

This simple legal observation is intended to help the Commission enable load to take the upper hand in remedying undue discrimination, meeting resource adequacy, mitigating market power, producing liquidity and transparency, better aligning physical and commercial rules, boosting innovation, improving service and satisfying reliability objectives. A dramatic change is required because load's opportunity to participate is now constrained by the slowest link in the chain (IOU, RTO, state and federal regulators), and load cannot afford the slow way.

There are numerous load participation programs presently in place. In Ohio, we have FirstEnergy's APX-based program, we have Cinergy's Power Share program, we have AEP's interruptible schedule with the buy-through component (which applies to all interruptible load in Ohio). There are more loads that would be interruptible on AEP's system, but for the cap that AEP imposed on the amount of interruptible capacity it would make available to retail customers. In Ohio, we unbundled rates so that the FERC transmission rate applies to all customers and all customers (including interruptibles) are currently paying for transmission service based on FERC's firm network service charges. The Ohio interruptible rates (and I suspect others) include demand charges and ratchets that obligate interruptible customers to pay capacity charges irrespective of their actual usage. Interruptible customers are also paying charges for stranded costs and have sophisticated metering and often demand controllers on their side of the meter that can be programmed to enable extremely effective demand-responsiveness. I note that despite the increase in generation capacity in the Midwest, the frequency and duration of AEP's interruptions have increased. In Indiana (non-choice state), Public Service Indiana (Cinergy) has an interruptible buy-through program (FERC jurisdictional due to a sale for resale element). The Ohio co-ops have a large amount of curtailable load (water heaters on radio control) that is presently used to increase the coincident purchased power load factor of each distribution co-op and to avoid the heavy ratchet in the contract with the co-ops' all-requirements supplier (Buckeye Power - owned by the co-ops). Ohio municipal utilities have both load and generation resources that are used mostly to peak shave (improve purchased power load factor). In some cases, there are restrictions on the operation of generators owned by customers as a result of all requirements contracts with customers (generators can only be operated in an emergency). The thing that is missing (relative to efficient use of these resources) is an opportunity for these resources to exhibit a coordinated response to information designed to indicate the behavior that will help meet larger reliability needs of the grid or to secure the much loved price response from real customers.

In almost every case, load's convenient opportunity to participate in the physical market as a resource to address reliability or to act as a price damper is channeled through a vertically integrated utility with conflicting missions and "weak incentives" to "make markets work." In most cases, load does not have an opportunity to see information (price or the balance between demand and supply) so that the load's behavior might be better coordinated with the system's needs or so that the load may more easily determine if it is being abused (through diversion or withholding) to the advantage of a

supplier seeking an opportunity to make a sale at a higher price. I note, importantly, that while independent RTOs can help to break out of our legacy culture, we see too often that the breakout is indirect and made resource intensive through a growing chain of balkanized negotiations that are the regulatory equivalent of being nibbled to death by ducks. For recent example, notwithstanding the Commission's common market directive to PJM, MISO and SPP, the CRR-follow-load perspective in the SMD NOPR, and the Commission's recent order involving a complaint against PJM by Oxy Chem, PJM's roll-out of PJM West as it applies to former Alliance Companies is not predicated on a load following FTR distribution sequence. No RTO should be permitted to claim fully functional status unless and until these important hedge instruments are placed fully under the control of load.

JUMP STARTING DEMAND RESPONSE

The following suggestion, broken into three parts, is offered to jump start demand response and to get load in the game.

Suggestion - Part 1

The Commission should require all jurisdictional entities (including RTOs) and their affiliates to publish every curtailment or interruption request (including any notice of probable curtailment or interruption) and every request for load to voluntarily release demand no less than 24 hours prior to the curtailment or interruption or desired release, except in cases where the curtailment is the result of an emergency that presents immediate risk of property damage or injury. The information should include the specific reason or reasons for the request, the amount of capacity/load subject to the request, the expected duration of the curtailment or interruption, the location and amount of total load per location subject to the request and, if the request is for economic reasons, the expected cost of supplying the energy but for the interruption. This information should go to the RTO, the relevant market monitor, all customers subject to the request, each state commission having jurisdiction over any service provided to the affected ultimate customers, and should be aggregated and published on each RTO's OASIS. The purpose here is to make load's current participation in the market more visible as the participation may relate to reliability or price objectives.

Suggestion - Part 2

All (firm and non-firm) load should have the opportunity to provide to a central location (*via* Internet) information on sags and other power quality deviations observable at their measurement stations. Where possible, it would be useful to automate the reporting of this information. This information should be assembled by the relevant RTO and posted on the RTO's OASIS in the aggregate (with node/zone information if possible) as well as by transmission owner (with node/zone information if possible). For each report, the serving TO should be required to identify the root cause of the problem and provide the options (with cost estimates) available to eliminate the power quality/reliability problem.

Any load may elect to install facilities to address power quality problems and receive a location-specific, transferable credit equal to 50% of the otherwise applicable transmission charges. Each transmission owner shall be required to provide information and resources needed to examine the root cause of power quality problems and permit load-driven modifications on upstream facilities where the modifications can address the problem more effectively and efficiently provided the modification does not negatively affect service quality to other customers. The credit shall apply for ten years or until the project cost is fully offset by the credit (whichever occurs first). Again, the purpose of this item is to make load's physical participation (involuntary frequently) more visible to the rest of the world and to give real customers the business case justification to proceed to fix problems. A similar credit approach should be considered in allowing load to address load pocket-related market power problems.

Suggestion - Part 3

The Commission should not permit any RTO to assume responsibility for reliability/congestion management for any new transmission owner (including PJM West) or commence operation of an energy market unless and until a system is in place to efficiently provide load with FTRs or CRRs. In addition, notwithstanding any contract or tariff provisions to the contrary, all ultimate customer curtailable/interruptible load paying for firm transmission network service shall be given all the FTRs or CRRs needed to access the market and replace the amount of the curtailed/interrupted energy specified in the day-ahead curtailment notice (see Part 1). All tariff restrictions on the amount of interruptible or curtailable load should be removed as a strategy to get more load involved directly in the market (both for price response and reliability purposes). This allocation of FTRs or CRRs could be required during a "transition period" ending on 12/31/05 or when the MISO/PJM/SPP common market is fully implemented (whichever occurs later). These customers would be free to use or transfer the FTRs/CRRs. This would also apply to interruptible customers in non-choice states with the Commission using the sale for resale jurisdiction and inherent interstate nature of load's reliability and price response roles to impose this as a condition.

This suggested approach puts a high priority on getting load directly involved in the market, gets the FTRs/CRRs to load for customers that are already participating in the physical market in the interim, and provides these customers with an incentive to go shop and keep their facilities in production or transfer FTRs/CRRs to those who need them and will pay for them.

The opportunity to coordinate these embedded resources to serve the public interest comes more easily and more effectively when the LMP congestion management engine is ignited by an RTO and the engine is seamless over as large a part of the interconnect as reasonably possible. This observation causes us to continue to urge FERC to make this objective (get the LMP engine running for as large a part of each interconnect as possible) its number one priority. At the moment, it appears that the Midwest has adequate generation capacity by any simple reserve margin calculation. Getting the

LMP engine started will allow us to get better information on where new generators and delivery system modifications should be considered to meet more sophisticated measures of reliability. Until then, we suggest that efforts to quantify a capacity reserve margin objective or implement untested business rules to “ensure” generation adequacy will not be productive. Resource adequacy measures will be better undertaken once we have the system reliability information that is essential to run LMP.

CLOSING

In closing, I would ask the Commission to consider a different type of resource adequacy as it selects the path that will get us the most market bang for the buck.

I do not think I can over-emphasize the difficulty that businesses increasingly challenged by their own competitive pressures are experiencing in this process. They are paying “stranded costs,” they are underwriters of the network’s fixed costs while confronting uncertainty about the potential for a symmetrical receipt of CRRs/FTRs, they are being asked to pay the growing costs of getting the RTOs up and running - to pay all the costs projected to be associated with the new markets (CRRs, capacity and so on), to pay (sometimes twice) all the RTO participation costs incurred by incumbent utilities, to fund the various layers of regulation, to underwrite the risk of TO revenue erosion that may result from the elimination of rate pancakes, to continue to be the reliability provider of last resort, and then to spend their last dollar to field a customer-driven team to make sure the devil is not in the details.

Load has already invested tremendous resources in this work and there are free riders, too many to count, on load’s side of the meter. Industrious customers cannot be expected to stay in this game based on forward-looking statements that they will see, someday, lower energy prices and better service. Instead of worrying about incentives for transmission owners to participate in RTOs (obligations as a matter of law in many cases) and nibbling at RTO expansion (increasingly based on special deals for each TO that are cutting against the type of seamlessness that RTOs are supposed to produce), the Commission should focus its attention on getting real customers in the market. All the cost/benefit studies done to this point show that demand response is the big pay day.

As a long-time representative of larger customers proactively interested in issues that affect the price and availability of energy, I greatly appreciate the Commission’s effort to include load’s perspective in the effort to make markets work.