

# Energy Choice Matters

July 24, 2008

## PUCO Staff Draft Changes Partial Payment Order for Electric Bills

PUCO Staff released draft rules to further implement SB 221, mainly related to governmental aggregation, reliability and net metering, but some competitive retail electric service (CRES) provider standards were modified as well (06-653-EL-ORD).

The draft would change the order of partial payment priority for both utility and supplier consolidated billing.

Under Staff's draft, partial payments would be credited as follows under both types of consolidated billing:

1. Billed and past due CRES provider charges, or, if applicable, CRES provider payment arrangement or past due CRES provider budget billing.
2. Billed and past due electric utility distribution, standard offer generation, and transmission charges or, if applicable, electric utility payment arrangement or past due electric utility budget billing.
3. Billed and due current electric utility distribution and transmission charges or current electric utility budget billing.
4. Billed and due current CRES provider charges or current CRES provider budget billing.
5. Other past due and current non-regulated charges, other than CRES charges.

Under the current rules, past due utility charges are paid first, followed by past due CRES charges, current CRES charges, current utility charges, and finally other non-regulated charges.

The Staff proposal would also modify the provisions applicable to CRES automatic contract  
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## Exelon Expects "Significant" Rise in Earnings When PECO Goes to Market

Exelon CEO John Rowe told investors yesterday that he expects a "significant" earnings increase in 2011, where Exelon is largely unhedged, due to higher market prices for generation and the scheduled transition to market-based retail rates in Pennsylvania.

For the second quarter, Exelon posted a \$748 million profit, up from \$702 million a year ago, on higher nuclear margins and better operating performance. Quarterly revenue grew to \$4.62 billion from \$4.50 billion.

Exelon Generation quarterly earnings reached \$653 million compared with \$578 million in the second quarter of 2007.

Exelon posted a nuclear capacity factor of 95.8% for the quarter, versus 93.6% a year ago. Commercial availability was 92.8% at its fossil fleet, with an equivalent availability factor of 94.4% at its hydro fleet.

The average margin realized by the Generation unit (\$40.53/MWh) was nearly \$5/MWh higher than the year-ago period.

Exelon is about 96% financially hedged for the remainder of the year, and between 70% and 90% financially hedged for 2009, near the top end of that range. For 2010, Exelon is about 70% hedged, and is largely unhedged in 2011 when it expects to benefit from higher power prices to a much greater extent.

CFO Matthew Hilzinger reported that liquidity in the power markets was tightening, possibly due to financial institutions' reducing their participation in power trading due to recent tightening in capital

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## FirstEnergy Wants Clarification That Self-Supply Not an Option Under MISO ASM

FirstEnergy urged FERC to clarify that the Midwest ISO's tariff does not permit entities to meet their ancillary services procurement obligations through self-supply. A Commission order, FirstEnergy observed, suggested that self-supply entities existed by listing them as potential customers of market based rate (MBR) sellers in language authorizing sellers with MBR authority to sell ancillary services at market prices (ER07-1372).

FERC's language would erroneously imply that LSEs in MISO could self-supply their regulation service and operating reserve obligations by simply entering into a bilateral agreement with suppliers at market based rates, FirstEnergy explained.

FirstEnergy argued MISO's tariff requires all LSEs to procure regulation service and operating reserve services through MISO at prices determined by MISO through the new ancillary services market.

Although a February order suggested an entity might self-supply under "very narrow circumstances," according to FirstEnergy, neither the order nor MISO tariffs provide for LSEs to self-supply through bilateral transactions with suppliers.

Allowing LSEs to bilaterally contract to self-supply their obligations would harm the liquidity and transparency of the ancillary services market, FirstEnergy argued.

## WPTF Says SDG&E Generation Application Shows Need to Fix RFO Process

An application by San Diego Gas & Electric for expedited approval of the proposed utility-owned Miramar Energy Facility II Project, "appears to be part of an ongoing effort by SDG&E to return to vertical integration," Western Power Trading Forum alleged in a protest at the California PUC (A.08-06-017).

Among other criticisms, WPTF argued that SDG&E's application has not justified the need for the peaker in 2009 in place of demand-side resources, and did not address whether

advanced metering or critical peak pricing under consideration in other dockets could address the potential heat storm that SDG&E says prompts the need for the peaker.

WPTF also questioned the "curious" timing of SDG&E's decision to purchase a turbine 11 months before a PUC order regarding its procurement plan in December 2007, and what Commission authorization provided SDG&E with the authority to purchase the turbine/generator.

WPTF further questioned, "the curious confluence of events that may be related to the apparently unusual circumstances surrounding the purchase of this turbine."

"One of the entities that 'won' in the SDG&E Peaker RFO withdrew its approved project just a few weeks before it finalized a deal with SDG&E to provide [Engineering, Procurement and Construction] services for the MEF II project, using the turbine that SDG&E had purchased prior to the RFO," WPTF reported.

"Even if this is a serendipitous combination of events, it is important that the Commission reject this application, if only to avoid the appearance of a negative perception regarding the nature of 'competitive solicitations' in California. To the extent competitive generation developments in California are seen as being regularly undermined by direct utility investment, developers with the wherewithal to both bid and build are less likely to participate in future RFOs," WPTF claimed.

WPTF added that the PUC's RFO process needs to be fixed so that utilities do not narrowly structure RFOs to produce one possible outcome. The time between bid submission and final approval should be reduced to minimize the likelihood of contract failure, WPTF added.

**Briefly:**  
**Stakeholders Want Abatement in CenterPoint AMS Case for Settlement Talks**  
 CenterPoint Energy and several parties to the PUCT docket concerning the TDSP's deployment of an advanced metering system (35639) asked the Commission to abate the docket for 60 days to allow the parties to focus on settlement. CenterPoint reported that it has agreed to consider full deployment of advanced meters throughout its service area which is favored by some stakeholders, as opposed to

the 250,000 initial deployment it had proposed (Matters, 7/9/08).

### **Parsley Stepping Down Sept. 2**

PUCT Commissioner Julie Parsley announced that she will leave her position effective Sept. 2, creating a second vacancy on the triumvirate panel on the heels of Commissioner Paul Hudson's decision to leave Aug. 15. Parsley has been with the Commission since late 2002, while Hudson joined in 2003, meaning the Commission is losing two of Commissioners who implemented the early stages of retail competition. Current Chairman Barry Smitherman was appointed to the PUCT in 2004.

### **GE Unit Steps Up Consulting Role, Applying for ABC Licenses**

GE Global Trade Management - Energy applied for an aggregator's license in Connecticut, and disclosed it would seek similar authority in Delaware, Maine, Rhode Island, Massachusetts, New Jersey and New York. The GE unit is currently acting as a broker/consultant for several Connecticut customers, assisting in supply procurement and risk management. The GE unit would aggregate C&Is across the entire state.

### **Electric Advisors Gets D.C. Broker License**

The Washington D.C. PSC granted Electric Advisors, Inc. an aggregator/broker license. Electric Advisors, which also operates in Maryland, will broker C&I customers (Matters, 6/3/08).

### **PUCO Approves New SSO Rate for Dominion**

PUCO approved the \$2.33/mcf retail adder for Dominion East Ohio's Standard Service Offer (Matters, 7/23/08). The Commission agreed that the markup was within the reasonable benchmark of \$2.504/mcf, while Staff noted that an increase in basis costs at major supply points, an increase in Dominion's fuel retention rate, and a significantly smaller spread between the cost of gas in storage compared to current NYMEX futures prices, all combined to put upward pressure on the auction results as compared to the 2006 auction which set the adder at \$1.44. Thirteen suppliers, versus a dozen in 2006, participated in the auction run by World Energy Solutions. As reported yesterday,

five bidders were awarded tranches. Although Dominion's aggregate load was separated into 12 tranches for the auction, due to auction rules and an oversubscription in the final round, 14 equal size tranches were awarded.

### **Fourth Entergy-SPP Workshop Set**

The fourth stakeholder meeting regarding the possible integration of Entergy Texas into SPP is set for Sept. 4 in Austin (33687). Integration is being studied as a possible means of finding a qualified power region for Entergy, which is necessary to open the area to retail competition.

### **Direct Buys Austin HVAC Firm**

Direct Energy has acquired the assets of Austin-based Airco Mechanical, Ltd., an HVAC and plumbing company focused on the light commercial and residential sectors, which complements Direct's residential and new home construction capabilities. Direct will retain the Airco brand and its management team. Airco Mechanical's operations include heating, ventilation and air conditioning and plumbing for the commercial new construction and renovation markets as well as commercial and residential service and replacement business.

### **BGE Reports Customer Savings Under Pricing Pilots**

Both peak time rebate and dynamic peak pricing customers under Baltimore Gas & Electric's smart energy pricing pilot have realized average bill savings since the pilot started June 1, BGE reported to the Maryland PSC in a monthly update. BGE has called five critical peak days so far. While the pilot is still in its early stages, BGE said that customer load reductions on critical days have been, "encouraging."

### **Liberty Fills Key Positions**

Liberty Power has filled positions in structuring, wholesale supply and middle market sales. Derik Viner was named VP of Pricing, Structuring, and Product Development after serving as VP of the Geographic Business Line for Constellation NewEnergy. Joe Holtman joins Liberty as Vice President, Wholesale Supply Operations, after most recently serving as Director of Electricity Supply for Consolidated Edison. Claus Kursell was named VP of Small and Medium Business Sales after holding a

similar position at Nortel Networks. Liberty also named Jason Merritt, formerly of Strategic Energy, as Director of Channel Development.

### **First Choice Power Matching Customer Donations**

First Choice Power is tripling all customer donations (up to \$10,000 per customer) to the Care to Share Fund through Sept. 30, its bill payment assistance program for low-income, elderly and other eligible customers.

### **EnergyConnect Signs Yahoo**

EnergyConnect has signed a contract to supply demand response services to Yahoo.

### **Exelon Earnings ... from 1**

markets, as well as the lack of defined future procurement structures for distribution companies in some states.

Hilzinger also noted, in response to an analyst question, that with Texas eyeing 18 GW of wind generation, it looks like a very different generation stack and supply model that Exelon will have to consider as it weighs building nuclear plants, or other assets, in ERCOT.

### **Ohio Draft ... from 1**

renewals that do not renew onto a month-to-month plan and include a termination fee of \$25 or less.

While the two-notice provision for such contract renewals would be kept, the draft specifies that the first notice must be in writing, and occur at least 45 days before renewal, but not before 90 days before renewal. The second notice would have to be in writing, as the draft eliminates the option for email or telephonic communication of the second notice. The second notice must occur at least 35 days before renewal, must contain the rate at which the customer contract will renew, or in the case of a variable rate, the applicable formula.

The draft continues the prohibition on renewing a customer onto a contract that includes a termination fee in excess of \$25 without affirmative customer consent obtained in the same manner as required for enrollment.

The Staff proposal explicitly adds to CRES marketing rules the provision that advertising or making offers that, "[f]ail to conspicuously

disclose an affiliate relationship with an existing Ohio electric utility," or that, "[l]ead the customer to believe that the CRES provider is soliciting on behalf of or is an agent of an Ohio electric utility when no such relationship exists," are deceptive practices.

Disclosures required by governmental aggregators have been modified to include any potential nonbypassable surcharge stemming from a standard service phase-in program, and a description of the process that the governmental aggregator will use to notify customers if the governmental aggregator chooses to use its new authority to bypass standby service on behalf of its customers, including a description of the potential impact on customers of such a decision.

If a governmental aggregator bypasses standby service, it shall not alter its governmental aggregation program in a manner that would require conducting an additional opt-out opportunity for the duration of its aggregation program.

The draft would codify SB 221's mandate that governmental aggregation customers shall only be charged a portion (proportionate to the benefit customers receive) of any nonbypassable surcharge enacted to recover costs of any phase-in of standard service rates.

Per SB 221, the duration of government aggregations under the draft could be three years (rather than the current two) before requiring another chance for customers to opt-out.

The draft would relieve governmental aggregators of the requirement to include a bold and highlighted statement on their opt-out notice that customers currently buying supply from a CRES provider may incur a contract termination fee for failing to opt-out. Customers taking service from a CRES provider other than the current supplier of the government aggregation pool are not eligible for municipal aggregation.

The draft would amend the environmental disclosure requirements applicable to CRES providers to provide that:

"Each CRES provider shall submit to staff for its review and approval a proposal for incorporating the use of renewable energy credits (RECs) within its annual and quarterly environmental disclosures. At a minimum, such submittal would be required for the following:

(a) A CRES provider sells RECs from one of its electric generating facilities,

(b) A CRES provider purchases RECs as a means of complying in part or whole, with a renewable energy resource benchmark under the state's alternative energy portfolio standard requirements."

The draft would allow CRES providers to send their annual environmental disclosure to customers electronically if a customer agrees to such an approach.

Staff's proposal adds the scenario where a CRES provider assigns a customer contract to another retailer as one of the conditions under which a customer's account number or social security number can be disclosed without affirmative consent.

The draft would change the timeline for renewal of CRES providers' certificates. Instead of applying for renewal between 30-120 days before certificate expiration, the filing would be required between 30-60 days before expiration. The draft adds that if the provider files such renewal application less than 30 days prior to the expiration date, the provider shall file a motion to extend the expiration date on its current certificate for an additional 30 days. Such a motion shall be deemed automatically approved, unless otherwise ruled upon by the Commission or an attorney examiner within three business days of the filing of the motion.

Under the draft, utility customers would be able to get up to 24 months, rather than 12, of usage history from utilities at no charge.

In addition to the current requirement to provide government aggregators (or their contracted CRES provider) with customer lists upon request, utilities must also provide, at no charge:

- An identification of customers who are currently in contract with an electric services company or in a special agreement with the electric utility, and
- On a best efforts basis, an identification of mercantile customers.

A switching fee shall not be assessed to customer accounts that switch to or from a governmental aggregation, the draft would rule.

Retailers may want to ask Staff to clarify language that makes it a deceptive practice to fail to include in advertisements, "a local, toll-free telephone numbers [sic]." It's unclear as

written whether retailers would need to provide both a local and toll-free (where non-local) number; or whether only one of the two is needed; or whether the only acceptable number which may be included in ads is a local number, which is toll free, and that non-local numbers (such as 800 numbers) cannot be used.

Another provision we're not quite sure about is the following Staff redline:

"CRES providers are prohibited from enrolling potential customers without the consent and proof of that consent as delineated in paragraph (D) of this rule. This requirement does not apply to ~~automatic~~ opt-in governmental aggregation pursuant to division (A) of section 4928.20 of the Revised Code..."

Since opt-in aggregation is not the same as automatic aggregation (which would be opt-out), it's unclear if this is a clean-up from the previous rule, or is in fact a policy change that would relive retailers from the current obligation (as set forth in the rules) to document opt-in authorization in the same manner they document authorization for non-aggregated customers.

Comments on the draft are due August 12.