Energy Choice Matters

May 20, 2008

Maryland PSC Orders Price Mitigation for New Type II Customers

The Maryland PSC instructed the three utilities implementing the new definition for a small commercial customer (Type I) on June 1 to mitigate price increases for customers kicked into the Type II class, whose prices are set quarterly. New Type II customers aren't to see price increases higher than 15% under the Commission's letter order.

In November 2006 (Case 9064), the PSC instituted a uniform size for Type I small commercial customers, adopting Pepco's definition. Under that decision, a small commercial customer is a customer that does not have: a metered 30-minute demand that equals or exceeds 25 kW; energy consumption in excess of 6,000 kWh in any two consecutive winter billing months; or a monthly energy consumption that exceeds 7,500 kWh for a single summer billing month.

Allegheny Energy, Baltimore Gas & Electric and Delmarva Power had drawn the line based on whether customers had demand meters, but the size of customers varied by utility. In some cases, customers with peak demands of up to 60 kW were eligible for Type I SOS. The three utilities are now implementing the new definition.

With the change to the new definition, there will be "new" Type II customers starting June 1 at Allegheny, BGE and Delmarva - customers who no longer fit the refined Type I definition.

The Commission is concerned that as a result of the new definition, new Type II customers may see their total bills for the three month period of June through August 2008 increase significantly over the total amounts paid for the same three months in 2007.

Accordingly, the Commission acted to provide the new Type II customers a "transition period" to give customers an opportunity to take any necessary steps to mitigate future potential bills increases, citing its authority to suspend rates under § 4-204(a) of the Public Utility Companies Article of the Annotated Code of Maryland.

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Maryland PSC Tells NCG to Suspend Brokering

The Maryland PSC ordered broker NCG Energy Solutions to cease and desist all activity as a broker in Maryland after the broker revealed it had been acting as a broker in the state for nearly two years prior to applying for a broker license (Order 82011, Case 9142).

The PSC also initiated an investigation into NCG's compliance with PUC Article § 7-507 and COMAR 20.51.02.01, pertaining to licensing of electricity suppliers and brokers.

NCG made the disclosure at a May 7 open meeting, where former NCG employees and consultants alleged that NCG, "engaged in fraudulent business practices that adversely affected customers in Maryland, New York and Massachusetts," as detailed in the PSC's order.

NCG also admitted to brokering power in Delaware and Washington D.C. without a license; the PSC is forwarding its order to regulators in both jurisdictions.

NCG is to notify each competitive retailer for which it has brokered power that it is not licensed by the PSC and has been ordered to cease its activities. NCG cannot facilitate new or renewed contracts while the Commission investigates, but electric suppliers who have used NCG as a broker are to honor terms of existing brokered contracts pending further Commission action.

The Commission directed NCG to explain why it should not be found in violation of the PSC's licensing rules and why it should not be fined up to $10,000 for each contract brokered or violation of regulations.

NCG was ordered to appear at the PSC's June 11 open meeting.

Cooperative Says Oncor, REP Are Infringing on its Service Area

Big Country Electric Cooperative asked the PUCT for a cease and desist order regarding retail electric service provided by Tenaska TOPS REP (formerly Tenaska-Oxy Power REP Services) and Oncor (identified as TXU in the cooperative's pleading) to affiliates of Occidental Chemical Corp. (Oxy), that BCEC claims encroaches into its service area (35690).

BCEC believes Tenaska TOPS is, "illegally providing retail electric utility service to consuming facilities which are wholly located within an area or areas that are singly-certified for BCEC to serve."

Such service is accomplished through, "unlawful use of customer-owned distribution facilities," to provide service across certification boundaries to consuming facilities wholly located in BCEC's certificated area, BCEC alleged.

BCEC claimed Oncor is wheeling electric service for retail provider Tenaska TOPS to Oxy's customer-owned distribution network to serve 10 petrochemical consuming facilities (oil wells, oil recovery facilities, etc.) in southwestern Kent County, Texas.

Oncor's primary metering point which serves the consuming facilities in dispute is located in Scurry County.

The service area where the consuming facilities at issue are located remains wholly within BCEC's singly-certified area, the cooperative asserted. Thus, retail electric service in the area is required to be provided exclusively by the cooperative, BCEC argued.

Citing *Citizens Coop Gin v. General Telephone*, BCEC contended that it is "well-established Texas law" that certification service rights are determined at the level of consumption, and that the location of the actual consuming facility is determinative. The locations of the meter, distribution facilities, production and transmission facilities are irrelevant to certification review, the cooperative observed.

Long-established Commission policy holds that customer-owned lines and facilities cannot be used to circumvent the application of certification boundaries, BCEC added, citing docket 4572.

Retail service should be immediately transitioned to BCEC, the cooperative urged.

RESA Suggests Maine Power Shopping Website

The Retail Energy Supply Association encouraged the Maine PUC to examine a power shopping website in connection with the PUC's investigation of promoting green power products through utility bills (2008-178, Matters, 5/19/08).

RESA pointed to such sites in Texas, New York and Connecticut, which contain information that allows customers to compare available offers in the market and includes links to supplier and utility websites that provide more information and web-based enrollment.

The sites can offer a variety of products and plans in addition to green products, RESA pointed out.

RESA also urged the PUC to explore utility billing for REC products, as well as other value-added green services that may be priced separately from commodity service, such as energy efficiency, demand response, and conservation services.

"For smaller customers especially, where utility consolidated billing brings economies of scope in billing and collections services, flexibility in billing is critical to the expansion of products and services beyond just commodity service," RESA noted.

Using REC products as a "test bed" for billing such non-commodity services would contribute to the development of a more robust market generally, RESA explained.

Edison Mission to Pay $7 Million for Misleading FERC Staff

Edison Mission Energy is to pay a $7 million civil penalty in connection with a series of representations that resulted in the misleading of FERC staff (IN08-3).

The agreement stems from an extended FERC investigation into the bidding practices of various Edison Mission affiliates in the PJM market from 2004 through 2006.

Edison Mission's actions not only misled and misdirected FERC staff, but caused staff to waste resources analyzing different explanations offered by Edison Mission for its bidding practices, according to an agreement between Edison Mission and the Commission.

Edison Mission admits to violating 18 C.F.R.

§ 35.41(b)(2007), regarding the requirement to provide accurate, factual, and complete information in communications with FERC as part of market-based rate authority.

During FERC's probe, Edison Mission repeatedly re-characterized its "high offer strategy" in which it regularly bid 750 MWs to 4,200 MWs of its PJM generation into the day-ahead market at over $900/MWh, near the offer cap of $1,000.

The intent of those offers was to ensure that the generation was not taken in the day-ahead market, thus allowing the generation to clear in the real-time market, FERC noted.

At various junctures during the FERC probe that started in March 2006, Edison Mission gave FERC staff different justifications for its high offer strategy, including that the strategy resulted from managing legacy PPAs; that it served as a hedge against the day-ahead/real-time differential to protect against derates; and that it was a contingency in case a tornado caused the loss of energy from Edison Mission's two large Powerton units.

When FERC staff would complete an analysis that showed that information or reasons provided by Edison Mission did not make sense, Edison Mission changed its explanation or added new information, the agreement states.

Edison Mission's very high day-ahead bids never cleared the market. It voluntarily stopped using the high offer strategy in 2006 and committed to not use it again.

During FERC's investigation, Edison Mission deleted emails potentially valuable to staff's probe despite a staff directive to preserve such emails. Some emails from the same time period were saved, leading to FERC concern over selective deletion.

FERC found the misleading statements and poor record keeping and production by Edison Mission to be a "severe" violation because they involved repeated conduct that misled staff in the course of an investigation.

The Commission stressed that the violations were not the type of data errors or omissions that sometimes occur in investigations involving large data production.

No findings with respect to Edison Mission's use of the high offer strategy were made in the agreement.

Edison Mission is also to institute a rigorous compliance program at the cost of about $2 million as part of the agreement.

Briefly:

Reliant Expands Md. Offerings to Type II Customers

Reliant Energy has started offering electric service to Maryland Type II customers. Reliant had been marketing service to Type III customers since 2003. Reliant has been pursuing new markets to offset churn in the highly competitive ERCOT market, and entered the New York medium-to-large C&I market earlier this year (Matters, 4/9/08).

U. S. Gas & Electric Eyeing Ohio Gas Market

After receiving a Michigan alternative gas supplier license last month (Matters, 4/23/08), U. S. Gas & Electric has moved onto applying for an Ohio retail natural gas marketer's license with the trade name Ohio Gas & Electric (08-0601-GA-CRS). USG&E sought authority to sell to residential and C&I customers at Columbia Gas, Dominion East Ohio and Vectren. It did not seek authority to sell in Duke's territory. USG&E has approximately 20,000 customers, mostly in New York, and delivers nearly 10 Bcf annually. The marketer is also licensed in Indiana and Michigan, with plans to expand into Massachusetts, Maryland and Washington, D.C. in the near future. USG&E, controlled by MVC Capital, owns production wells in Pennsylvania and leverages an integrated model in its retail operations.

Milder Weather Lowers Sales at TXU

Average residential consumption fell 5% at TXU Energy during the first quarter, from 3,427 kWh to 3,249 kWh on warmer weather, executives from Energy Future Holdings reported on a conference call (Matters, 5/16/08). That, combined with higher purchased power costs and its 15% price discount, lowered retail margins. Residential growth at 2% was marginal (to 1.889 million customers), but is a big turnaround from historic churn. New enrollments in Houston and South Texas mitigated churn in North and West Texas, TXU reported.

MXenergy Creates Customer Bill of Rights

MXenergy recently crafted a bill of rights for its customers. Among the guarantees offered are that customers have the right to switch service at any time, with MXenergy ensuring the process goes smoothly, and that customers have the right to not be surprised when it comes to rates.

Iberdrola Earmarks $8 Billion for U.S.

Iberdrola plans to invest $8 billion in the U.S. between now and 2010, and aims to have a 15% share of U.S. wind power by 2010 as well. Iberdrola's U.S. wind capacity totaled 2,400 MW at the end of March and it expects that total to grow to 3,600 MW by the end of the year.

Pa. Generators Tout RPM Results

The latest RPM auction results, including a 37% dip in prices (Matters, 5/16/08), show that competitive electric markets work, the Electric Power Generation Association noted in directing Pennsylvania policymakers to take note of the results when considering options to address scheduled transitions to market-based retail rates for several utilities in the 2010-2011 timeframe. Although RPM reinforces the fact that competitive markets offer the best means to temper higher electric prices, EPGA cautioned that capacity auctions must accurately reflect the cost of new generation entry to maintain future electric reliability.

NUS Surveys Rates, Increases

NUS Consulting released its yearly survey of large C&I utility rates and listed the top "surveyed" utilities in terms of price as Consolidated Edison, National Grid, Commonwealth Edison, and Southern California Edison. NUS only samples 24 IOUs. NUS measures the all-in rate for a 1-MW customer, and in restructured states mixes regulated and competitive charges. NUS reported Baltimore Gas & Electric industrial customers saw the largest increase at 18.5%, with other notable increases being ComEd at 18.4%, Alabama Power at 15.5% and Progress Energy Florida at 13.1%. NUS included Reliant Energy in both categories, but we feel its inclusion is particularly inapt given that it does not have any tariffed rates, unlike market-based or hourly-indexed last resort service in other competitive states. NUS also reported that, "the highest power prices are usually found in those states that have deregulated their retail electricity markets. Once considered a means of lowering electricity costs, deregulation has yet to fulfill this central promise."

Type II Mitigation ... *from 1*

"In the Commission's view this one-time transition mechanism is mandated by the public interest in order to avoid an unanticipated price spike."

The PSC suspended the portions of the filed tariffs from Allegheny, BGE and Delmarva that affect the commodity rates that apply to new Type II customers.

Each utility was directed to file substitute tariff pages that would revise the rates that apply to new Type II customers such that the total bills for new Type II customers will, on average, increase no more than 15% for the period June 1 - August 31, 2008 as compared to the same three-month period in 2007 (assuming similar usage by each New Type II Customer).

The revisions should be reflected in the non-distribution portion of the respective bills, the Commission stressed.

The PSC instructed each utility to propose an adjustment to the distribution charge for nonresidential service for the period June 1, 2008 through August 31, 2008 to collect the estimated costs that will be incurred due to the rate mitigation. Utilities are to file true-up mechanisms as well to redistribute any over-collection or under-collection.

The Commission will consider the mitigation proposals and hear arguments at its May 28 administrative meeting.