Energy Choice Matters
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Shoppers Won't Subsidize Residential Skewing at Consumers, But POR Rejected in Rate Case

A POR program won't be coming to Consumers Energy's electricity business anytime soon, but competitive retailers did win on the issue of keeping retail open access (ROA) distribution rates cost based, avoiding imposition of a subsidy to pay for lower residential rates. Those were the two biggest retail choice rulings in Consumer Energy's electric rate case, issued by the Michigan PSC yesterday (U-15245).

Hopes for a POR program for mass market customers were raised after an ALJ recommended the program in a proposed decision, exclusively covered by *Matters* (Matters, 4/1/08).

But the Commission was not persuaded that implementation of a POR program is needed at this time.

"There are no residential ROA customers; thus it is disingenuous to argue that such customers are already paying bad debt expenses," the Commission concluded.

The Commission directed that POR should be investigated more thoroughly, in the future, and encouraged parties to continue to explore the billing option.

But retailers scored a major win when the Commission reversed the ALJ's recommendation that ROA customers should start paying to subsidize lower residential rates. Retail access customers have not been forced to pay for the subsidy in the past, but Consumers suggested the change in the rate case. Retailers argued that they already pay several subsidies to bundled load, and that the subsidy is generation-related and thus shouldn't be collected from shoppers.

The ALJ dismissed those arguments, finding that the subsidy was not specific to distribution or

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Calif. Utilities, Consumer Advocates Paint Gloomy Outlook for Accelerated Return of Direct Access

The California PUC should set a target date of July 1, 2010, for the reinstitution of direct access to facilitate the process of novating or assigning Department of Water Resources power supply contracts to other parties, necessary to lift the ban on shopping, Reliant Energy told the Commission in post-workshop comments (R. 07-05-025).

But utilities and consumer advocates painted a much bleaker picture, and questioned whether the novation process would make sense at all since it's likely some counterparties won't agree to novate the contracts without material changes.

The July 2010 date would allow the Commission to focus on getting DWR out of contracts that expire after that date, easing some of the workload, while structuring the novation/assignment discussions so that meaningful progress toward agreements will be accelerated, Reliant explained.

But Southern California Edison envisioned a lengthy, contentious novation process given that there are 26 DWR contracts with 15 separate counterparties.

The novation process won't likely involve mere administrative changes that place a new counterparty in place of DWR, utilities cautioned. CalPeak Power, for example, suggested during the workshop that the novated contract would not mirror the current DWR pact, and that it would seek to extend the contract's length.

CalPeak's statement should, "dispose of any mistaken belief that this process will simply consist of removing DWR's name from the contract and replacing it with the name of the IOU," SCE noted.

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PUCT Meeting Today on MCPE, Shadow Pricing

The PUCT called another emergency meeting for today at 9 a.m. local time to address substantial increases in ERCOT MCPEs and recommendations from the Independent Market Monitor that several adjustments be made to the manner in which the shadow price is calculated, and that several limitations be imposed on the MCPE in certain circumstances. The Commission has recently learned that methodologies used to calculate the MCPE can use only one shadow price cap for all commercially significant constraints (CSCs) in ERCOT, and that when there is zonal congestion or there are two or more CSCs, the MCPE can significantly exceed existing offer caps.

Riverway POLR Drop Begins

As expected (Matters, 6/10/08), Riverway Power (Sure Electric) defaulted on ERCOT obligations and is dropping 6,202 customers, including 6,179 residential and 23 small non-residential customers, to POLRs. The size of the associated load is approximately 286 MWh per day. Residential customers by transmission provider are:

CenterPoint	3,394
Oncor	1,849
AEP Central	678
Texas New Mexico Power	195
AEP North	50
Sharyland Utilities	13

A judge approved the cancellation of Riverway Power's bankruptcy request which cleared the way for the POLR transition. After evaluating its options, Riverway determined that it was not feasible to reorganize.

Nazarian Named as Larsen Replacement at Md. PSC

As reported yesterday, Maryland Gov. Martin O'Malley selected PSC General Counsel Douglas R.M. Nazarian to replace current chair Steven Larsen, who is returning to Amerigroup.

Nazarian has been with the PSC since last June after a stint at Hogan & Hartson in a practice that included business litigation and government investigations.

During the announcement, O'Malley promised "a major policy speech" in coming months to discuss Maryland's energy future. The Governor added that there is room for regulation in a deregulated market, but that his administration needs to see how far it can go.

Nazarian has been credited with a series of high-profile wins at FERC (such as preventing a higher CONE and eliminating bid cap exemptions in PJM), and zeroed in on wholesale pricing during a news conference.

"There are some things we cannot waive a magic wand and change," Nazarian noted, adding that, "What the commission can do is identify ways in which the wholesale markets are not functioning fairly, and we can address that."

Draft Favors All PG&E C&Is on Default Time of Use Rates with Critical Peak Pricing by 2011

Default Critical Peak Pricing (CPP) with Time-of-Use (TOU) rates outside of the peak period should be the default pricing structure for large C&Is (200 kW and above) at Pacific Gas & Electric starting by May 1, 2010, PUC Commissioner Rachelle Chong concluded in a proposed decision (06-03-005).

Default TOU/CPP more closely aligns the retail rate with the wholesale market, and can give customers an opportunity to manage their usage and lower their bills, Chong noted.

"Although the CPP price and the calling of events are not entirely market based, the CPP price and events can be good market proxies if the rate is designed well and called appropriately by the utility," Chong found.

Real-time pricing (RTP) should be offered as an option once the California ISO's Market Redesign and Technology Upgrade is operational and PG&E has two summers of experience with the new market -- which should be before the summer of 2011.

While RTP could subsequently become the default rate, Chong does not believe customers should be moved between rates too frequently and favors keeping RTP a voluntary option.

Chong dismissed PG&E's arguments to delay CPP until 2011 because of backoffice concerns.

"The constraints identified by PG&E appear to be related to PG&E's internal planning rather

than any explicit Commission direction," Chong observed.

Medium C&Is (20 kW - 200 kW) are to have a default TOU/CPP rate before May 1, 2010. Simple TOU rates, and RTP once it is feasible, should be available as options. A non-time-differentiated rate should not be available to medium C&Is, Chong concluded.

Medium C&Is are to have 12 months with advanced meters prior to moving to a default TOU/CPP rate, so customers can observe their usage patterns. That's shorter than the 18-months proposed by PG&E, which Chong considered excessive.

Small C&Is (under 20 kW) should receive default TOU/CPP rates by May 1, 2011, giving them a year of extra education and outreach compared to medium C&Is.

Chong would move small C&Is with advanced meters onto default TOU/CPP rates even if other customers in the class haven't yet received meters, consistent with how the Commission priced default service for large C&Is when customers were given new interval meters.

Large agricultural customers would be put on a default TOU/CPP rate by May 1, 2011, while such customers could elect to receive simple TOU rates as an option.

Simple TOU rates would be the default rate starting in 2010 for small and medium agricultural customers with interval meters.

For the purposes of the draft, Chong assumed that AB 1X protections precluded making time differentiated prices the default rate for residential customers, but noted that assumption may need to be updated if the Commission reaches a different conclusion regarding AB 1X protections in another docket.

Still, PG&E would be required to file an application proposing default TOU/CPP for residential customers 30 days after any Commission decision or change in law that materially changes or interprets the AB 1X rate protections.

PG&E's current optional CPP rate for residential customers should become a TOU/CPP rate, Chong added. RTP should be an option by 2011 as well.

All dynamic pricing rates should allow customers to hedge some of their load by including a capacity reservation charge, or a similar feature, that lets a customer pay a fixed charge for a predetermined amount of load and pay the dynamic price for consumption in excess of the reserved capacity, Chong determined.

Steelmakers Say CenterPoint Opened Door for EILS Argument

CenterPoint Energy's statement that customer response to advanced meter signals will replace the need for Emergency Interruptible Load Service (EILS) in ERCOT, "is nothing more than a reprise of [CenterPoint's] objection to EILS as stated in Project No. 34706," three steelmakers told the PUCT (35639).

CenterPoint "opened the door" on the issue of EILS in the docket, Chaparral Steel Midlothian, CMC Steel Texas, and Nucor Steel-Texas argued, and thus the TDSP cannot now claim EILS providers do not have a justiciable interest in the docket (Matters, 6/10/08).

CenterPoint's new assertion that it did not intend its comment to be an attack on EILS is nothing more than a "ruse" to bolster its challenge regarding the intervention status of the steelmakers, the steelmakers alleged.

The Commission, in project 34706, rejected CenterPoint's position that advanced meters would eliminate the need for EILS and accordingly removed a sunset date for the EILS program, steelmakers pointed out.

Steelmakers noted that while CenterPoint defended its statement, it did not move to have the related testimony regarding EILS withdrawn, and thus steelmakers conclude that CenterPoint is still seeking a determination in the case that advanced meters will replace the need for EILS.

"Absent any indication that the applicant is withdrawing this issue, the Steel Mills' have established a justiciable interest in CEHE's AMS filing which supports the granting of their motion to intervene," steelmakers argued.

Maryland PSC Leads Protest Over RPM Avoided Cost Rates

The Maryland PSC, District of Columbia PSC and Public Power Association of New Jersey protested a PJM compliance filing which sets the generic default Avoidable Cost Rates (default bid) in the Reliability Pricing Model, claiming PJM's revised tariff would, "open up yet another loophole in RPM's mitigation rules for the

administrative convenience of at most a few owners", by retaining a option for the assumption that a unit would retire if it failed to clear in the RPM auction(ER05-1410-007 et. al.).

PJM's revised language creates two sets of avoided cost rates (ACR); one set is based on a mothballing assumption and the other set is based on a retirement assumption. The mothballing assumption would be the default ACR, but sellers could elect to use the retirement assumption if the seller submits a sworn statement of a company officer attesting that the unit will retire if it does not receive at least the retirement ACR in the relevant Delivery Year.

The PSCs favor approving only the mothball ACR since the retirement ACR, "provides too much temptation to those entities that have an incentive to economically withhold capacity to increase prices for the balance of their portfolios," the PSCs alleged.

Briefly:

Md. PSC Staff Asks for More Time to Research NCG Case

The Maryland PSC staff asked to defer consideration of NCG Energy Solutions's license application and related issues until the June 25 administrative meeting. The case had been slated for today's administrative meeting. The PSC had ordered NCG to suspend brokering in Maryland after it became apparent NCG was operating without a license, while former employees have made various allegations relating to NCG's improper business practices (Matters, 5/20/08).

N.Y. PSC Ponders Role for Long-Term Planning Case in Light of Gov's Order

A June 24 plenary session for Phase III of the New York PSC's review of long-term electric planning (07-E-1507) has been indefinitely postponed and parties have been asked to comment on how efforts in the case should continue in light of the governor's executive order creating a state energy plan whose creation will likely encompass many of the same issues.

RPM Prompts Constellation to Return Idled Plant to Service

Constellation Energy announced that its 102-MW Gould Street Power Plant in Baltimore has returned to service after being idle for five years due to PJM's RPM capacity market. Constellation invested $26 million in the gas-fired plant.

PG&E Warns of Higher Purchased Power Costs

Pacific Gas and Electric told the PUC yesterday that the skyrocketing price of natural gas and lower than expected hydroelectric power are resulting in higher purchased power costs. Electricity costs are to be $482 million higher starting in October, resulting in a 4.5% rate increase. Electricity costs in 2009 are anticipated to increase by approximately $340 million, resulting in another 2% increase over the rates projected to be in effect this October.

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generation charges and thus should be paid by all non-residential customers.

But the Commission rejected the proposal to include ROA customers in the payment of the subsidy. Retail access customers have, after several years of subsidization themselves, been brought to cost of service based distribution charges, the Commission noted. "Rates based on the cost to serve each customer class are the Commission's goal, and the Commission finds that the ROA distribution charges should remain cost based."

The Commission found that, "it is time to make significant progress to align rates." Thus, it ordered a first step in deskewing rates by directing that the subsidy paid by bundled service C&Is shall be reduced by approximately $19.9 million. That will increase residential rates by $0.00153/kWh.

Commissioners accepted Consumers Energy's proposed "Electric Choice Incentive Mechanism" (ECIM) to smooth the impacts of fluctuations in competitively served load. The ECIM is similar to the Choice Incentive Mechanism at Detroit Ed. The Commission agreed with the ALJ that while shopping is expected to be flat for the next few years, annual variations in ROA load have ranged from -64% to +227%.

Under the ECIM, if ROA sales increase or decrease more than 5% from the amount set in rates, a charge or credit would apply to rates of

the class where the ROA sales change occurred.

The Commission also accepted two special bundled rates opposed by retail marketers.

The General Educational Institution (GEI) credit was adopted because investment in education has untold benefits for the state, the Commission ruled. The per-kWh credit is to be applied to all electricity consumed by an educational institution.

Retailers had argued that seasonal rates would be a better, non-discriminatory alternative to reduce schools' rates.

Retailers claimed that Consumers was engaging in anti-competitive tactics because the new discounted rate would lure customers away from ROA service. Traditional ratemaking principles were not used in calculating the GEI credit, retailers noted, and the credit will cost non-participant customers almost $19 million.

But the Commission reasoned that the method for calculating the credit simply recognizes the fact that schools demand less energy during peak times and therefore should see a corresponding discount. Present economic conditions warrant the special assistance to educational institutions, the Commission ruled.

The Commission also accepted the General Economic Development (GED) rate under which any C&I that adds at least 1 MW of new demand and maintains at least 75% of that new demand over a five year period would receive a credit to its base rates in diminishing percentages over the following five years. The Commission decreed that the GED rate will not apply to fuel switching or process replacement situations.

Retailers objected to the rate, claiming that it was discriminatory and that it would be unfair to require existing businesses to subsidize new competitors.

The rate creates no new subsidy as long as the new load's resulting GED rate recovers the incremental costs of providing service, the Commission determined. "Even if there are isolated cases where it does not, the Commission is persuaded that the time is right for encouraging business development, job creation, and economic growth in Michigan."

On the issue of line losses, the Commission approved using the 2004 loss study for setting a uniform line loss factor for all customers. While that answers retailers' concerns that Consumers had sought to apply different losses to ROA and bundled load, retailers still feel the 2004 study is unreliable, and think losses should not have been changed.

The Commission adopted the ALJ's recommendation that requires the utility to receive written consent from a residential customer for the utility to release the customer's billing data to a competitive supplier.

Commissioners did not consider the policy a new burden on suppliers since the language simply mirrors what is already in practice.

Residential customers will be exempted from nearly all notice and minimum stay provisions under the PSC's order, and won't have to pay an exit fee or remain on retail access for two years as currently required. However, residential customers will have to remain with Consumers for 12 months when returning to full service from a competitive supplier.

As favored by the ALJ, Consumers was ordered to provide competitive retailers with all current balancing and energy delivery requirements data -- to an individual marketer that newly enters the competitive residential electric market, and to all suppliers when the requirements change.

Complete billing (aka utility consolidated billing) will remain under the Commission's order, which rejected Consumers' suggestion to end the program.

The Commission declined to revive the customer education program previously commenced in Case No. U-12133, although the Commission is to "stand ready" to provide information relating to choice since interest may increase in the near future.

Commissioners rejected Consumers' proposal to stop giving suppliers advance notice of customer terminations for nonpayment, noting that the proposal could cause serious operational problems and pose a financial danger to suppliers.

While the Commission, "wholly approves of utility initiated energy efficiency programs that are efficient, cost effective, and available for all classes of customers," it decided to defer approval of Consumers' proposed efficiency programs in light of several efficiency bills before the legislature.

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"It is more likely that this process will be akin to negotiating an entirely new set of power purchase agreements where both parties seek to secure favorable terms and reasonable assurances of performance and payment," SCE reasoned.

One or more hold-out parties during the process could prove very problematic, SCE added, since direct access can only return when DWR has exited all of its contracts. SCE suggested that the Commission examine whether it is feasible and desirable for the novations/assignments to be contractually contingent or dependent on one another.

"If DWR cannot novate or assign all of the agreements, there is little point in spending the Commission's, DWR's and the parties' resources on an effort that will ultimately not affect the re-opening of direct access," Pacific Gas & Electric added.

PG&E pointed out that DWR has concluded that under an assignment it would continue "procuring power" unless a release accompanied the assignment, but none of the sellers has indicated that it is willing to give a release to DWR in addition to consenting to an assignment.

PG&E favors TURN's suggestion of starting the process with sellers whose contracts lack a novation clause -- Coral, Sempra and PPM.

"If any of these parties indicates that it is unwilling to novate their contract without material modification or assign the contract and give DWR a release, the Commission should reconsider initiating the effort to novate, assign or renegotiate the other agreements," PG&E urged.

TURN added that the Sempra contract, one of the largest agreements, is mired in litigation that is likely to severely confound any attempt at renegotiation.

"Unless there is a breakthrough in negotiations with Sempra that would allow a novation without the imposition of other additional costs on bundled service customers, there is really no reasonable prospect of removing DWR from its procurement role prior to the expiration of the Sempra contract on September 30, 2011," TURN observed.

San Diego Gas & Electric supported the Division of Ratepayer Advocates' recommendation that the Commission focus on the small number of contracts with novation clauses that extend beyond 2012.

SCE estimated that completion of the novations/assignments would take up to 24 months.

The Alliance for Retail Energy Markets (AReM) and California Alliance for Competitive Energy Solutions (CACES) downplayed concerns over novation challenges.

Incentives, such as providing that only contracts novated before a date certain would be eligible for "blend and extend" approval under the Commission's just and reasonable approval authority, could reduce the benefits of holding out, AReM suggested. By holding out and missing a blend and extend option, sellers would be accepting that their contract would end completely at the end of the current term, exposing sellers to market risks.

AReM also suggested that DWR contracts do not have to be novated or assigned only to the utilities, and noted that third-party market participants may be able to step in.

PG&E argued that there are benefits to some of the DWR contracts, and that more recently some of the contract prices have become below-market.

"For years, California customers have borne the burdens of the DWR contracts; they should not now be deprived of the benefits," PG&E argued.

At a minimum, PG&E pointed out, customers will incur $31 million in additional net costs as a result of novation, according to DWR's presentation.

DWR also reported that based on current market prices, at least through 2010, customers are better off having the DWR contracts because all of the contracts combined are currently in the money, PG&E added.

But AReM countered that there is work to be done to better quantify the benefits attributable to novation/assignment. For example, SCE acknowledged that there are benefits to management of the contracts as part of larger portfolio, AReM observed, though such benefits are hard to quantify.

Risks (whether fuel purchase risks, power sales risk, congestion cost risks, or credit risk) can be better managed and mitigated when integrated within a portfolio, AReM explained.

"There is a very real possibility here for the entities that take novation or assignment of these contracts to ultimately renegotiate these contracts to reduce the prices in return for extended terms," AReM added. But DWR no longer has the ability to conduct such blend and extend renegotiations, so novation would open the possibility of those savings.

Given the $9 billion size of the DWR contracts, small percentage savings will produce big results, AReM pointed out. Renegotiations that clip 1% of the cumulative costs would save ratepayers $90 million, outweighing the $31 million in novation costs. A 5% reduction would equal $450 million.

AReM added that novation will reduce DWR management and administrative costs, and urged the Commission to quantify such savings.

SCE cautioned that even before the novation process begins, the PUC must address cost allocation of the contracts.

"This subject will probably require its own procedural schedule - one that allows for evidentiary hearings," SCE suggested. At issue is what costs from the contracts each of the three major IOUs will bear, and how to blend those costs with the current allocation methodology which currently charges SCE customers more but is to transfer more costs to Pacific Gas & Electric customers in later years to make costs allocation equitable.

AReM argued that SCE and PG&E have exaggerated the difficulties associated with cost allocation, and noted the PUC could simply use the current method, or have costs follow the individually assigned or novated contracts.

"The Commission should not allow the utilities' desire to reopen past cost allocation decisions, and develop new methodologies for allocating the costs of these contracts, to unduly delay this phase of the proceeding," AReM cautioned.

PG&E's bankruptcy settlement also imposes some barriers on novation, since PG&E cannot be required to accept assignment of DWR contracts until, among other things, it has a credit rating of at least "A" from S&P and "A2" from Moody's, which it currently lacks.

The Consumer Federation of California questioned whether DWR could even legally novate contracts, since DWR no longer has authority to enter contracts. The federation claimed that a novation is made by contract, and is subject to all the rules with relation to contracts in general.