

Energy Choice Matters

May 14, 2008

D.C. People's Counsel Opposes Shortened Rescission Period

The D.C. Office of People's Counsel remains concerned that the PSC's latest proposed Consumer Bill of Rights (Matters, 4/14/08) still reduces the rescission period for switching to a competitive energy supplier from 10 days to three days, it told the PSC in comments on the latest draft (FC 712).

"The reduction in the rescission period adversely affects utility consumers and harms the public interest by failing to provide consumers the necessary and proper time frame in which to rescind a contract," OPC had argued in a previous filing.

OPC claimed a majority of working group participants favored keeping the 10-day period, and contended that nothing in the docket's record supports a shortened rescission period.

The counsel also urged the PSC to codify that consumers can't be disconnected for failing to pay for appliances or services not regulated by the Commission. OPC is worried language only referencing appliances or merchandise does not protect customers from disconnection for other non-utility services.

OPC also proposed a moratorium on disconnects of elderly and disabled customers when the temperature is at or above 90 degrees. A law which extended a similar protection (at 93 degrees and higher) to all customers last year has expired, OPC noted.

Citing increased customer confusion of under- and over-billing from meter errors, OPC suggested the PSC adopt rules for fast and slow meters similar to COMAR 20.55.04.05 and 20.50.04.05 in Maryland, which set guidelines for refunding overcharges and collecting undercharges, including the availability of installment plans.

Pepco Energy Services' Solution to RPM Availability Would Violate Filed Rate Doctrine, Bypass Stakeholder Process, PJM Says

Pepco Energy Services' (PES) proposed remedy for reforming how infrequently run generating units are treated under RPM in terms of availability penalties would violate the filed rate doctrine and circumvent the stakeholder process, PJM and several other generators told FERC (EL08-58).

PES had filed a complaint at FERC over the Peak-Hour-Period Availability Charge (PHPAC), arguing that it discriminated against infrequently run generators by basing charges or credits for units running less than 50 peak hours on the plant's Equivalent Demand Forced Outage Rate (EFORd), rather than the more granular EFORp, or the plant's availability during peak hours. Generators meeting the 50-peak hour threshold have penalties based on EFORp.

Using EFORd, PES asserted, sends the wrong incentives to generators because it could penalize them for unavailability in non-peak hours, even though the charges are meant to prompt availability in peak hours.

PJM countered that PES's units appear to have had forced outages at times when needed by the system (as determined by the EFORd calculation) to a substantially greater extent this year than they have had on average over the last five years.

And most of the PES units in SWMAAC ran for fewer than 50 hours during the peak hour periods, PJM reported.

Thus, if those units' availability were measured using the EFORp metric, "it would make it appear that their availability had deteriorated far less, and might even make it appear in some cases as if they

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Comverge Cites PJM Rule Change for Weaker Economic Demand Response Revenues

Comverge signed 557 MW of demand resources during the first quarter but recorded a larger loss of \$8.8 million versus \$4.5 million a year ago from higher expenses.

Quarterly revenues jumped 82% to \$10.5 million, helped by two acquisitions, but operating costs rose as well. General and administrative costs nearly doubled to \$8.3 million, while marketing and selling expenses grew to \$4 million from \$1.9 million in the year-ago quarter.

Comverge blamed changes in PJM's economic demand response programs, including the elimination of paying load full LMP above \$75, for weaker revenues at its Enerwise unit. Enerwise revenues from PJM economic demand response fell from \$2.8 million in last year's quarter (before Comverge acquired the unit) to \$100,000 this quarter.

Comverge explained that due to limitations on the maximum hours demand response could be called, it was managing its megawatts to be called in the summer, where economic values would be higher, rather than dispatching the load in the first-quarter shoulder months since load is no longer paid full LMP.

New megawatts signed by Enerwise during the quarter won't start bringing revenue until June 1, Comverge added.

Enerwise, acquired last year, increased C&I volumes under contract to bid into open markets 74% during the quarter, to 803 MW from 462 MW a year ago.

Channel partners are acquiring the bulk of C&I customers for economic load response programs, Comverge reported.

CEO Robert Chiste touted the firm's outlook given large opportunities arising from more urgent supply constraints and environmental concerns in the bulk power system.

Comverge now manages 2,011 MWs (including some waiting for Connecticut regulatory approval) versus its 362 MW portfolio at the time of its IPO a year ago.

Comverge expects the DPUC to approve its Connecticut load response contracts, and is working on resubmitting demand response contracts for programs at Southern California

Edison. The California PUC rejected several of Comverge's contracts in March.

Comverge's smart grid unit is rolling out pilot superstat thermostats to deliver a demand response solution over broadband power line connections, and through a price responsive program.

Calif. PUC Draft Would Approve PG&E Mover Referral Service

Pacific Gas and Electric would establish a mover referral service under a draft resolution issued by the California PUC (G-3417).

PG&E had requested authority to offer a service to its new or transferred residential gas and electric customers which it describes as a "one stop" call for moving services.

When a residential customer contacts the utility to transfer to or initiate service, the customer service representative will complete the utility transaction and then offer to transfer the customer to a vendor who will then offer to establish a connection to companies offering such services as telephone, internet, cable or satellite television, home security, trash removal and other such services that may be of interest to recent arrivals to the area.

The vendor will pay PG&E for its referrals, with the revenues net appropriate costs shared 50-50 with ratepayers.

Under the draft, the vendor could not be an affiliate of PG&E and none of PG&E's affiliates are to participate as service providers under the referral program.

PG&E expects 10% of its new and transfer customers to use the mover referral program, based on a review of over 20 utilities using similar programs in other states.

The PUC draft would require the customer service rep to make clear to customers that their utility transaction is "now complete" before offering the mover service.

Customers would not have to entertain the offerings of the referral service and the customer service rep would have to end the call if the customer indicates no interest in the mover referral.

The draft would not permit a "hard sell" of the referral service, and customer service reps could not be paid a commission or other financial incentives. Reps would have to stick to a PUC-approved script.

A customer's credit standing could not affect whether the mover referral service is offered to the customer.

Potential liability risk to the utility under any dispute between the customer and vendor or referral service provider would be borne exclusively by shareholders, the draft dictates.

SCE Sees Renewable Integration Study Benefiting All Customers, So All Should Pay

All utility distribution customers should pay for Southern California Edison's proposed Renewable Integration and Advancement (RIA) program because the program is aimed at providing overall system stability and enhancements which will benefit all customers on the grid, SCE argued in reply comments (A-0803014).

Thus, cost recovery should be from all customers, including existing and new direct access customers and community choice aggregators, not only bundled utility customers as several marketers had suggested (Matters, 5/13/08).

SCE assured the PUC that it is not seeking to gain any equity position in pilot renewable products, systems or technologies through the RIA program. SCE is including small-scale field tests of new technologies to evaluate feasibility of integration and to ensure overall system stability, the IOU reported. Western Power Trading Forum had cautioned that under RIA SCE could be using ratepayers to subsidize testing of utility-owned generation.

SCE also told the PUC that RIA is designed to complement, not duplicate, existing integration efforts at the California ISO and PUC.

Briefly:

PUCT Staff Opens New CREZ Transmission Selection Docket

The PUCT Staff filed a petition in new docket 35665 for the selection of entities responsible for transmission improvements necessary to deliver renewable energy from Competitive Renewable Energy Zones (CREZs). The docket is meant to facilitate settlement talks in parallel to the formal rulemaking process for Transmission Service Provider selection criteria (Matters, 5/9/08) and in anticipation of a final order by July 17 in docket

33672, designation of CREZs. Staff requested an intervention deadline of June 27 in the new docket, and that a prehearing conference be held to set a detailed procedural schedule once the Commission issues a final order in docket 33672. Staff will conduct settlement discussions in the interim as well.

FERC Agenda Set for Demand Response Forum

FERC released an agenda for its May 21 technical conference on demand response in organized electric markets (AD08-8). Panels include a presentation by NARUC President Marsha Smith and panels on:

- Appropriate Compensation for Demand Response in Organized Electric Markets;
- Barriers to Comparable Treatment and Solutions to Eliminate Potential Barriers: ISO New England, NYISO and PJM; and
- Barriers to Comparable Treatment and Solutions to Eliminate Potential Barriers: CAISO, Midwest ISO, and SPP.

GHRA Calls Latest Tara Motion Another Delay

The Greater Houston Retailers' Association asked an ALJ to deny Tara Energy's motion to reconsider a protective order in GHRA's complaint case against Tara, calling Tara's motion another tactic designed to further delay the proceeding (33967). Tara had argued that the protective order would injure its competitive position by allowing aggregators to view competitively sensitive information (Matters, 5/13/08). But despite Tara's "histrionics about 'keys to the kingdom,' actual facts or affidavits supporting its fanciful arguments about 'siphoning off' or 'skimming' profits are not offered," GHRA shot back. Tara attacks standard provisions in the protective order as being mere "promises," but violation of those "promises" could subject violators to sanctions by the Commission, including an aggregator's loss of its certification, GHRA pointed out.

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had improved availability this year," PJM cautioned.

Such resources may have even been rewarded with credits for "over-performance" despite a, "dramatic worsening in the availability," had PJM not implemented special rules for resources that run infrequently, PJM claimed.

"Such a result would defy common sense," PJM reasoned.

PJM noted that owners of infrequently run generation can avoid being rated on EFORd by simply self-scheduling their plants enough such that they run for more than 50 peak hours.

Bear Energy separately provided an example of the rationale for self-scheduling. Bear estimated, based on data in PES's complaint, that if PES self-scheduled its Buzzard Point West CT#16 for only 10.63 hours in February 2008 (the minimum additional hours needed to reach 50 peak hours), it would have incurred net costs of approximately \$46,000, but would have avoided up to \$158,300.49 in RPM penalties by reaching the 50-hour threshold for EFORp treatment.

Generators can also obtain and commit replacement capacity (on as little as one day's notice) to mitigate the risk of an availability shortfall, PJM pointed out.

PES hasn't shown that EFORd, a measure of availability used in the PJM region for decades, is an unreasonable metric for units that simply do not have sufficient peak-period operating history to be judged on their peak-period availability, PJM argued.

It is "patently obvious" that judging availability on EFORd rather than EFORp can yield different results, but such policy is clearly dictated by the plain language of the terms adopted by the RPM Settlement, PJM reminded.

"Indeed, the possibility of such a variance is what prompted creation of this separate category in the first place. It was precisely because the Peak-Hour availability of a unit that runs during relatively few of those Peak Hours might be an unreliable indication of the resource's true availability (as PES acknowledges) that the RPM Settlement opted for the well-known EFORd metric as a better indicator of a capacity resource's value to the system," PJM explained.

PES's proposal to simply exempt generation running less than 50 peak hours from any charges or credits would violate the filed rate doctrine, PJM argued.

The proposed retroactive elimination of the charges and credits would penalize owners that worked to improve their units' availability, while excusing those that failed to prevent deterioration in their units' performance -- exactly the opposite of the intended effect of the provision, PJM asserted.

"The Commission should reject this blatantly self-interested argument," PJM urged.

PES's proposed waiver would indeed harm other market participants since it would deprive generation owners who are due to receive credits under the current tariff of those credits. Giving units that under-performed a free pass would also discourage future availability by excusing market participants from the adverse consequences of their undesirable conduct, PJM noted.

NRG Energy agreed that there is, "unquestionably a punitive impact of utilizing EFORd" in assessing charges, but supported prospective changes only, following the stakeholder process.

PSEG Power also objected to PES's "decision to essentially end-run the existing stakeholder process," and opposed any retroactive relief.

Constellation Energy argued that to meet the "clear intent" of the tariff, peak hour availability must be determined based on performance during the peak-hour period, not on performance over the entire year as EFORd does. Thus, using the current penalty methodology is unjust and unreasonable because the penalties assessed fail to correlate with desired action by the generator. Put another way, a generator can perform as intended, yet still incur a substantial penalty, Constellation cautioned.

Constellation supports PES's plea for Commission action prior to the outset of the 2008-2009 Delivery Year to provide certainty to low load factor units regarding maintenance and operation of their infrequently run facilities in light of the prevailing rule set.

But Mirant concluded that the parties to the RPM Settlement "expressly rejected" the use of an EFORp-based metric for determining charges for infrequently run resources. "Nonetheless, on the eve of the 2008-2009 Delivery Year, PES is unilaterally asking the Commission to substitute that rejected metric for the EFORd-based metric to which the settling parties (including PES) agreed," Mirant observed in protesting the retroactive relief.