and some state commissions objected to increasing the cap ex ante, instead offering payment in excess of the current $1,000/MWH offer cap only after an ex post review of the components of the offer.

PJM Demand Response/Order 745 Compliance - In the context of the D.C. Circuit denial of rehearing en banc of FERC Order 745 (regarding payment of full LMP to DR in the energy market and FERC jurisdiction over DR, as noted above), PJM's General Counsel, Vince Duane, provided initial impressions and intention to the PJM Markets and Reliability Committee.

PJM reinforced the importance of DR to competitive outcomes in the energy, ancillary services, and capacity markets, as well as its importance to reliable system operations. PJM stated that in the near future it will release a "Conceptual Model" describing its view on how wholesale DR can continue to participate in the PJM markets. This release will be influenced by any orders or guidance that FERC may issue. PJM distinguished "wholesale DR" and "retail DR" describing the former as that provided by participants that serve wholesale load in the PJM markets.

Elaborating, PJM opined that wholesale DR turns on whether the provider has a wholesale load-serving obligation such that it can curtail load at the wholesale level. Under this assumption PJM expects lower levels of DR participation in the markets than they have seen historically.

Until guidance is received from FERC, PJM does not plan to change DR involvement in its markets. However, PJM expressed uncertainty regarding the potential for ordered resettlement of capacity or energy markets. PJM and others opined that any resettlement of DR all the way back to when DR was introduced into the PJM markets is very low probability; however, some expressed the view that a resettlement of all DR activity from the DC Circuit Court publication of the rehearing denial date is possible.

NYISO

NYISO Reviewed EPA's Clean Power Plan with Stakeholders and Noted Flaws in EPA's Design - On a fleet-wide basis, New York is far ahead of what EPA's 2030 goal requires. New York currently has the lowest per capita CO2 emissions in the US, except for Washington, DC. The fact that New York has a very clean fleet will make it very challenging to lower CO2 emissions further. One Market Participant noted that if New York could replace all of its fossil generation with natural gas combined cycle generation at the natural gas combined cycle emissions rate, it would still remain significantly above its emissions target.

NYISO acknowledged that significant increases in renewable generation/ energy efficiency and the preservation of all its existing nuclear generators will be required to meet the EPA targets. The New York State Department of Public Service asked both NYISO and its stakeholders to file comments to help EPA understand how these building blocks could be applied in New York, pushing the New York target in the wrong direction. Comments are due by 10/16.

SPP

SPP-MISO Seams Coordination - FERC Commission staff held a technical conference to discuss three issues related to the implementation of the SPP-MISO Market-to-Market Protocols. The three issues discussed included the Interface Bus Pricing Methodology, the Day-Ahead Firm Flow Entitlement Exchange Process, and the Creation of Market-to-Market Flowgates. The overarching theme of the technical conference was that neither SPP nor MISO wanted to see any of the issues delay the Market-to-Market "go-live" date of 3/1/15 and that FERC should let SPP and MISO continue to work towards a solution rather than mandate any answer.

Interestingly, PJM participated in the conference and shared their experiences with close to 10 years of experience operating as MISO's neighbor. PJM appears largely aligned with SPP and believes that MISO's treatment of its neighbors must improve. Staff concluded the technical conference noting that comments on the discussion would be accepted in the docket until 10/7 and reply comments would be accepted until 10/22.

Commission staff encouraged interested parties to file comments to make the discussion part of the record and ended the technical conference by encouraging MISO and SPP to file any language or proposals they may come to mutual agreement on as soon as possible for consideration by the Commission.

ERCOT

Loads in Security Constrained Economic Dispatch - ERCOT's Technical Advisory Committee discussed the status of demand response participating in the Security Constrained Economic Dispatch (SCED) process. Normally, SCED stacks resource offers to sell energy and selects the most economical resource. ERCOT's plan to include demand response in SCED would involve loads providing bids to curtail in real-time and the SCED engine comparing the cost to curtail with the cost of additional generation.

The SCED engine would continue to choose the most economical resource and set the system price (LMP) based on that choice. ERCOT hoped to implement the program before summer of 2015, but discussion of the issues has met with some complexities that have delayed implementation past summer of 2015. Stakeholders are still weighing the issues of what settlement price and quantity to use for any participating demand response. Price and quantity need to be as accurate as possible in order to avoid any over or under payments. In addition, discussion continues on how to qualify and manage automated load response.

Ancillary Service Redesign - ERCOT continued its Ancillary Service redesign discussions by holding another workshop to discuss the Ancillary Services procurement process with market participants. ERCOT walked through six potential procurement options that ranged from a fixed annual amount to fluctuating daily amounts. Target quantities were provided for each option, which will allow market participants to more easily compare each option. Stakeholders raised concerns regarding pricing outcomes that may drive potential changes in participant behavior. ERCOT stated that a final decision would need to be made on procurement methodology by 11/1 in order to begin the cost/benefit analysis.

Further discussion will take place at the 9/25 Technical Advisory Committee meeting. ERCOT's Ancillary Service project is the most comprehensive change to the ERCOT market since the implementation of the Nodal Market. The changes will impact commercial operations, bilateral agreements, market positions, hedging strategies and more.

▶ MISO

South To North/Central Transfer Study - MISO conducted a study to establish the Total Transfer Capability (TTC) between MISO South and MISO North/Central Regions and to determine if the stability limit exceeds the thermal limit. The TTC was determined to be 3,000 MW without redispatch to 4,000 MW with redispatch. Because the TTC exceeds the Sub Regional Power Balance Constraint (SRPBC) of 1,000 MW that MISO has been utilizing, as well as the 2,000 MW Operations and Reliability Coordination Agreement (ORCA) limit, MISO no longer intends to continue to look for transmission upgrades to increase the interregional transfer capability as part of this study.

The study also suggests that the ORCA limit could increase or be eliminated in April 2015. In addition, MISO has stated that they do not plan to utilize the 1,000 MW interregional constraints when conducting the 2015/16 Planning Resource Auction (PRA), as they believe that constraint is artificial. This could result in the use of a lower Planning Reserve Margin in the North/Central Region, causing them to secure less capacity through the PRA, which would be risky should the South Region Generation in fact not be available during emergencies. The use of this constraint for the PRA will be discussed further at the Supply Adequacy Working Group on 10/2.

Redesign of Pricing under Emergency Conditions - MISO and the Independent Market Monitor (IMM) have both submitted proposals to enhance pricing under emergency conditions. Currently there is a failure to obtain efficient pricing under emergency conditions due to potential price suppression (or escalation if a light load scenario) caused by the deployment of Load Modifying Resources (LMRs). MISO has proposed to do this by adjusting the offer prices of external resources, generation and LMRs to the maximum of their offer price or the average ELMP of the hour immediately prior to the initiation of the maximum generate procedure.

The IMM has made an alternate proposal that all emergency resources should have offer floors of $1,000, rather than being tied to the pre-emergency conditions, as those prices may not always be adequate. MISO believes that the IMM's proposal is inefficient and non-competitive, and would make deployment difficult if all emergency resources had an equal deployment price.

▶ CAISO

Phased Implementation of the Energy Imbalance Market - While careful to not call it a delay, the CAISO and Pacificorp announced that the Energy Imbalance Market (EIM) that was to begin full operations on 10/1 will be phased-in throughout the month of October. Specifically, they have said that all EIM dispatches in October will be advisory only and will have no settlement implications. Market participants do not seem to viewing this as any sort of major setback for EIM implementation and go-live.

▶ CFTC

CFTC Re-issues Proposed Margin Rule for Bilateral Swaps - On 9/17, the CFTC hosted its first open meeting since Chairman Timothy Massad took office and unanimously approved a proposed rule that would establish initial and variation margin requirements on uncleared swaps. In his opening statement, Chairman Massad stressed that the rulemaking is designed to "minimize the burden" on commercial hedgers and make sure that the CFTC's regulatory scheme "recognizes the needs and concerns of commercial end-users who depend on the derivatives markets to hedge normal business risks."

The proposed rule applies to Swap Dealers registered with the CFTC but not regulated by a bank regulator (e.g., BP and Cargill). The CFTC rule would establish minimum requirements for the exchange of initial and variation margin between these CFTC-registered Swap Dealers and their counterparties to non-cleared (bilateral) financially-settled transactions (swaps). Consistent with the margin rule originally proposed by the CFTC in 2011, the new proposed rule does not require Swap Dealers to collect initial or variation margin from commercial end-users like Exelon, but rather leaves that decision to the Dealer, consistent with its overall credit risk management.

CFTC Final Rule Formalizes Relief to Facilitate Energy Related Swaps with Municipalities and Other Government Entities - The CFTC unanimously approved a final rule aimed at preserving the ability of Exelon and other market participants to enter into financially settled natural gas and electricity swaps transactions with municipal gas and power authorities and other government entities that serve a utility function (aka "Utility Special Entities") that are hedging their risks.

CFTC staff explained during the open meeting that the rule responds to concerns raised by these Utility Special Entities that the number of counterparties willing to enter into swaps with them has been reduced due to strict treatment in the CFTC's original rules for transactions with municipal utilities, federal agencies and other government entities. The final rule permits a firm to apply trades with Utility Special Entities to a broader $8 billion registration threshold that applies to all market participants, as opposed to the previous stringent $25 million threshold for transactions with Utility Special Entities that if exceeded would have required registration with the CFTC as a Swap Dealer.

The final rule puts into a more permanent form the relief previously granted in a series of no-action letters that provided temporary relief. CFTC Chairman Massad said this rule is an example of the "fine-tuning" process needed for the regulatory framework established by Dodd-Frank.

COMPETE

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