

Energy Choice Matters

April 14, 2008

Ohio House Bill More Favorable to Competition

Ohio Gov. Ted Strickland, D, promised to veto a House electricity bill that would maintain competition and set a shorter path towards market-based rates for the state's consumers.

"The House bill recognizes that competition and customer choice will provide customers with the best price, innovation and efficiencies, and therefore preserves that option for customers," House Speaker Jon Husted's, R, office stated.

The text is somewhat convoluted leading to much argument about whether the bill would or would not give utilities "unfettered" access to market-based prices immediately in 2009.

From our reading, we believe the bill, as currently drafted, would require all utilities to submit an "electric security plan" to PUCO to price standard service starting Jan. 1, 2009. Utilities may simultaneously apply to offer market-based rates.

The electric security plans would be analogous to cost of service rates, which could include automatic recovery of the utility's costs of fuel used to generate electricity; purchased power supplies; reasonable allowance for construction work in progress for new generation; and a nonbypassable surcharge for the life of an electric generating facility that is owned or operated by the electric distribution utility. That last provision, which would subject shoppers to paying for utility-owned generation they don't benefit from, is a big drawback of the proposal from retailers' perspective.

The PUCO would be compelled to compare the electric security plan to the expected results that would otherwise apply under market-based pricing, and determine whether the electric security plan is favorable.

Should market-based rates be deemed more favorable, their implementation would depend on whether the utility owns generation. Utilities not owning generation could go to full market-based rates immediately, but those retaining generation would have to phase-in market-based rates over

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D.C. PSC Issues Revised NOPR on Consumer Rights

The D.C. PSC has issued a NOPR to update the residential consumer bill of rights to, "reflect the competitive nature of the energy and telecommunications industries and to provide appropriate safeguards for consumers who purchase services in this new, more competitive environment" (FC 712).

One of the more interesting codes we found in the 62-page NOPR is 327.37 which states, "Once the Natural Gas Utility processes a Customer Enrollment from an Energy Supplier, the Natural Gas Utility shall not accept Enrollments from any other Energy Supplier for that Customer until Termination of Contract."

First, we're unsure how the utility is supposed to verify whether a contract from the customer's original supplier is in effect, or has been terminated.

Second, there is no comparable treatment for competitive electric service. Instead, utilities are expected to honor the most recent enrollment submitted by a competitive electric supplier when assigning a customer.

The bill of rights includes rules for bill format and presentation, supplier contract terms and conditions, advertisements, and methods of authorization and enrollment.

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FirstEnergy Says Purely Financial Trades Must Benefit Consumers

Purely financial transactions, “should be permitted only so long as it has been determined that such transactions provide real and consequential benefits to consumers,” FirstEnergy told FERC in urging the Commission to not delay its review of PJM’s complaint against the Tower Companies (EL08-44).

Such financial transactions should not be permitted if they will increase costs to consumers or enable parties to engage in activities such as the market manipulation alleged by PJM in its complaint against Tower, FirstEnergy said (3/28/08).

FirstEnergy urged that FERC impose on PJM the burden of showing that permitting parties to take risky counterflow positions is of real benefit to the FTR markets and ultimately reduces costs to PJM members.

“PJM also should be required, before permitting such transactions, to demonstrate that sufficient safeguards are in place to protect PJM members and their customers from incurring losses and costs,” FirstEnergy added.

The Tower Companies had suggested that FERC wait on the results from investigations by FERC’s Office of Enforcement and the PJM Market Monitoring Unit before addressing PJM’s complaint against Tower in EL08-44.

FirstEnergy argued that a delay isn’t warranted and would only lead to inefficient, multiple filings of individual PJM members against Tower.

FERC should first determine whether the allegations of the Tower Companies’ market manipulation have substance, including whether there is a basis for piercing the Tower Companies’ corporate veils, before addressing certain Tower demands for the return of collateral and the payment of revenues they allege are due them (Matters, 3/31/08), FirstEnergy asserted in urging the Commission to maintain the status quo with respect to revenues withheld by PJM.

Conn. OCC Shares Skeptical View of Summer Savers Program

Connecticut’s Office of Consumer Counsel agrees with the DPUC that the Department should not renew a Summer Savers program, which pays rebates to customers who lower their electric usage during the summer, until a more thorough cost-benefit analysis is completed (07-06-21).

“The approximately \$24 million cost to ratepayers of the Program is tremendous, particularly in light of the fact that, aside from possibly heightening awareness about conservation, no concrete benefits were documented,” OCC noted (Matters, 4/7/08).

“OCC believes that a significant number of ratepayers were not even aware of the Program until they received the analysis of their usage when the Program was over.”

“Moreover, it is difficult to determine whether those who lowered their usage did so as a result of the program or on their own initiative out of concern for higher electric rates,” OCC added.

“Perhaps most significantly, the program fails to reward those who made long term commitments to conservation prior to 2006 and, in fact penalizes them by increasing their fixed charges,” OCC cautioned.

OCC believes that the best way to encourage conservation is to provide incentives to make the initial investment necessary for conservation measures, and then allow ratepayers to see the positive effect of their conservation in a lower energy bill.

Increases to fixed charges obscure the ability to see the positive cost impacts from conservation efforts, OCC said.

Calif. PUC Staff Doesn’t See Need for Energy Contract Bulletin Board in CAISO

The California PUC staff doesn’t favor FERC’s proposal to make RTOs create online bulletin board to facilitate long-term energy contracting, in preliminary comments which the PUC gave the green light to last week.

The staff intends to file comments on

FERC's NOPR to improve competition in organized markets (RM07-19, AD07-7) and briefed the PUC on areas of the NOPR requiring improvements.

The PUC staff thinks the bulletin boards may be unnecessary in a state such as California, given the "substantial" processes under PUC purview supporting long-term contracting. Proposals for an electronic bulletin board for trading resource adequacy capacity are currently pending before the PUC as part of Phase 2 of its resource adequacy proceeding, staff noted.

Energy contracts are already bought and sold on the Intercontinental Exchange, and the staff thinks it's unclear what, if any, additional benefits would accrue to California markets or ratepayers if the California ISO were required to also post opportunities to buy and sell energy.

Staff is concerned about possible FERC encroachment in the definitions of products that are the subject of state jurisdiction.

The requirement to create a bulletin board must not become a vehicle to allow FERC to do what it specifically recognizes it has no authority to do -- dictate state purchasing practices, regardless of whether the product in question is energy or capacity, staff argued.

While an electronic bulletin board could in theory be a useful tool for creating liquidity and promoting long-term energy contracts, FERC must allow capacity products and procurement processes in California to be defined by the PUC, staff asserted.

The staff does favor promoting long-term contracts, as reflected by state policies facilitating their use.

Long-term contracting reduces ratepayer risk and supports the development of new generation by providing a predictable revenue stream that is generally needed to secure financing for the construction of new generation facilities, staff observed.

Long-term contracts limit the immediate impact of volatile spot markets by insulating a substantial share of the market from short term price fluctuations, staff added.

Lastly, long-term contracts decrease the incentives for market manipulation, staff reasoned, because the share of the market

subject to manipulation in spot markets is reduced by the exclusion of the share of energy supply secured by long-term contracts, making the potential gains from gaming the market much smaller.

In terms of demand response, the NOPR does not go far enough to open access to smaller providers of demand resources in addition to aggregators, the staff argued.

By proposing to require RTOs to accept demand response bids from an aggregated retail customer, it is unclear if FERC contemplates that individual customers may also participate as a demand response provider, staff questioned.

The staff has worked hard with the CAISO to ensure a 100 kW minimum bid-in threshold for demand response providers, to ensure that independent entities capable of individually meeting the minimum 100 kW threshold would be allowed by the CAISO to bid their negawatts into the market without third party or aggregator assistance.

FERC should allow flexibility in allowing states to decide who can provide demand response into the wholesale market and clarify that it is not limiting the providers of demand response to only aggregators, the staff urged.

Briefly: **Maine Utilities Moving Forward with Northern Maine Tie**

Central Maine Power and Maine Public Service have decided to pursue development of the 345-kV Maine Power Connection (Matters, 3/18/08) that will connect the currently isolated northern Maine grid to the rest of the state's bulk power system, which is part of NEPOOL, the utilities told the PUC (2006-513). The connection is to resolve the "market failure issue" presented by the isolated MPS system, which prevents competitors from offering lower prices, and also facilities over a billion dollars in wind investment in MPS which could be exported to the rest of the state. Over 800 MW of wind has requested interconnection to MPS's system. A 150-200 mile connection would cost \$400-500 million, the utilities reported, which they would seek to have socialized across all of NEPOOL. The utilities expect to

submit a CPCN application in early July.

Usource Gets Delaware License

The Delaware PSC granted Usource an electric supplier license to act as a broker for commercial, industrial, municipal, and governmental customers (08-20).

ERCOT, UCE Still Working on ADR

ERCOT and Utility Choice Electric have reopened discussions on ways to resolve the Alternative Dispute Resolution, ERCOT told the PUCT in asking for 90 additional days to continue talks (32314). UCE has addressed its non-ERCOT related claims, ERCOT reported. ERCOT is seeking more than \$5 million in charges that UCE accumulated in the market back in the fall of 2005 when Calpine terminated its QSE agreement with UCE and UCE did not post the collateral to serve as its own QSE, resulting in a POLR transition for UCE's customers.

PUCT Passes on Expert Help for Manipulation Case

The PUCT's executive director has decided not to award a contract to assist staff in connection with a contested case regarding alleged market power abuse, after reviewing proposals submitted in response to an RFP (35128). The PUCT had been seeking a firm to provide consulting or expert testimony.

Two ARES's Approved in Illinois

The Illinois market got two new entrants last week with the ICC granting ARES licenses to FirstEnergy Solutions (08-0142) and Juice Energy (08-0161). FirstEnergy Solutions' license is only for the Ameren territories but allows it to serve all customer classes (Matters, 2/28/08), while Juice Energy received approval to sell to ComEd customers using more than 15,000 kWh annually (Matters, 2/29/08).

Calif. Electric Customers Socked with \$600 Million Tab to Subsidize Academia

The California PUC went forward with what critics called a "boondoggle" wealth transfer to the University of California that's to cost ratepayers \$600 million by approving the

California Institute for Climate Solutions (R. 07-09-008). The final order provided for greater window dressing oversight but did not substantively address the concerns of load that the plan was vague, redundant, misguided, unaccountable, and downright illegal (Matters, 3/5/08). In response to criticisms that ratepayers won't get the benefit of intellectual property rights that they financed, the PUC offered that a Technology Transfer Subcommittee will develop intellectual property guidelines, with the requirement that at least 10% of net revenues revert to ratepayers, unless such an action violates existing laws. We still think customers are getting a raw deal on that one, when such intellectual property discoveries would not be possible without the \$600 million they're being forced to cough up.

Entergy Reports OASIS Problem

Entergy reported to FERC an OASIS Automation issue involving the evaluation of limiting flowgates for certain transfer paths in the Study Horizon (ER05-1065). During a routine quality assurance test on March 27, Entergy ascertained that since September 2007, a limited subset of Transmission Service Requests (TSRs) in the Study Horizon with a Point of Delivery (POD) of AMRN or AECl may have been evaluated considering one more limiting flowgate than is standard operating procedure. Entergy blamed a software change several months ago for the problem. Since September 2007, some TSRs with a POD of AMRN or AECl may have been evaluated considering as many as sixteen, rather than fifteen, significantly impacted flowgates in the Study Horizon. TSRs with the six following Point of Receipt ("POR")/POD combinations may have been evaluated with up to sixteen flowgates: Ruston/AECl, Batesville3/AMRN, Batesville3/AECl, Choctaw/AMRN, Choctaw/AECl, and Ackerman/AECl, Entergy reported. Corrected software was delivered by Entergy's vendor on April 8.

DPUC Again Protests FERC ICR

The Connecticut DPUC protested FERC's jurisdiction to set installed capacity

requirements (ICR) for 2008/2009 capability Year in ISO New England for the same reasons that the DPUC has unsuccessfully protested FERC-determined ICRs in previous years – the Federal Power Act reserves jurisdiction over generating facilities and resource adequacy determinations to states (ER08-696). FERC, in dismissing similar protests in prior years (Matters, 3/17/08), has found that it can set the ICR since the Commission is not asserting jurisdiction over generating facilities but rather is reviewing a process that affects jurisdictional consumer rates.

Detroit Ed Looking for Green Suppliers

DTE Energy issued an RFO to buy Michigan-based, newly built renewable energy for its GreenCurrents utility product, chosen by less than 1% of the utility's 2.2 million customers (Matters 4/2/08). Responses are due May 2; bidders information is available at <http://www.dteenergy.com/rfp>. Last year, Detroit Ed was short about 4,000 RECs in supplying the program.

DESC Holding Workshop for Small Business Commodity Suppliers

The Defense Energy Support Center is holding a Small Business Networking and Training Conference June 10, 2008, in Naperville, Illinois, which is to enhance small business participation in federal acquisitions with companies capable of providing energy commodities and services.

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five years, gradually blending a higher amount of market-priced power with their own generation mix.

Utilities would only be required to submit a security plan in 2009, although the plans could last for years. In subsequent filings, utilities could choose whether to only pursue market-based rates or continue to file security plans.

The House bill's language would limit PUCO's role in determining whether a utility can move to market-based pricing to comparing the security plans with market prices. A Senate bill, more closely tracking Strickland's views, would give PUCO much

broader authority to determine when utilities could move to market-based rates. The Senate would also require another decade of transitioning to market pricing.

The House bill also ends transition charges at FirstEnergy designed to recover stranded costs, which would remain under the Senate bill favored by the governor. Eliminating those fees would lower FirstEnergy's prices.

Ohio is to move to market-based rates Jan. 1, 2009 if the legislators do not change the current law.

The House bill would also end special low-cost contracts for industrial customers but preserves some special rates for schools and hospitals, when struck in a transparent process. But Democrats claimed the House bill still allows industrials to strike secret side-deals.

A hearing is set for today with a vote scheduled for Tuesday.

DC Bill of Rights ... From 1

In particular, it includes specific language competitive retailers must follow when initiating a solicitation either over the phone or in-person, including an up-front disclosure that the contact represents a sales call and whether the customer consents to hear the offer. Required questions for third-party verifications are included as well.

The bill of rights would also require competitive suppliers to prepare a pamphlet in English and Spanish in layman's terms summarizing the rights and responsibilities of customers.

Under the bill of rights, payments shall be due within twenty days after the date the bill is rendered, which is a longer period than required in some other jurisdictions (such as ERCOT), so retailers may wish to check their terms and conditions for compliance.