Energy Choice Matters

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DPUC Decision Finds Eight Suppliers "Failed to Comply" With Billing Error Statute

A final decision by the Connecticut DPUC regarding Connecticut Light and Power's Time-of-Use billing errors removes the finding that six competitive suppliers "violated" Conn. Gen. Stat. § 16-259a(d) by not offering affected customers who were re-billed a payment plan, or by offering a plan inconsistent with the statute's provisions (Matters, 6/23/08). Rather, the final decision finds that eight suppliers "failed to comply" with the statute (08-02-06).

Those failing to comply were Consolidated Edison Solutions, Constellation NewEnergy, Glacial Energy of New England, Hess Corporation, Sempra Energy Solutions, Strategic Energy, Suez Energy Resources NA and TransCanada Power Marketing.

While a draft had found that six of those retailers had “violated” the statute, retailers asked for softer language since their failure to comply with the statute when issuing re-bills was an inadvertent and technical error due to CL&P’s errors (Matters, 7/8/08). A finding of a statutory violation would have to be reported to regulators in other states, either immediately or in routine update filings, and could harm suppliers' ability to do business in other states. The obligation retailers have in various states to report that the DPUC found that they "failed to comply" with a statute, as opposed to a formal violation or penalty finding, will depend on the precision of each state's language regarding reporting of such events.

While tweaking the language, the DPUC was also harsher in describing the conduct of suppliers in the final order compared with the draft, calling retailers' claim that they go to great lengths to comply with applicable statutes "disingenuous at best" since the record in the case indicated that none of the

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FirstEnergy EDCs Oppose Deferral Credit for Shoppers

FirstEnergy’s Ohio utilities opposed a proposal from retail suppliers and governmental aggregators to mitigate the anticompetitive effects of potential utility generation rate deferrals under electric security plans, in reply comments filed on draft rules to implement SB 221 (08-777-EL-ORD).

Competitive retailers and the Northeast Ohio Public Energy Council had recommended credit mechanisms that would pay shopping customers a credit equal to any utility generation deferrals, that would then be paid back when the utility collected deferred costs from standard service offer customers (Matters, 7/23/08).

But FirstEnergy considers such mechanisms "nothing more than a direct subsidy," for customers not even receiving generation service from the electric distribution utility, and urged PUCO to reject the proposals.

The City of Cleveland supported many of the suggestions offered by NOPEC to promote governmental aggregation, but noted that such items should not be limited to currently "large-scale" aggregators, adding that NOPEC did not offer a definition of large scale. Cleveland pointed out that SB 221 is to encourage large-scale municipal aggregation, which should be taken to mean promoting the growth of large-scale aggregation through policies applicable to all aggregators that allow any size pool to grow into large-scale aggregation. Treating currently large governmental aggregation programs differently than smaller ones would be anticompetitive, Cleveland argued.

FirstEnergy also opposed recommendations from joint consumer groups to require EDUs to

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Delaware PSC Issues Draft to Implement Nonbypassable Charge for Long-Term Contract Costs

The Delaware PSC has issued a draft of revised RPS rules to implement recent legislation, which, among other things, allows utilities to collect costs from certain default service supply contracts from all customers through a nonbypassable charge (Reg. Dckt. No. 56).

Although contained in RPS rules, the proposed language would read, "All costs arising out of contracts entered into by a Commission regulated electric company pursuant to 26 Del .C. § 1007(d) shall be distributed among the entire Delaware customer base of such companies through an adjustable non-bypassable charge which shall be established by the Commission." Section 1007(d) provides for long-term contracting under an integrated resource plan which is not limited to renewable procurements and seemingly would apply to any IRP contract.

The other proposed change in the RPS rules would implement legislation providing that regulated utilities shall receive 350% RPS credit for Delaware offshore wind energy.

The changes are prompted by the contract struck between Delmarva and Bluewater Wind (Matters 6/24/08). Comments on the proposal are due Sept. 30.

Conn. Draft Calls for Default Service Pricing 45 Days Ahead of Effective Date

Retailers would get some additional time between the filing of new retail default service rates at the DPUC and their effective date, but not the full 60 days they had requested, under a draft decision by the DPUC (06-01-08RE02).

The proposed changes are part of a process to make the procurement process simpler and more transparent, which culminated with a joint proposal from the utilities in March (Matters, 3/18/08).

The JP suggested that Generation Services Charges and Bypassable Federally Mandated Congestion Charges for Standard Service should be filed 40 days prior to their effective date, with DPUC approval approximately 15 days later. For Last Resort Service, the JP proposed that rates would be filed approximately 30 days prior to their effective date, with DPUC approval about 15 days later.

Retailers had urged that average prices for each default service term be released two weeks after the RFP results are approved, with retail rates posted at least 60 days ahead of their effective date. The additional time is needed so customers can compare offers, and initiate and complete a switch (which can take up to 45 days) before the new default service rates take effect, retailers argued (Matters, 4/23/08).

But in the draft, the DPUC shares the concern voiced by the utilities that releasing weighted average procurement results within two weeks of the RFP approval would create customer confusion since such prices would not reflect the reconciled retail rates paid by customers.

Still, the draft concludes that the efficient processing of retail rate filings requires slightly more time than is included in the JP, and would require that retail rates be filed 45 days prior to their effective dates, instead of 40 or 30 days, as proposed by the JP.

Cumulative percentage of load that has been awarded for each service term covered under the RFP and the names of all suppliers for that service term (assuming 100% of load is awarded) shall be filed two weeks after RFP results are approved, per the JP. The draft would adopt the JP's recommendation that the percentage of load obligation awarded to each supplier would not be released in the filing made two weeks after procurement.

The draft would also implement the JP's recommendation that each electric distribution company file, 90 days after each procurement is conducted, copies of bid sheets received, provided that bidders' identities are redacted from such filing. That would reduce the current six-month schedule for such a filing, consistent with the reduced time adopted by ISO New England for releasing bidding data.

After reviewing procurement policies in Delaware, the District of Columbia, Illinois, Maryland and Pennsylvania, the draft, "could not identify a procurement process used by another jurisdiction that nears Connecticut in terms of transparency."

Marketers Urge Calif. PUC for Implementation of Tradable RECs

A proposed decision that would find that a REC shall, by definition, include the greenhouse gas (GHG) attributes of the underlying generation resource, is, "an important step forward toward ensuring compliance with the RPS through a regional REC market," and, "will help ensure the development of a fungible, unbundled and tradable REC product that can be verified and tracked through the Western Region Electricity Generation Information System (WREGIS)," the Alliance for Retail Energy Markets and Western Power Trading Forum told the California PUC (R. 06-02-012).

However, the power marketers faulted the draft for deferring a decision on tradable RECs, which AReM and WPTF called a common, useful, and much needed compliance tool.

AReM and WPTF urged the Commission to, "act with all due speed," to issue a decision authorizing the use of tradable RECs for RPS compliance, which will increase the probability that all classes of RPS-obligated LSEs will meet the state's renewable energy goals. The record in the proceeding is ample and supports such a finding, the groups claimed.

Deferring a decision on tradable RECs, "continues the elevated state of uncertainty in the renewable energy sector," AReM and WPTF added.

Southern California Edison also supported a decision implementing tradable RECs, reasoning that tradable RECs will provide LSEs with additional flexibility and options in contracting for renewable energy, thus lowering transaction costs in obtaining renewable attributes from renewable resources that have limited access to transmission or are located a far distance from their buyers.

AReM and WPTF also argued that the draft must be modified to reflect that RECs from out-of-state generation that are retired for purposes of RPS compliance may also be used to "specify" the emission rate for an equivalent quantity of imported, unspecified power in the narrow case that the LSE retiring the REC is responsible for emissions from imported power as the "first deliverer" of that power under a cap and trade system.

Calpine contended that the draft's bundling of GHG attributes in RPS RECs will result in economic inefficiencies since it is likely two different markets will emerge for RPS and GHG products. Entities that only need the renewable attribute of a REC for RPS compliance purposes would necessarily have to bid against entities that only need the environmental/GHG attribute for AB 32 compliance purposes, Calpine explained.

The Independent Energy Producers Association agreed, noting that an RPS REC per se has no relevant meaning or use to an industrial facility or other entity seeking to comply with AB 32.

"Potentially more troubling is that combining renewable and environmental/GHG attributes could result in LSEs 'locking-up' environmental attributes that may be needed for AB 32 purposes (i.e., keeping them off the market) in their efforts to meet RPS compliance obligations," Calpine cautioned.

The draft also prejudges certain outcomes with respect to the Air Resources Board's ongoing implementation of AB 32, added Calpine.

CenterPoint Gas Marketing Loss Flat

CenterPoint Energy's competitive natural gas sales and services unit reported an operating loss of $5 million for the second quarter of 2008, compared to a loss of $4 million for the same period of 2007.

The second quarter of 2008 included charges of $10 million resulting from mark-to-market accounting for derivatives used to lock in economic margins of certain forward natural gas sales compared to mark-to-market charges of $6 million for the same period of 2007. The second quarter of 2007 also included a $5 million write-down of natural gas inventory to the lower of average cost or market.

"Our primary focus is to grow this business by expanding our commercial and industrial customer base while capturing asset optimization opportunities when they become available in the marketplace," executives told analysts.

The unit's core business of selling natural gas to C&I customers was "comparable" to last year, executives said.

REPs may also be interested to know that

CenterPoint continues to see "strong growth" in Houston customer count, adding nearly 52,000 customers since June 2007.

On a corporate-wide basis, CenterPoint posted net income of $101 million for the quarter, up from net income of $70 million a year ago.

Briefly:

Metromedia to Maintain Current Md. Bond

The Maryland PSC directed Metromedia Energy to maintain a $250,000 surety bond on file with the Commission, "until it demonstrates an acceptable financial condition." Metromedia had asked for the PSC to examine the continued need for the bond in light of the supplier's most recent audited financials.

Integrys Marketer Urges FERC Action on SECA Initial Decision

Integrys Energy Services urged FERC to issue, on an expedited basis, an order affirming the Initial Decision in several dockets related to Seams Elimination Charge Adjustments, in which an ALJ determined that transmission owners did not adequately justify that all of their collections through SECA were indeed lost revenue (ER05-6 et. al.). While many claims have been settled, Integrys still has claims against AEP and Mirant and would receive a refund under the Initial Decision, it told FERC. A settlement with AEP is "not likely, " Integrys added. Thus action on the Initial Decision, issued back in August 2006, is needed to resolve the proceeding. Integrys' (and affiliate Quest's) total SECA payments were about $19.6 million.

Mega Energy to Pay $200 to Settle REC Shortfall

Mega Energy entered into a settlement with the PUCT Staff under which Mega would pay $200 for failure to retire four of the RECs it was required to retire for 2007 by the March 31, 2008 deadline (35966). Mega also agreed to purchase and retire the remaining four RECs.

PUCO Opens Winter Disconnect Docket

PUCO has opened a docket (08-951-GE-UNC) for an investigation into long-term solutions concerning disconnection of gas and electric service in winter emergencies. An entry order setting the scope of the docket has not yet been issued.

DPUC OKs Latest CL&P Procurement

The DPUC approved procurement results for Connecticut Light and Power standard service and last resort service from an auction conducted Aug. 5.

Perry Endorses Council's Recommendations on Electric Competition

Texas Gov. Rick Perry adopted the energy plan drafted by the Governor's Competitiveness Council which affirms the state's commitment to competitive wholesale and retail electric markets, but recommends a review of REP certification standards (Matters, 6/23/08). As more fully detailed in our earlier story, the plan resists centralized resource planning that would inhibit innovation, while attributing rising prices mostly to natural gas. Greater residential customer education on electric choice is needed, the plan states, suggesting reinstitution of funding for the PUCT's customer education efforts.

Calif. ALJ Allows RPM Complaint, Response into Resource Adequacy Record

A California ALJ permitted the Bilateral Trading Group to enter into the record the RPM Buyers' complaint at FERC against PJM's transitional capacity auctions, as part of the PUC's consideration of resource adequacy (R. 05-12-013). The response of the California Forward Capacity Market Advocates, which includes the answers of PJM and the PJM Power Providers to the complaint at FERC, will be included in the record as well. The ALJ also reported that the Energy Division plans to convene a workshop later this month, currently scheduled for Aug. 22, to provide greater understanding of the "Modified Capacity Mechanism" embodied in "Staff Recommendation 1" in the proceeding. The ALJ may make a determination after the workshop to allow for supplemental comments based on the workshop discussions.

TANC Sees No Need to Rush IBAA Proposal with MRTU Delay

With the California ISO officially delaying the start date of the Market Redesign and Technology Upgrade (Matters, 8/6/08), the Transmission Agency of Northern California

urged FERC to not act "hastily" on CAISO's Integrated Balancing Authority Area (IBAA) proposal, which has been savaged by non-CAISO LSEs (ER08-1113, Matters, 7/9/08). TANC noted CAISO had urged FERC to quickly review the IBAA filing because of MRTU's fall start, but that need is now moot since, "implementation of MRTU is neither imminent nor even susceptible of a target start date."

FERC Accepts PJM SIL Studies

FERC approved the simultaneous transmission import limit (SIL) studies submitted by PJM for the PJM market and PJM-East submarket, dismissing concerns from PPL and FirstEnergy regarding treatment of transmission reservations in conducting the SIL studies. PPL and FirstEnergy had argued that PJM should not have subtracted, from the total simultaneous import capability, the amount of transmission capacity represented by all existing and confirmed transmission reservations for imports into PJM, since an SIL study should properly distinguish between the import capability that is available for use by the applicant (and its affiliates) and the import capability for all other competing suppliers (non-affiliates). PJM's SIL values represent less transmission capacity into the study area than may actually be available, which would in turn increase the likelihood that an applicant will fail the screens, PPL and FirstEnergy claimed. But the Commission held that PJM followed its OASIS practices in developing the studies, and thus the studies are consistent Order No. 697. Answering PPL and FirstEnergy's concerns about PJM's study showing less transmission capacity, FERC observed that PPL and FirstEnergy are not required to rely on PJM's SIL studies and can file their own SIL studies or submit sensitivity studies to PJM's SIL studies.

FERC OKs Entergy OATT Filing with Revisions

FERC accepted with modification Entergy's compliance filing to implement Order No. 890 (OA07-32). Among other findings, the Commission held that Entergy's proposed crediting provisions for imbalance energy penalties was not consistent with Order No. 890 because Entergy did not provide a rollover mechanism for revenue to be carried into the following year in cases where revenue does not hit the $100,000 threshold that triggers crediting the revenues to both native load and competitive transmission customers. Entergy must submit a compliance filing to implement a rollover mechanism that ensures that all imbalance revenues will be distributed once they exceed $100,000. Suez Energy North America and others had argued that Entergy's original crediting proposal would have unduly benefited Entergy's own native load customers and/or shareholders at the expense of all other transmission customers.

Michigan PSC Adopts New Net Metering Standard

The Michigan PSC ordered all electric utilities to submit net metering tariffs by Dec. 31, 2009, to comply with a new standard which is a simple netting on a one-to-one kilowatt-hour (kWh) basis of electricity delivered by the utility to the customer and electricity delivered by the customer to the utility, at least to the point of zero net usage. Utilities must also make net metering available to all customers. Utilities, per PURPA, must also develop a plan to minimize dependence on one fuel source and ensure that their supply is generated using a diverse range of fuels and technologies, including renewables, the PSC ordered.

ACES Signs City of Glendale

ACES Power Marketing has entered into an agreement with the City of Glendale, Calif., to provide a suite of energy portfolio management services, under a master service agreement with the Southern California Public Power Authority.

Conn. Bills ... from 1

12 suppliers involved were even aware of § 16-259a, "an important consumer protection statute that has been in existence for 24 years."

Although none of the 12 suppliers were aware of the statute, only eight failed to comply with 16-259a, because the other four either do not direct bill customers, had not issued re-bills yet, or issued re-bills resulting in a credit to customers, rather than additional charges.

"Breach of the law is aggravated by the fact that the involved suppliers are multi-million dollar corporations that are licensed in numerous states to provide electric generation services to

thousands of customers. The Department is dismayed that these suppliers have displayed a blatant disregard and profound disrespect of consumer rights in Connecticut," the DPUC added.

The Department further directed retailers to review Conn. Gen. Stat. §§ 16-245r, 16-245s, 16-245t and 16-245u, regarding supplier conduct.

Other than the harsher language, the relief retailers must provide customers is unchanged from the draft. Suppliers, the same as CL&P, must provide affected customers with an outstanding balance a payment plan which prorates all arrearages over a period of at least 12 months, which is a longer period than required by statute. No payment charged under any plan shall exceed 50% of the average of the customer's bills for the previous 12-month period, so it may be necessary for some payment plans to extend beyond 12 months. Retailers and CL&P can offer longer plans if they desire.

Suppliers and CL&P are prohibited from imposing any late fees, penalties or interest charges on any balance resulting from the billing problem.

ConEdison Solutions, Constellation NewEnergy, Glacial, Hess, Sempra, Strategic, Suez and TransCanada must also file their latest payment arrangement policies with the Department. The payment arrangement policies, due Sept. 30, shall address each supplier's requirements for all nature of customer disputes, inaccurate bills, non-bills or other reasons for repayment.

CL&P and suppliers also must determine which customers, if any, have lost the opportunity to apply for or receive energy assistance when they were back-billed. All suppliers are prohibited from holding any such customers financially liable for any arrearage amounts resulting from the billing problems and shall forgive all such arrearages. CL&P and each supplier shall submit to the Department a report which describes in detail: the method or process the company used to determine which customers lost, or would lose, energy assistance; the actual number of customers under this category; and the total dollar amounts the company already collected from such customers. The reports are due Sept. 30.

The final decision affirms the draft's finding that while the statute limits the time a company may discover a billing error to one year after the date of service, collection of payments for such properly discovered errors can exceed one year, contrary to arguments from the Attorney General.

The DPUC confirmed that CL&P's actions after a system failure which generated the billing errors were imprudent, and rapped CL&P for "blatant" disregard of § 16-259a as well. The Department is thus disallowing the costs related to the billing system error to ensure that ratepayers do not suffer additional economic loss.

Ohio SSO Rules ... from 1

demonstrate that no generation charges under their SSO would be included in unavoidable charges. Nothing in the statute suggests that generation charges are prohibited from being unavoidable or nonbypassable by shopping customers, FirstEnergy claimed, adding that the Supreme Court of Ohio has upheld such charges.

Kraft Foods suggested that PUCO clarify that mercantile customers may enter into "reasonable arrangements" with any public utility electric light company besides their own EDU, since statutes do not prohibit an EDU from providing competitive retail electric service to customers within another EDU's certified territory.

FirstEnergy and Duke Energy Ohio rejected pleas from several consumer groups that the utilities regarded as, "trying to convert the SSO process into a cost-based ratemaking proceeding, which the legislation specifically avoided."

Proposals from the consumer groups to mandate at least five-year procurement planning horizons (with a preference for 10 years) amount to "command and control" measures that are inconsistent with SB 221's flexibility for competitive procurement, Duke argued.

Additionally, there is no statutory basis that an electric utility be mandated to propose an "active portfolio" approach for its bidding process or any long-term procurement plan, FirstEnergy pointed out. "The legislature certainly could have enacted more prescriptive measures, as they did elsewhere in the statute, if they had intended such a specific bidding approach, but they did not," FirstEnergy said.