

# Energy Choice Matters

September 22, 2008

## PUCT Staff Wants MCPE Price Out of POLR Rules

Changing the POLR rate from an MCPE-based price to the POLR's lowest month-to-month offer was a solution suggested by several stakeholders at a PUCT workshop on the POLR rulemaking (35769).

Staff's ultimate goal is to craft a POLR rule which does not contain a price tied to MCPE. The volatile 130% of MCPE price in the current rule left customers dropped to POLRs this May and June paying over 30¢/kWh for power in some cases, when competitive rates offered in the market were about half that.

Steve Davis of the Alliance for Retail Markets noted that making the POLR rate a REP's standard month-to-month rate would alleviate, at least for a time, the double deposit problem POLR customers encounter. Customers dropped to POLRs typically do not recover their deposits from the defaulting REP, could be required to pay a deposit to their POLR, and also could be required to pay another deposit to get off POLR service and get a competitive rate. If the POLR product is a competitive rate, customers would not need to switch (and put up a third deposit) to avoid a high price, though they still may desire to choose another REP.

Jessica Mahaffey, regulatory affairs director at Direct Energy, also suggested that REPs, as part of certification, be required to post a letter of credit to cover POLR administration expenses. The funds in the letter of credit would be drawn upon by POLRs in the case of defaults, and used to discount the POLR rate that customers pay to a competitive, month-to-month rate instead of the MCPE rate.

Marc Burns, director of regulatory advocacy for TXU Energy, said that he reads PURA as currently prohibiting discounted POLR rates due language in Sec. 39.106 (b) mandating that, "A provider of last resort shall offer a standard retail service package for each class of customers designated by the

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## FERC Directs PJM To Study E&AS Offset as Part of RPM Review

As part of its order setting a technical conference on RPM (Matters, 9/19/08), FERC directed PJM to evaluate in depth RPM Buyers' concerns and the Brattle Report's suggested revisions with respect to Net Cost of New Entry, particularly use of historical averages of energy and ancillary services (E&AS) revenue offsets (ER05-1410).

"Given the critical importance of Net CONE to RPM, PJM and its stakeholders need to thoroughly review and refine the methodology for determining energy and ancillary services revenue offsets, as well as consider the use of different types of generation technologies for different Locational Delivery Areas, as the Brattle Group has recommended," the Commission said in its written order.

Other areas to be examined include:

- Rules for the participation of energy efficiency and demand-side resources in the RPM auctions;
- Market power and mitigation rules;
- Reliability requirements/criteria and defining Locational Delivery Areas;
- Must-offer rules relating to the exclusion of capacity due to (i) the sales cap imposed on Fixed Resource Requirement entities and (ii) partial-year ownership and availability;
- Performance penalties;
- Incremental auctions; and
- Length of forward commitment for new capacity resources.

"PJM should develop and implement provisions to enable energy efficiency resources to participate

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## **PUCT Report Suggests Lawmakers Give Commission Authority to Mandate AMI**

The Texas legislature should clarify that the PUCT has the authority to order utilities to deploy advanced meters as rapidly as possible, with the appropriate cost recovery provided under the Commission's advanced metering rule, says a Staff report to lawmakers on advanced metering (35770). The report is to be considered at the Sept. 24 Open Meeting.

The Governor's Competitiveness Council has suggested that the Commission have such authority (Matters, 6/23/08). Advanced meter deployment is currently voluntary. Although Oncor and CenterPoint have filed deployment plans with the Commission (with Oncor's already approved), AEP and Texas New Mexico Power have not yet filed plans.

The Commission believes that AMI should be ubiquitously deployed in order to give Texas retail electric customers an increased ability to control their electric use, the report says.

State policy should also ensure that all retail customers have the option to have their billing determined on actual interval data captured from the advanced meters, so they receive the full benefits of changes in consumption behavior, the report continues.

Included among the benefits of advanced meters listed in the report are the ability of customers to select flexible billing cycles to meet their preference, as well as the facilitation of prepaid service.

## **IPPs Want Standard Offer Rate for MISO Blackstart Service**

The Midwest ISO's proposal to provide compensation for providers of Blackstart Service will act as a "significant deterrent" to non-utility providers because the proposal lacks a standard offer, non-unit-specific compensation mechanism, Reliant Energy and Dynegy told FERC.

MISO's proposed Schedule 33 would compensate Blackstart Service providers only on the basis of a rate that reflects the provider's unit-specific costs.

Reliant and Dynegy cited the difficulty that existing non-utility generators have in identifying

and documenting the costs of older facilities that were acquired many years ago when load-serving utilities divested their generation assets. The two IPPs also noted that because such older generation facilities may be fully depreciated, rates tied to unit-specific costs may provide insufficient incentive for such generators to offer Blackstart Service.

That's why ISO New England, New York ISO and PJM provide for a standard offer rate that may be chosen in lieu of a project-specific cost of service rate, Reliant and Dynegy observed. MISO should adopt a similar mechanism that could be based on either the ISO-NE, NYISO, or PJM process, while taking into account replacement cost values consistent with the Midwest ISO independent market monitor's recent evaluation of the cost of a new unit (\$80,000/MW-year) as a basis for the formulation.

Reliant and Dynegy also argued that MISO's requirement for units to commit to provide Blackstart Service for a three year term (with termination only upon two years' notice) may discourage non-utility generators from providing Blackstart Service, and urged the commitment be shortened to two years (with termination after one year's notice)

Detroit Edison and Consumers Energy cautioned FERC that Schedule 33 appears to discriminate against resources currently receiving compensation for Blackstart Service because a unit could only be compensated under Schedule 33 if the costs associated with Blackstart Service are not being recovered through other rates or charges.

Detroit Ed contended that such treatment, "unduly discriminates against state-regulated load serving entities that may already be receiving compensation for blackstart service, in whole or in part, from their retail loads through retail rate mechanisms."

"Clearly, there is no reason why state-regulated entities should not be entitled to full compensation under Schedule 33 to the extent they can demonstrate to FERC in their separately-filed revenue requirement filings that no double recovery will result (i.e., that amounts collected under Schedule 33 will be flowed back to retail customers to the extent these customers have already compensated the generation owner)," Detroit Ed said.

## CenterPoint Allows REPs to Post Outage Data on Own Websites

Some 803,000 customers remain without power at CenterPoint Energy, 36% of its total base, while Texas New-Mexico Power has resorted power to 90,000 of 115,000 customers affected. Oncor reported that all affected homes or businesses were restored by Saturday, except for those locations where it is not safe to restore power due to damage.

In response to REP requests, CenterPoint informed REPs that REPs may use the utility's published Outages by Zip Code on their own website, or for their own operations, to improve communications to customers under certain conditions. REPs must refresh the data four times daily concurrent with CenterPoint's new postings, and must clearly identify data sources as "CenterPoint Energy." REPs cannot eliminate such identification or replace it with their own identification. REPs must provide clear links to CenterPoint's main website or lke subsite.

TNMP reported that all transmission and distribution main circuits are repaired, with crews now focused on the numerous outages that remain on lateral single-phase and three-phase lines. TNMP said such restoration could take at least two weeks.

### **Briefly:**

#### **DPU Declines Review of POR, Payment Rules**

The Massachusetts DPU declined to examine Purchase of Receivables and other supplier billing and payment rules as part of a rulemaking to update rules of practice and procedure and make other ministerial changes (07-105). The Retail Energy Supply Association had urged the Department to examine POR, and the applicability of burdensome utility disconnect, payment and deposit rules on competitive suppliers, as part of the review. But the DPU agreed with utilities and the Attorney General in finding the suggestions to be outside the scope of the proceeding (Matters, 2/11/08). RESA had argued that that current billing and deposit rules are a "significant market entry barrier" that aren't appropriate in the provision of competitive services.

#### **DPUC Sets Conference to Review Possible BEII Event of Default**

The Connecticut DPUC has set a technical conference for Sept. 24 regarding the possibility that Bridgeport Energy II's bid submitted for the 2011-12 ISO New England Forward Capacity Market may not clear the auction (08-01-01). Bridgeport Energy II was one of three cost-of-service peakers selected by the DPUC (Matters, 6/26/08). The contract for differences with Bridgeport Energy II requires the unit to clear in the FCM for the first period for which it is eligible based on the project's commercial operation date of September 30, 2010. If Bridgeport Energy II does not clear in the 2011-12 FCM, it may constitute an Event of Default of Supplier under the CfD, which may cause Bridgeport Energy II to be subject to Remedies Available to the Buyer under the contract, including early termination. The DPUC is interested in the economic impact to ratepayers if Bridgeport Energy II does not clear in the 2011-12 FCM, as its selection in the peaker proceeding was predicated on a cost-benefit analysis based on it clearing the auction.

#### **MidAmerican, Constellation Sign Definitive Agreement**

MidAmerican Energy Holdings and Constellation Energy signed a definitive merger agreement Friday as expected (Matters, 9/19/08). Under the agreement MidAmerican does have 14 days to review CEG's books, and can also terminate the deal if CEG's retail and/or wholesale business has "materially deteriorated" since June 30, defined as a decline in value of more than \$200 million. Meanwhile, speculation continues to swirl about EDF's next move, if any. Conflicting published reports have EDF making an offer to CEG with an unnamed U.S. partner, while other reports have EDF backing away from any such move.

#### **Pepco Updates Proposed Procurement Rider**

Pepco has amended its proposed Generation Procurement Credit for District of Columbia non-residential customers, requesting a credit of \$0.000056/kWh instead of the originally submitted \$0.000068 (FC 945). The proposed residential credit remains \$0.

## Luminant Files for 2 New Reactors at Comanche Peak

Luminant filed a combined operating license application with the NRC for two new nuclear units at its Comanche Peak facility, with each unit rated at 1,700 MW. Luminant and Mitsubishi Heavy Industries entered into an agreement to form a joint venture to develop the two new units. Upon the joint venture's closing, Mitsubishi would have a 12% stake.

## Comverge Reaches 2,200 MW, Re-aligns Divisions

Comverge says a new contract with Arizona Public Service and several other additions push its megawatts under management to 2,200 MW with over \$476 million in estimated future revenues. Comverge said it has increased capacity owned under long-term contracts by 387 MW this year, with 165 MW of that total awaiting regulatory approval. Comverge now has a total of 866 MW owned under long-term contracts. Megawatts managed in open market programs have increased by 435 MW this year, for a total of 897 MW. Comverge is consolidating its three current business groups into a single group to be named the Comverge Clean Energy Solutions Group, combining units focusing on demand response, alternative energy, and smart grid technologies. Frank Magnotti, formerly President of the alternative energy group, will be President of the Solutions Group and is responsible for all customer-interfacing activities. Comverge also formed Comverge Clean Energy Enterprise to focus on R&D, to be led by Bud Vos. Dean Musser, President of the Enerwise demand response unit, will resign Sept. 30, 2008 and serve in a consulting role through the end of the year before pursuing other, non-competing opportunities, Comverge said.

## ***POLR Rule ... from 1***

commission at a fixed, nondiscountable rate approved by the commission." Although the PUCT has told REPs that it will allow lower POLR rates, Burns suggested that the Commission seek a language change from the legislature so POLRs can discount rates.

Randy Chapman, Texas Legal Services Center executive director, suggested a centrally

administered deposit fund which would safeguard deposits from defaulting REPs, and allow customers' deposits to follow them when switching REPs or dropped to POLR service. At the very least, if REPs are permitted to still administer deposits, deposits should be required to be held in escrow accounts, Chapman said.

Mahaffey suggested that upon certification, REPs should be required to post another letter of credit to provide for deposit funds in the case of mass transitions. The letter of credit could be drawn upon by the POLRs should the REP ever default, so customers switching would not be required to put up a new deposit with the POLR. If the customer leaves the POLR, the customer would be paid their deposit by their POLR.

Burns, however, noted that letters of credit are extremely expensive forms of security, and cautioned that requiring them for POLR deposits and administration would raise the cost of service to all customers.

Burns recommended that distressed REPs be required to automatically send customers in good payment standing a letter stating so, which can be used in lieu of a deposit per PUCT rules. However, when REPs default, it's difficult for customers to get such a letter after the fact. Burns also suggested a shorter period be considered as good standing in cases of distressed REPs, rather than the standard 12 months of no late payments.

The System Benefit Fund could potentially be used to pay for POLR deposits when POLR customers have already paid a deposit to their defaulting REP and haven't been refunded their money yet, Burns reasoned, though he stressed there was not internal agreement on the idea at TXU.

Stakeholders agreed that a lack of accurate customer data hampers mass transitions, but no clear remedies were apparent.

REPs also discussed whether POLRs should have an initial opportunity to market to new POLR customers before other REPs can make use of customer information provided during the mass transition process to target POLR customers. REPs noted that a flood of REP marketing materials coincident to (or even before) the customer's initial POLR welcome letter could confuse customers. Mahaffey also argued that POLRs should be rewarded for taking on the risk of POLR service by getting a

chance to convert POLR customers onto one of their competitive plans. Burns suggested that after an initial time period, POLRs be required to produce a list of customers who haven't left POLR service, so other REPs could offer them cheaper products, since the ultimate goal is to get customers off POLR rates.

Chapman stressed that any such marketing efforts must be non-discriminatory, and that POLRs should not only offer their best rates to select customers based on credit or other factors. Paul Smolen, of aggregator Fox, Smolen & Associates, cautioned that POLRs charging a high MCPE-based rate could offer customers a "competitive" rate that seems low when compared with MCPE, but was actually higher than most rates in the market, auguring for the need not to foreclose competitive marketing to POLR customers.

REPs suggested that notification regarding a POLR drop should come from the PUCT or ERCOT, with a PUCT seal, rather than the defaulting REP as is currently the case. Staff also suggested using phone calls to inform affected customers.

REPs asked for greater clarity in the POLR rule regarding the appropriate EDI transactions to use to speed transitions off POLR, a subject that has been in ERCOT workshops (Matters, 8/12/08). REPs suggested that the rule expressly permit the use of Move-Ins to speed any transitions.

CenterPoint Energy, however, noted that Move-In transactions erase a customer's history with the TDU because a new account is created. That means a customer's critical care status, and denial of meter access information, are eliminated. Move-Ins also might trigger tenant permitting requirements which aren't really needed since the Move-In isn't truly for a new resident. CenterPoint suggested using off-cycle, unprotected switches to speed transitions, although those transactions carry additional fees.

REPs noted that Move-Ins are faster than off-cycle unprotected switches, and suggested some indicator could be placed with a Move-In transaction noting that the customer is not new to the residence and should retain any critical care status.

Smolen, observing that the current rule minimizes uplift to the market but places a greater burden on affected customers who may

not be able to switch quickly enough to avoid MCPE rates, suggested an analysis be done comparing the costs and benefits to the market from the current mass transition timeline compared with costs incurred by customers stuck paying a POLR rate before they can switch.

John Orr from Constellation noted that POLRs have volunteered to serve in the upcoming two-year cycle (2009-10) based on the current rules, and suggested the PUCT conduct a new POLR interest process if there are substantive changes in the rule.

Chapman reiterated his desire for standard terms of service for month-to-month products.

Stakeholders also discussed developing an early warning system for distressed REPs, with Burns citing examples from the insurance and banking industry.

### ***RPM ... from 1***

in the RPM auctions," FERC said, consistent with Brattle and Buyers' recommendations. Energy efficiency and demand response should also be appropriately reflected in PJM's load forecasts, the Commission concluded.

"The Brattle Report's findings and recommendations, as well as RPM Buyers' analyses, suggest that PJM may need to reexamine its mitigation rules, particularly with respect to the calculation of avoidable costs and determination of offer caps to ensure that they are consistent with reasonably competitive bidding behavior," FERC observed. PJM should take care to address specifically: (1) calculation of avoidable costs; (2) effectiveness of the RPM mitigation rules; and (3) application and enforcement of RPM mitigation rules, FERC said.

As to RPM Buyers' complaint which was denied, FERC found that, "the PJM tariff provisions, and particularly the tariff's mechanisms for protecting customers from the exercise of market power, were followed, and we find no basis to overturn the auctions for the transition period." FERC cited evidence from the Market Monitoring Unit showing suppliers could not, and did not, offer prices well in excess of avoidable costs. RPM Buyers also failed to show that any seller violated the mitigation rules in place during the auctions, the Commission said.