

# Energy Choice Matters

July 25, 2008

## Parties File AMIN Settlement with 125,000 Meter Cap

CenterPoint Energy filed an all-parties settlement that would cap smart meter deployment under its Advanced Meter Information Network (AMIN) program at 125,000, with limited exception, and would make meters already ordered by Reliant Energy available to other REPs on a pro rata basis (35620). The provisions are meant to address competitive concerns raised by other REPs (Matters, 7/10/08).

Reliant agreed to market and fund the installation of some cell relays in Baytown, Pearland, and/or Brazoria County. The first 2,000 meters funded by Reliant in those three areas will not count against Reliant's ESI ID ratio share of the 125,000 meter cap. Reliant will also market to and fund the installation of at least 75 cell relays in certain economically disadvantaged neighborhoods.

REPs wishing to obtain a pro rata share of Reliant's initial order of meters, defined as those meters ordered before July 8, must submit such an order to CenterPoint by August 8.

AMIN participants could order and fund their ESI ID ratio share of the 125,000 meter cap through April 1, 2009. A REP's ESI ID ratio share is the REP's share of residential ESI IDs in CenterPoint's territory as of March 31, 2008.

After April 1, 2009, a REP could request as many meters as remaining available, with such meters allocated based on a participant's ESI ID share as of December 31, 2008, of the total ESI IDs in CenterPoint's territory for all participants who place orders up to the participant's order amount.

AMIN meters could not be ordered after August 1, 2009, except to replace already deployed meters.

Once installed, AMIN meters could not be moved. If a customer switches providers, the customer's new REP would not have to reimburse the customer's old REP which funded the meter installation. The customer's new REP could use the meter's existing functionalities if that REP is an

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## PUCT Staff Opposes Emergency Deposit, Switching Fee Rulemaking

Due to the "attenuated" connection between REP deposit requirements and switching fees, and health, safety or welfare emergencies, PUCT Staff recommended in a memo to Commissioners that a petition for emergency rulemaking to waive certain deposit requirements and switching fees for low-income customers of defaulting REPs be denied (35868, Matters, 7/14/08).

Although Texas Legal Services Center and Texas Ratepayers Organization to Save Energy cite recent REP defaults in their request for the emergency rulemaking, Staff noted that the agencies did not specifically describe the "imminent peril" that would warrant emergency action, nor did the groups explain how their proposed rule would affect those customers who have already been, or are being, transitioned from defaulting REPs.

Staff noted current rules address service disconnection and its potential impact on customer safety, health and welfare, and also provide that low-income customers can pay certain deposits in installments.

Due to the many unintended consequences possible from any deposit and switching fee rulemaking, Staff favors making any changes in a normal rulemaking. Staff noted an emergency rulemaking would have to address whether deposits should be requested from the customers upon the expiration of the emergency rule; and whether the proposed rule would create a disincentive for REPs to help customers switch quickly after defaults.

Staff expects to consider the manner in which deposits are maintained by REPs in project 35767, the REP certification rulemaking. The issues raised by TLSC and ROSE may also be addressed in

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## **Price Always a Material Condition, Texas Consumer Groups Say**

Price is always material to a customer's decision regarding retail electric service, Texas Legal Services Center and Texas Ratepayers' Organization to Save Energy argued in reply comments on strawman REP disclosure rules (Matters, 7/18/08).

TLSC and ROSE consider it a problem that REP Terms of Service language, "often includes language where the REP claims that price is immaterial."

Since price is always material, REPs should be prohibited from requiring a consumer to waive the materiality of price changes under any circumstances, TLSC and ROSE urged.

"We fail to see any reasonable justification for allowing a consumer to agree that price is not a material change as this puts all the risk for changes in price on the consumer," the consumer groups said.

Even consumers who opt for variable price plans should not be asked to waive the materiality of price, TLSC and ROSE stressed. The agencies reiterated their view that the PUCT should define material change as an increase of 5% or more for a variable priced plan, any change in the term of a variable price product, and any other change in the TOS.

TLSC and ROSE also opposed the suggestion, made by several REPs, that customers who move within the same service area, or to whom the REP is still willing to honor the original terms of the contract in another service area, be forced to honor any early termination fees in the contract if switching REPs. TLSC and ROSE argued that a move (such as from a house to an apartment) can include significant changes in a customer's usage patterns and total consumption, and thus customers should be free to choose a new plan based on the energy needs of the new location.

The consumer groups also want the Commission to prohibit the collection of termination fees when a customer switches away from a defaulting REP, such as in advance of a mass transition.

In addressing the challenging issue of defining a fixed price product, First Choice

Power suggested splitting fixed products into two categories, an "All-In Fixed Price Product" and a "Limited Fixed Price Product."

An all-in fixed product would include TDU charges and could not vary at all during the term, but could include different price components related to factors such as time-of-use, season, or usage blocks if the individual price components are fixed. The limited fixed product would include TDU charges but could change during the product's term due to changes in TDU fees, ERCOT or Texas Regional Entity fees, or changes resulting from federal, state or local laws that impose new or modified fees or costs on a REP. Limited fixed products could also include different price components for time-of-use, season, or usage blocks where those individual prices are fixed.

Constellation NewEnergy blamed the "costly and burdensome customer protection requirements" for serving customers under 50 kW for its decision to not serve those customers, and urged the PUCT to allow small commercial customers to waive such protections. Such a waiver would increase competition and offerings to those customers, NewEnergy argued.

## **Market Participants Blast Duquesne MISO Integration Filing as Incomplete**

Duquesne Light's integration filing to join the Midwest ISO should be rejected, a chorus of stakeholders protested, because Duquesne hasn't committed to joining MISO, has failed to produce a solution for "portable" capacity, and otherwise has given market participants incomplete information (ER08-1235).

The Duquesne Industrial Intervenors were one of several protestors that pointed out that while Duquesne has proposed an October 1, 2008, integration date, the transmission owner has made joining MISO contingent on the favorable resolution of several pending issues at FERC regarding its withdrawal from PJM. Duquesne could still decide to not join MISO depending on FERC rulings concerning final liabilities to PJM, including transmission expansion costs.

The Commission and market participants should not be required to expend the time and resources to litigate the issues raised by

Duquesne's integration filing if Duquesne is unsure about its decision to move forward, the industrials argued, in a view repeated by many other stakeholders.

Constellation Energy and Exelon protested that while Duquesne committed to leave PJM in February to avoid RPM costs for the 2011/2012 delivery year, affecting the auction results, Duquesne is now equivocating and "playing for time" to see how capacity costs compare.

Industrials further contended that until a final solution on capacity portability (the use of RPM capacity to meet MISO obligations) is reached, meaningful review of the integration filing cannot occur. Customers cannot be assured that they will not have to pay for capacity twice upon integration until a capacity portability solution is finalized.

Careful consideration of the potential customer impact of MISO integration is particularly important in light of the fact that Duquesne's departure from PJM would signal the first time that a public utility offering retail customer choice withdrew from an RTO, industrials noted.

Industrials reminded FERC that nearly 90% of industrial load within Duquesne buys power from a competitive supplier, meaning the risks presented to customers by Duquesne's unilateral actions differ materially from the risks presented to customers by other RTO exits involving vertically integrated utilities.

"Thus, fundamental fairness and sound public policy dictate that Duquesne must be required to hold harmless any customer in the Duquesne service territory that is not being provided with generation supply service by Duquesne by unconditionally ensuring that such customers will continue to receive service at the same rates, level of service, and quality of service that they would have received, absent Duquesne's withdrawal from PJM, including access to comparable load response programs, and otherwise will not be subject to unnecessary increases in MISO costs," industrials urged.

Reliant Energy added that not holding Duquesne responsible for any increase in costs shifted to other market participants as a result of Duquesne's withdrawal from PJM will likely lead to a corresponding increase in the cost of forward bilateral contracts, forward capacity market clearing prices, and long-term Financial

Transmission Rights market prices because the risk of increased transmission costs and loss of Auction Revenue Rights and FTR hedges caused by a transmission owner unexpectedly withdrawing from an RTO will have to be factored into those contracts and clearing prices.

"The Commission should take this opportunity to provide guidance and clarity in matters involving a transmission owner's transition from one RTO to another that will engender market certainty and stability, and send a signal to market participants that long-term commercial transactions can take place without the specter that they will be undermined by the unilateral decision of a transmission owner that ignores market-wide impacts and consequences," Reliant urged.

Allowing transmission owners to avoid the costs and market consequences of their decisions to withdraw on short notice will undermine the independence and governance processes of RTOs, Reliant observed, by setting a "dangerous precedent" where a single transmission owner can leverage the threat of withdrawal, and the resulting market turmoil, to seek modifications of rules that provide short-term benefits to that owner instead of shared benefits to all market participants.

EPSA, Exelon, Constellation and others recommended that any integration be pushed back to June 1, 2009, the start of both PJM and MISO's planning year, for a variety of reasons.

A June 1, 2009, start date would resolve the issue of market participants being unable to access Auction Revenue Rights, needed to hedge congestion, in MISO because the ARR auction is only conducted annually, Strategic Energy added. Strategic reported that the loss of PJM ARRs will have a significant impact on LSEs in the Duquesne Zone, estimating its own loss at \$187,814.

Reliant reported it will incur additional, unforeseen costs due to Duquesne's exit, including (1) transmission charges that Reliant will be required to incur in order to meet its existing obligations to supply RPM capacity to PJM as an external PJM resource; (2) costs and penalties if transmission is not available to fulfill its PJM capacity obligations; (3) the direct costs Reliant might incur if it has to shut-down or mothball any units because they are unable to access PJM markets due to lack of transmission;

(4) any stranded costs associated with new investment that cannot be recovered because Reliant is unable to obtain transmission into PJM to fulfill its capacity obligations; (5) the costs of not being able to hedge congestion costs in Midwest ISO during the first partial year of integration; and (6) the lost value of any of its 2008-2009 PJM ARR allocation.

Reliant also reported that ancillary service charges associated with transmission access into PJM upon MISO integration could be as much as \$4.7 million per year for the 2008/2009 and 2009/2010 delivery years.

While Duquesne asserts that it has no requirement to hold third-parties within its service territory harmless from the consequences of its withdrawal, FERC, "did not give Duquesne free reign to harm the market," EPSA charged.

EPSA also reported that it is "seemingly impossible" to simultaneously comply with the capacity requirements of both MISO's Module E and PJM's RPM based on EPSA's current knowledge, primarily because both have must offer requirements.

FirstEnergy cautioned FERC that Duquesne's affiliated retail power marketer, Duquesne Light Energy, could gain an advantage from Duquesne's equivocation over joining MISO, thereby distorting competition. FirstEnergy is concerned that Duquesne has not committed in any filings that Duquesne Light Energy executives will be excluded from participation in Duquesne's decision-making regarding whether or when it will move to MISO and from preferential access to information concerning Duquesne's inclination and its final decision.

While FirstEnergy assumes such information sharing is prohibited under the Commission's standards of conduct regulations, and that Duquesne is not sharing that information with unregulated affiliates, FirstEnergy is nonetheless concerned the integration filings are silent on the subject. Early access to non-public information about Duquesne's planning and decision-making could constitute a significant and unfair advantage by allowing Duquesne Light Energy to make forward arrangements for energy and ancillary services for delivery in the RTO where Duquesne chooses to locate, ultimately allowing it to offer more attractive

pricing and secure greater market share. FirstEnergy stressed that it is not accusing Duquesne of sharing non-public information with its retail power marketer.

## **Final Order on O&R Rate Case Accepts JP's Retail Access Recommendations**

Retail access related provisions contained in a joint proposal regarding Orange and Rockland's rate case were approved without modification by the New York PSC (07-E-0949). Although the PSC voted on a final order last week (Matters, 7/17/08), in which it agreed that the mandatory hourly pricing cutoff at O&R should be lowered to 500 kW, a written order addressing several other ESCO issues was not available until recently.

The expansion of mandatory hourly pricing, still subject to a separate Commission order after O&R submits an implementation plan, would make about 90 additional customers with a combined load of approximately 65 MW subject to default hourly pricing, the Commission reported in its final order. Pending O&R's implementation plan, mandatory hourly pricing could begin early next year.

The PSC approved the JP's modifications to O&R's Merchant Function Charge, and eliminates the retail access MFC that included ESCO credit and collection charges. The MFC will now only be paid by full-service customers, with a unique MFC applicable to each of three groups of rate classes. The new MFC will include commodity procurement charges and credit and collection charges applicable to full-service customers. Credit and collection charges stemming from retail access customers will be collected through a POR discount.

The new MFC arrangement is the same as used by all other New York utilities that have MFCs and POR, and will allow customers to see the true retail price of the commodity, facilitating price comparisons.

The Commission also accepted the JP's recommendation that O&R study the advantages and disadvantages of revising the Market Supply Charge (MSC) so that it reflects the actual New York ISO day-ahead market prices that were in effect during each customer's billing period.

Per the JP, the Commission also directed O&R to evaluate and report within six months on whether new customers requesting service from the company should be included in the PowerSwitch ESCO Referral Program.

The PSC approved the JP's provision that an unbundled charge of \$1.02 for billing and payment processing would apply only to bundled electric or gas customers as well all retail access customers electing to receive two separate bills. Retail access customers served on a consolidated bill would not be charged the billing and payment processing fee, since their ESCOs will be charged the fee by O&R.

O&R is to also provide "price to compare" information on its website during 2008 and quarterly on customers' bills starting in January 2009.

## **Hess Cautions Against Long-Term Contracting Review in N.J. Draft Master Plan**

The New Jersey Energy Master Plan Committee's recommendation to examine the use of long-term contracting, particularly between distribution companies and generators, is a "dangerous" mechanism that would harm ratepayers and serve as a barrier to the state's demand response goals, Hess cautioned in comments on the plan.

The final plan should not include any provisions for mandatory long-term contracts, Hess added, because they block accurate price signals that enable customers' use of demand response, energy efficiency or green energy products. Long-term contracts that provide inaccurate price signals would make the Plan's goal of a 20% reduction in demand by 2020, "impossible to achieve," Hess argued.

Hess added that long-term contracts could saddle ratepayers with stranded costs while not promoting new generation due to siting and environmental hurdles.

The draft's proposal to lower the real-time pricing cutoff to 600 kW by 2010 and 500 kW by 2012 is "critical" to achieving demand reduction goals while enabling customer choice, Hess noted.

A State Power Authority would be an "unreliable and costly" mechanism for infrastructure development, Hess cautioned. In

contrast, a State Energy Council that could provide a one-stop generation siting process would foster more rapid development of generation.

Hess encouraged the draft's focus on advanced metering, and added that smart meters would be most beneficial to customers where utilities make hourly data from smart meters available on a next day basis. Meters would need appropriate two-way communication capability and the ability to time-stamp and store data.

## **Termination of ConocoPhillips TSAs Violated Entergy's OATT**

The termination of two of ConocoPhillips' firm point-to-point transmission service agreements by Entergy's Independent Coordinator of Transmission was improper, FERC concluded yesterday (EL08-59, Matters, 4/25/08).

ConocoPhillips had been granted the TSAs by Entergy's ICT, but the transmission service was later recalled because the Entergy-Ameren interface had been oversold due to a software error. The ICT curtailed ConocoPhillips' service in full because it was the last customer to make a transmission request, and the ICT did not issue curtailments on a pro rata basis.

FERC ruled that since Entergy's OATT does not have a specific provision for terminating transactions due to software errors, section 13.6, regarding curtailments needed for system reliability, should be used in this case. Section 13.6 calls for curtailments to be made on a non-discriminatory basis, and the Commission does not find that relieving system constraints through termination of reservations in the reverse order that the requests were accepted is consistent with non-discriminatory treatment.

Once transmission service requests are accepted, all customers are similarly situated regardless of when the request was accepted, and whether the request was granted in error, FERC determined. Thus, making the last customers to receive transmission service bear the full burden of any curtailments is unduly discriminatory. Curtailments should have occurred on a pro rata basis, FERC said.

ConocoPhillips did not seek monetary relief in the complaint but did ask that FERC require Entergy to promptly discover such errors in the

future, and to provide immediate relief upon discovery. FERC denied those requests as unnecessary, because Commission orders and Entergy's OATT already require such action.

FERC also denied NRG Energy's request that the Commission's determination in the case apply to other customers who experienced terminations, since it is improper to allow a third-party to join a complaint by merely filing comments.

### ***Briefly:*** **Illinois Power Agency Wants More Time for SOS Procurement Plan**

The Illinois Power Agency requested that the ICC extend the due date for its 2009-2010 SOS procurement plan from Aug. 15 to Sept. 3 (08-0450). The new power agency reported that the extension is needed due to start-up activities, and also because the procurement plan will be the first developed by the agency.

### **Proposed Oncor AMS Surcharge Drops by One-Cent**

The surcharge required under Oncor's proposed Advanced Metering System deployment plan would be marginally lower than originally projected due to revisions in how Oncor calculated certain inputs in its modeling (35718, Matters, 5/29/08). Both the residential and average non-residential monthly surcharge would be one-cent lower under the revised proposal, now at \$2.28 for residential customers and at an average of \$3.89 for non-residential customers. The non-residential surcharge would range from \$2.48 to \$5.35 per month depending on service class.

### **Over a Dozen File Interest to Build CREZ Transmission**

Over a dozen transmission companies submitted statements of interest to build Competitive Renewable Energy Zone transmission (35665):

- AEP Texas Central, AEP Texas North, Electric Transmission Texas (AEP-MidAmerican), LCRA, Oncor, and Sharyland Utilities (jointly)
- Bandera Electric Cooperative
- Brazos Electric Power Cooperative
- CenterPoint Energy
- City of Garland and the Texas Municipal Power Agency

- CPS Energy
- Cross Texas Transmission (LS Power)
- ITC Panhandle Transmission
- Lone Star Transmission (FPL)
- South Texas Electric Cooperative
- Tejas Transmission (Babcock & Brown)
- Texas-New Mexico Power Company
- Trans-Elect Texas (AES)

The proposal by AEP et. al. would cost \$1.5 billion to \$1.7 billion.

### **Site Controls Buys Excel Energy Technologies**

Site Controls has acquired Excel Energy Technologies, including its Ikanosphere energy management product for chain retailers.

### ***AMIN Settlement ... from 1***

AMIN participant.

CenterPoint will not publish a list of ESI IDs with AMIN meters, due to concerns of REPs poaching AMIN customers, but participants will be able to obtain a list of ESI IDs for which they provided AMIN funding, and a list of ESI IDs with AMIN meters for which the participant is the REP of record.

AMIN participants, plus other settling parties, will have access via website or other electronic means to regular Market Transparency updates from CenterPoint on information such as orders placed, orders filled, deployment progress, reimbursement shortfalls (if any), and available unique capabilities.

CenterPoint is to provide notice of a Communications Infrastructure, Functionality, Reliability, Scalability and/or Unique Capability request, and notice when orders for such items are placed and installed. The notice shall include the number of and proposed locations of Communications Infrastructure (with approximate coverage area) and a description of functionality or unique capabilities. Any such information will not include the name of the participant making the request.

CenterPoint would also provide monthly statements that include: (1) the cumulative total number of meters installed under AMIN; and (2) the cumulative amount of funding provided by participants in each of the following categories: Communications Infrastructure, Reliability and Functionality.

Participants will also receive notice of any reimbursement shortfall within 30 days after the shortfall is determined.

Unique Capability procured under AMIN is not eligible for reimbursement under CenterPoint's Advanced Metering System (AMS) deployment.

REPs would be prohibited from charging customers for AMIN meters unless and until the Commission approves an AMS surcharge or includes recovery of AMS costs in base rates.

### ***Emergency Rule ... from 1***

project 35769, the POLR rulemaking, whose scope has not been determined, Staff added. Since administrative codes prohibit the publication of a proposed amendment to a rule while another proceeding regarding the rule is pending, Staff recommended that the TLSC/ROSE petition not be converted into its own normal rulemaking, and that the issues raised be addressed in 35769 or 35767.