

# Energy Choice Matters

September 10, 2008

## Duke Wants Ohio Renewable Capacity Charges to be Nonbypassable

Duke Energy Ohio recommended that only energy costs associated with utilities' compliance with new renewable standards be bypassable, opening the door for utility capacity costs associated with the portfolio standards to be charged to customers on competitive supply via an unavoidable surcharge (08-888-EL-ORD, Matters, 8/21/08).

As proposed by PUCO Staff, "All costs incurred by an electric utility in complying with the requirements of the alternative energy portfolio standard shall be avoidable by any consumer that has exercised choice of electricity supplier."

Duke, however, suggested that the language be amended to provide that only all "energy" costs be avoidable, arguing that the Staff's language conflicts with the intent of SB 221 to develop renewable resources in Ohio.

"Absent an unavoidable charge, it is unlikely that utilities will invest in significant renewable capacity additions," Duke said.

Duke noted that SB 221 expressly allows utilities, through their electric security plans, to impose an unavoidable charge for constructed capacity dedicated to Ohio for the life of the plant or purchased capacity newly dedicated to serve load in Ohio.

"[T]here is nothing in the statute that mandates avoidability of capacity costs," Duke argued, claiming that a nonbypassable surcharge will be necessary to meet the state's "aggressive" renewable mandates.

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## Integrys Energy Services Warns FERC on Attempts to Undermine Demand Response

Integrys Energy Services, "has become concerned with developments in PJM designed to attempt to undermine the existing demand response program," citing parties that are, "now trying to keep all retail customers out of RTO demand response programs unless their state commission explicitly authorizes such participation." The Integrys competitive supplier made the comments in AD07-7, regarding FERC's review of wholesale competition in organized markets.

At least one utility has filed a request to keep their customers from participating directly through a curtailment service provider or PJM, Integrys Energy Services pointed out. In states where utilities are expected to provide demand response programs for their regulated businesses, "competing interests are likely to result in more requests to keep customers out of RTO demand response programs." Integrys Energy Services noted AEP wants to add language to PJM's tariff that restricts demand response participation to those entities receiving affirmative approval from their state regulators for participation by retail customers.

FERC has jurisdiction to order RTOs to allow retail customers to participate in demand response programs either on their own or through aggregators without first consulting state commissions, Integrys Energy Services argued. "Unfettered access to demand response programs is the best way to maximize participation in those programs to bring clear and identified benefits to wholesale markets."

Absent such exercise of FERC jurisdiction, Integrys Energy Services urged FERC to act on its NOPR which calls for retail customers to be permitted to participate in RTO demand response programs, except where a state commission expressly prohibits such retail customer participation.

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## **BGE Renews Criticism of RM17 POR, Proration**

Baltimore Gas and Electric renewed its opposition to both Purchase of Receivables and pro-rated partial payments in supplemental comments on the latest draft of RM17, and also cautioned the Maryland PSC that new provisions which would allow suppliers to view customers' utility consolidated bills would give suppliers access to sensitive customer information as well as competitors' rates.

BGE claimed POR could result in increased costs to customers and result in the shifting of collection risk from suppliers to the utility's customers. Proration of partial customer payments between a utility and a supplier has the potential to lead to increased service terminations and is therefore not in the public interest, BGE added.

The latest RM17 proposal would allow suppliers to view customers' bills, which BGE argued could possibly violate statutory consumer protections. Bill view access could also permit a supplier to access the rates charged by competitor, BGE noted. For combined electric and gas customers, RM17 would allow the electric supplier see the customer's bill which includes their gas rate. If the customer is being served by a competitive gas supplier, that supplier could be a competitor of the electric supplier, many of whom provide gas service as well, BGE explained. Thus, suppliers could gain access to competitors' rate information.

BGE also asked that, for efficiency reasons, it be permitted to delay implementation of any RM17 billing changes until the final outcome of RM35, which is considering similar issues for gas customers.

## **IOUs, Consumer Advocates Still See Big Roadblocks to DWR Novation**

Pacific Gas and Electric's refusal to accept novation of its allocated Department of Water Resources contracts, "completely obfuscates the entire purpose," of the California PUC's review of novating contracts to accelerate the return of direct access, San Diego Gas and Electric argued in reply comments (R. 07-05-025,

Matters, 8/19/08).

SDG&E noted PG&E has stated that PG&E is not willing to voluntarily waive provisions in its bankruptcy settlement that allow PG&E to refuse assignment of DWR contracts in cases where PG&E would not maintain a certain credit rating by doing so.

Without PG&E's participation in the novation of the DWR contracts, per the Commission's interpretation of AB 1X, DWR will not have made a complete exit from the power business and thus direct access could not be reinstated until PG&E's allocated contracts have all expired, SDG&E noted.

"Because reinstatement of DA is, ostensibly, the whole purpose of this proceeding, novation of only the SDG&E and Southern California Edison Company (SCE) allocated contracts would appear to be a futile, resource draining exercise," SDG&E reasoned.

TURN also countered arguments from electric service providers who have downplayed the fact that four of the DWR contracts lack novation clauses. While DWR has stated there has been little opposition to novation clauses in other contracts, TURN asked that if obtaining novation clauses from the remaining counterparties is so easy, why hasn't DWR already done so?

"Obviously the remaining parties must have significant objections and/or other related contractual demands, given the fact that securing such clauses has been one of DWR's key negotiating priorities for some time. TURN can only conclude that securing such novation clauses from the remaining parties (particularly Sempra and Coral) will be extremely difficult and potentially expensive - otherwise it would already have happened," TURN concluded.

PG&E noted that the Legislature recently passed AB 3058, which limits DWR's ability to modify the DWR contracts. If the Governor signs AB 3058, DWR would be required to provide for a period of public comment and a report to the PUC before executing material amendments or modifications to the existing DWR contracts, PG&E said. Such provisions will impact DWR's ability to modify the remaining four contracts that do not have novation provisions to include novation provisions for certain consideration, PG&E observed.

TURN also questioned how the novated

contracts can be considered just and reasonable when the Commission is still engaged in litigation over some of the contracts. While the PUC has allocated costs of the contracts, it has never found them to be just and reasonable, TURN said.

Reliant Energy countered claims from the Division of Ratepayer Advocates that novation would violate statutes that provide for competitive procurement of IOU supply. The megawatts under the allocated DWR contracts are currently included as part of the IOUs' portfolios for long term planning purposes, Reliant explained, and the mere act of novating the contracts from DWR to the IOUs "as is" does not represent an act of incremental procurement that would be subject to a competitive process.

### ***Briefly:***

#### **PUCT to Examine Cap Rock Retail Competition**

The PUCT Staff requested a docket (36130) styled as "Customer Letters concerning Retail Competition in the Cap Rock Energy Service Area." Although two parts of Cap Rock's service territory are in ERCOT (with the remaining part in SPP), the utility was still a cooperative during the initial unbundling period of Texas deregulation and did not become a public utility regulated by the PUCT until September 1, 2003. Any Cap Rock transition to competition would be governed by PURA § 39.102(d) & (e), which are specifically directed at electric utilities that were not subject to Chapter 39 Restructuring before September 1, 2003. Per Cap Rock's website, the average rate for a residential customer using 1,000 kWh in September is 11.85¢, and was 16.50¢ in August, 16.51¢ in July, 14.65¢ in June and 14.40¢ in May. Prior to the summer run-up in rates, prices had been in the 10-12¢ range.

#### **Nordic Energy Services Applies for ARES License in ComEd**

Energy management consultant Nordic Energy Services has applied with the Illinois Commerce Commission for an alternative retail electric supplier license to serve non-residential customers with annual usage in excess of 15,000 kWh in the Commonwealth Edison territory. Nordic expects to begin operation in 2009 and told the ICC it expects that its peak

during 2009 will be 1.7 MW. Nordic has contracted with ACES Power Marketing to meet various scheduling and technical requirements. Nordic does not intend to offer single billing services at this time. Nordic holds gas supplier licenses in Illinois and Indiana.

#### **Start-up Aggregator Seeks Conn. License**

Stanwich Energy Advisors filed for an aggregators license with the Connecticut DPUC, intending to pool C&I and governmental customers. Managing partner John O'Connell spent over two years as an account executive at Tradition Energy, handling business development, and has held various positions in property and leasing management at Newmark Knight Frank.

#### **Broker NDCA Receives Texas Aggregators License**

The PUCT granted broker NDCA of North America an aggregators license for residential, C&Is, municipals and political subdivisions. NDCA has a relationship brokering for Constellation NewEnergy. NDCA owner Abel Sanchez II has marketed for several third-party channels including Tremcor Energy, and various intermediaries that had relationships with Reliant Energy and Entergy Solutions.

#### **PUCT Staff Opens Docket for Disconnect Rulemaking**

The PUCT Staff opened docket 36131 for the Commission's rulemaking relating to disconnection of electric service and deferred payment plans, initiated at the last Open Meeting (Matters, 8/29/08).

#### **OCC Opposes Duke AAC Adjustment**

The Ohio Consumers' Counsel moved to dismiss Duke Energy Ohio's application to modify its Annually Adjusted Component, a bypassable charge, for 2009 (08-1025-EL-UNC, Matters, 9/2/08). The AAC includes environmental compliance, Homeland Security and tax charges. OCC argued that Duke does not have authority to adjust a charge beyond the period of its current rate plan, which expires Dec. 31, 2008. OCC views the application an attempt to adjust AAC charges in 2009 should Duke's electric security plan be rejected by PUCO, an adjustment that otherwise would be prohibited.

If the ESP is rejected by PUCO, or if Duke rejects PUCO's changes to the ESP, 2009 rates are to be set at the most recent standard service rates plus adjustments for fuel costs. Under such provisions of the revised code, non-fuel adjustments, such as the AAC changes, would not be permitted, OCC said.

### **Affordable Power Signs Aransas County**

Affordable Power won an RFP to supply 15 million kWh to Aransas County, Texas.

### **N.Y. PSC Clarifies Adder in RG&E FPO**

The New York PSC issued an erratum yesterday to its recent order on Rochester Gas & Electric's fixed price option, clarifying that the FPO adder is to be 6 mills/kWh, rather than 4 mills (03-E-0765, Matters, 8/29/08).

### **USPowerGen Gets New CEO**

US Power Generating Company named current President and COO Mark Sudbey as CEO yesterday. Sudbey, who has been in his current role at USPowerGen since 2005, previously served as a regional President at Reliant Energy's wholesale generation unit. Sudbey replaces USPowerGen founder Jacob Worenklein who resigned to pursue other opportunities.

### **OPSI Selects Advisory Board Members**

The Organization of PJM States selected members of its Advisory Committee which will provide advice to FERC, PJM's board, PJM's Market Monitoring Unit, and stakeholders. They are:

- New Jersey BPU Commissioner Frederick Butler
- Virginia State Corporation Commissioner Mark Christie
- Pennsylvania Public Utility Commissioner Tyrone Christy
- North Carolina Utilities Commissioner Sam Ervin
- Illinois Commerce Commissioner Lula Ford

The OPSI Advisory Committee will hold its first meeting with market monitor Dr. Joseph Bowring on Sept. 17 in Chicago. The meeting is open to the public.

### **FERC Sets Technical Conference on MISO Market Service Plan**

FERC has set for Nov. 12 a technical conference regarding the Midwest ISO's Market Coordination Service proposal in docket ER08-637 (Matters, 9/8/08).

### **Rendell Warns of Overwhelming Pressure on Rate Caps if Lawmakers Fail to Act This Year**

Pennsylvania Gov. Ed Rendell renewed calls for action on electric rate mitigation legislation, telling legislators that a, "crisis is coming," and that, "the pressure to simply extend the current rate caps will be overwhelming," if lawmakers fail to enact solutions that the administration favors. Rendell pushed for passage of HB 2201 which would require utilities to provide service to customers at the lowest reasonable rate and procure default service through a mix of short- and long-term contracts and spot market purchases. The PUC should also immediately adopt measures to phase in any rate increases over three years, Rendell said. Rendell also touted HB 2200 which is meant to cut peak demand and total throughput, via utility-offered conservation programs, smart meters, and optional time-based pricing.

### **EPSA Wants Action on FERC-NARUC Report**

Consumers will only benefit from the best practices identified by a FERC-NARUC collaborative on competitive procurement if regulatory commissions in vertically integrated states, "adopt the thoughtful elements outlined in the report - and do so before it is too late," EPSA said yesterday. EPSA noted that while more than 40% of states have competitive procurement rules, the percentage drops to less than a third for vertically integrated states. "It is in these states where strong competitive procurement is most needed to guard against utility construction risks and cost over-runs, as well as affiliate abuse," EPSA argued. EPSA particularly noted that credit requirements in RFPs should be flexible and clear, as credit rules can be used to preclude "strong, experienced and well capitalized suppliers from competing." EPSA also suggested that to shift development and capital cost risks away from consumers, utility bids should require utilities to agree not to pursue cost recovery for increases in construction costs beyond initial estimates.

### **CAISO Issues Credit Policy White Paper**

The California ISO issued a white paper reviewing possible enhancements to the ISO's credit policies, including alternatives to obtaining unsecured credit limits, and the acceptance of financial security from non-U.S. based entities, or on behalf of affiliated entities. As part of a stakeholder process, CAISO expects to post a final draft credit policy on Nov. 11 with the changes presented at the Dec. 16 board meeting. Tariff language would be filed at FERC on Jan. 6, 2009.

### **SCE Defends Generation Procurement**

Southern California Edison opposed the Independent Energy Producers Association's request for an investigation into the procurement practices of the IOUs based on Pacific Gas & Electric's Tesla application (A. 08-07-018, Matters, 8/22/08). SCE argued that IEP's motion is procedurally improper, and lacks factual assertions that are verified. SCE noted two-thirds of its non-renewable generation since the start of the hybrid market has been built by IPPs, and the remaining utility built generation has been due to market failures or Commission direction (such as its 2007 peakers).

### **CAISO Board Tells Management to Prepare for Jan. 31 MRTU Go-Live Date**

The California ISO board directed CAISO management to prepare the 60-day Market Redesign and Technology Upgrade readiness certification so that it can be filed by December 1, 2008, for a January 31, 2009 Go-Live date. The board expects to receive confirmation of system readiness from management at its October meeting, at which time market participants are encouraged to address MRTU readiness.

### **CAISO Submits Tariff Language to Delay CRR Load Migration Accounting**

The California ISO submitted to FERC tariff language to implement its proposal to delay the timing of load migration adjustments in its Congestion Revenue Rights allocation process. Due to problems in obtaining granular migration data before the 2009 annual CRR allocation process, CAISO is proposing performing migration after the process, rather than before as currently provided in the tariff (Matters, 9/1/08).

### **Grid Names Former Pa. PUC Vice Chair as Reg. Affairs VP**

National Grid named former Pennsylvania PUC Vice Chair Lisa Crutchfield as executive vice president for Regulatory Affairs. Crutchfield most recently served a similar role at PECO, and also served a stint at Duke Energy.

### **Duke Signs PPA to Sell Wind**

Duke Energy Generation Services entered into a 20-year PPA with PacifiCorp for 99 MW of wind electricity from its Campbell Hill wind farm in Wyoming.

### **ComEd Reports C&I Efficiency Incentives Quickly Reserved**

ComEd reported that business customers have already reserved 85% of the funds in its Smart Ideas for Your Business efficiency program in the two months since its launch.

### ***Ohio RPS ... from 1***

Duke also asked PUCO to clarify provisions allowing LSEs to use RECs to meet renewable mandates, and whether use of RECs will require LSEs to show that the underlying generation creating the REC meets the portfolio standards' Ohio deliverability requirements.

American Municipal Power-Ohio also noted the proposed definition requiring RECs to be "fully aggregated" is problematic, and suggested revising the rules so that greenhouse gas attributes may be separated from RECs. The Great Lakes Energy Development Task Force wants the definition of REC to provide that RECs from a pilot offshore wind project in Lake Erie be four units of credit for one megawatt-hour of electricity, up to the first 50 MW generated by such projects.

EnerNOC urged PUCO to count demand response achieved by third-party curtailment service providers towards utility load reduction mandates. Otherwise, third party activity will be seen as undermining the utility's goals, EnerNOC cautioned.

Currently, only utility-sponsored load response programs would be counted towards the goals, but EnerNOC noted such a mechanism will not capture a large amount of peak reduction activity in Ohio that occurs outside of utility programs. Third-party

curtailment service providers are able to customize solutions for customers to boost participation, EnerNOC noted, which utilities cannot do because of the non-discriminatory nature of utility tariffs.

### ***Demand Response ... from 1***

Integrus Energy Services believes the NOPR's provision would engender great demand response participation than alternate proposals that would prevent retail customers from participating in RTO programs, except when granted specific permission from state regulators. Such alternate proposals would only create a barrier to load response participation, Integrus Energy Services said, since they would require customers to petition state commissions for approval before enrolling in demand response programs.