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UNITED STATES OF AMERICA

BEFORE THE
FEDERAL ENERGY REGULATORY COMMISSION

Promotion of a More Efficient Capacity Release Market	:	Docket Nos. RM08-1-000

COMMENTS
SUBMITTED ON BEHALF OF THE PUBLIC UTILITIES COMMISSION OF OHIO

January 25, 2008

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I. INTRODUCTION AND BACKGROUND

On November 15, 2007, the Federal Energy Regulatory Commission (FERC or Commission) issued its Notice of Proposed Rulemaking (NOPR) in Docket No. RM08-1 (Promotion of a More Efficient Capacity Release Market). FERC's NOPR invited comments from interested persons regarding its proposals on the following matters: (1) to permit market-based pricing for short-term (*i.e.*, one year or less) capacity releases using a bidding system with no price cap; and, (2) to facilitate asset management arrangements (AMAs) by relaxing the Commission's prohibition against tying and its bidding requirements for certain capacity releases. The Commission also invited comments on how its proposed rule changes will affect states with retail unbundling (Choice) programs and what corresponding rule changes may be needed to accommodate states with such programs. FERC indicated that after reviewing the comments responding to this investigation, it will decide whether to move forward to initiate a proposed rulemaking. Comments responding to FERC's NOPR were to be filed on January 10, 2008 (which date was extended to January 25 by Notice issued December 14, 2007).

II. SUMMARY OF THE OHIO COMMISSION'S COMMENTS

A. Capacity Release

- The PUCO supports FERC's proposal to advanced market-based pricing for released pipeline capacity so long as "safe harbor" provisions exist for state-mandated unbundling programs.
- In Ohio, capacity releases made by the local distribution companies (LDCs) to marketers participating in state-mandated unbundling (Choice) programs should be exempted from market-based pricing so long as the retail markets have not fully matured and adequate protections exist to ensure that neither the LDC nor a participating Choice marketer is advantaged or disadvantaged from such an arrangement.
- The PUCO encourages the Commission to examine broadening the concept of an individual LDC waiver to that of a state-wide waiver where state-mandated retail unbundling programs are developing.

B. Asset Management Arrangements (AMAs)

- The PUCO encourages FERC to proceed with an exemption from the bidding requirements for AMAs, where those AMAs comport with certain structural safeguards.
- The PUCO views the utilization of asset managers and Choice marketers – particularly in states where retail unbundling is developing – as performing much the same function of LDCs; that is, standing in the shoes of the LDCs to serve firm, end-use customers as efficiently as possible. In these particular instances, differentiation from entities with excess, unutilized, or under-utilized capacity, is necessary and appropriate.
- In certain aspects, many of the exemptions for asset management arrangements ought to be duplicated for retail Choice programs.

III. DISCUSSION

A. Capacity Release

Just as FERC's efforts towards unbundling have been an iterative process utilizing a succession of FERC Orders over time, so, too, are Ohio's retail unbundling efforts an evolving and iterative process. As the next step to further develop pipeline capacity markets, FERC's proposal to advance market-based pricing for released pipeline capacity (as opposed to capacity initially sold by the pipelines) would extend the existing market-based pricing for short-term capacity releases beyond the current 30 days and increase it up to one year as a permanent provision. While FERC's proposal advances efforts to promote an efficient marketplace for pipeline capacity, this proposal has significant implications for Ohio's Choice programs.

Ohio has Choice programs in existence for all four of its major local distribution companies (LDCs). In terms of the levels of voluntary participation, Ohio's Choice programs have been successful. In Ohio's Choice programs, Choice marketers may acquire and utilize the LDC's existing primary, firm pipeline capacity for up to a year at a time, so that this capacity, in turn, serves the Choice customers in Ohio in lieu of the LDCs performing that function. Given that Choice loads shift between marketers or to/from the LDC's sales service (or Standard Service Offer – discussion following) in every given month, it is difficult for an LDC to release a given amount of capacity for periods exceeding one year in order to be exempt from FERC's proposed bidding requirements. Ohio's LDCs need the flexibility to realign capacity among Choice marketers as loads shift between the marketers. There is no one period for a contract between marketers and customers; instead, customers have the flexibility to shop amongst the various suppliers throughout the year.

These pipeline capacity releases for the Choice marketers are designed to comport with existing FERC requirements. Such capacity is released to the participating Choice marketers at the maximum tariff rates, as the Choice marketers are essentially standing in the shoes of the LDCs in serving those firm customers. Through these transactions, neither the LDCs nor the Choice marketers are advantaged or disadvantaged one over the other. Rather, the Choice marketers merely stand in the shoes of the LDC regarding the pipeline capacity and natural gas commodity procurement functions. Once deliveries are made by the Choice marketer to the city gate, the LDC – much like a pipeline – operates and balances its systems and transports or redelivers the natural gas to the Choice customers for their end-use. In fact, in many ways, the Choice marketers are functioning much like asset managers for discrete portions of the LDCs' load profiles, rather than for a system-aggregated firm load.

Additionally, Ohio presently has one LDC, and other Ohio LDCs are contemplating, bidding out the residual firm sales load and transitioning this residual load to a market-based standard service offer (SSO). Much like the Choice marketers serving discrete portions of LDCs' firm loads, the SSO is being supplied by contractual bidders, functioning as asset managers for discrete portions of the residual firm load for the LDC. While delivery into the SSO pool has been bid out (just like an asset management arrangement), it is shared amongst several entities each functioning as individual asset managers, rather than just one asset manager for the aggregated load. Once again, this illustrates the need for flexibility in reallocating capacity between choice and SSO suppliers.

B. Asset Management Arrangements

FERC's proposal to carve out an exemption for asset management arrangements (AMAs) is appropriate. The objective to promote FERC's long-standing policy of "Shipper Must Have Title" remains appropriate. Ohio, in particular, has given this policy due respect and continues to develop its evolving retail markets with this policy in mind.

Since the full implementation of FERC Order 636, LDCs have been entirely responsible for the procurement of their own city gate and upstream pipeline capacity, storage capacity, and natural gas commodity for their customers. As the wholesale and, particularly, the retail markets have continued to develop, there also have been significant changes in the organizational makeup and capabilities of the LDCs to continue in this role. As a result, LDCs that once had the financial and human capital resources to draw upon in order to meet their firm sales requirements may have lost some of those market-place efficiencies and economies of scale with the advent of retail competition. Some of these marketplace efficiencies and economies of scale may continue to be provided to LDCs' firm sales customers by utilizing asset management arrangements in lieu of direct procurement by the LDCs, themselves.

In the instance of Ohio's Choice programs and the utilization of AMAs by LDCs, there is regulatory review by the PUCO – the state regulatory body. Such regulatory oversight is not being accomplished behind closed doors. No entity is being unduly advantaged or disadvantaged at the state level. The PUCO believes that it is in the best position to understand the nuances of the end-use or retail customer, to ensure the dedi-cation of valuable resources to be utilized to serve the retail customer while ensuring the interest of efficiency and economy of scale.

IV. CONCLUSION

Until retail markets for Choice customers are fully developed, the PUCO believes that continued introduction of market forces into the pipeline capacity market are appropriate, so long as safeguards exist to prevent the introduction of these market forces from impinging upon the relatively immature, but developing, unbundled retail markets. These safeguards are necessary when entities – whether asset managers or individual Choice marketers – are standing in the place of LDCs in the procurement of natural gas commodity and capacity for firm end-use customers, particularly those that are heat-sensitive, small volume, end-use customers.

The PUCO commends FERC for recognizing the importance of AMAs and for recognizing the potential impacts of changes in capacity release requirements upon retail unbundling efforts. Ohio's LDCs need the flexibility necessary to ensure the continued least-cost provision of gas supplies to their customers, particularly while the retail markets continue to evolve. Exempting LDCs and Choice marketers participating in a state's unbundling efforts from the proposed capacity release bidding requirements, as well as exempting AMAs from those same requirements, are necessary and appropriate. In the interest of efficiency, the option of a state-wide exemption from these bidding requirements for states that have undertaken significant retail unbundling efforts might be given consideration. The PUCO thanks FERC for the opportunity to respond to its invitation for comments regarding promoting a more efficient capacity release market.

Respectfully submitted,

/s/ Anne L. Hammerstein

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V. CERTIFICATE OF SERVICE

I hereby certify that the foregoing have been served in accordance with 18 C.F.R. Sec. 385.2010 upon each person designated on the official service list compiled by the Secretary in this proceeding.

/s/ Anne L. Hammerstein

Anne L. Hammerstein
Assistant Attorney General

Dated at Columbus, Ohio this January 25, 2008.