Energy Choice Matters

September 26, 2008

Draft Illinois ABC Rules Ostensibly Apply to All Non-Employee ARES Sales Agents

Draft rules from the Illinois Commerce Commission Staff would ostensibly require the contracted sales forces of alternative retail electric suppliers to be licensed as ABCs and be subject to various requirements under the ABC law, under our interpretation of the draft included in a formal rulemaking opened Wednesday (08-0548, Matters, 9/25/08).

Per the Staff language, it appears that an ARES sales force could only avoid the ABC rules if such sales force were direct employees of the ARES and were thus a part of the licensed ARES entity. Any third-party sales force, even if conducting sales under the brand of the ARES and exclusively for the ARES, would fall under the rules in some fashion. While agents working exclusively for one ARES would not be subject to most of the requirements, they would still have to disclose to customers in writing such exclusivity.

We arrive at this conclusion based on the following.

The ABC law defines "agents, brokers and consultants" as "any person or entity that attempts to procure on behalf of or sell retail electric service to an electric customer."

Staff's draft further holds that the ABC rules are to apply to the following:

1) Each ABC that receives a commission, salary, or other remuneration from a Retail Electric Supplier (RES) for selling retail electric supply on behalf of such RES;

2) Any ABC that receives a commission, salary or other remuneration from retail customers for procuring retail electric services on behalf of such retail customers or attempting to procure retail electric services on behalf of retail electric customers.

Before considering any exceptions, it seems sales agents that are not ARES employees (such as those at third-party call centers or contracted feet on the street) are clearly covered by the first condition listed above, even if they sell under the brand of the ARES.

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PJM Submits Revised Operating Reserves Compensation, Cost Allocation

PJM submitted to FERC proposed Operating Agreement and OATT revisions endorsed by most Members Committee members that would (a) separately consider extended hours of operation when calculating a pool-scheduled resource's Operating Reserve make-whole payments; (b) limit under certain conditions the operating parameters that may be submitted for a unit to reduce the possibility that market power may be exerted; and (c) change how the costs of Balancing Operating Reserves are allocated to PJM Members.

The proposed changes are meant to further solidify incentives for participants to bid their Day-ahead quantities as close as possible to what they expect in the Balancing Market, thereby maintaining a high level of convergence between Day-ahead and Real-time Prices and maximizing market efficiency, PJM said. The modifications are to also strengthen the incentive for generators to follow PJM dispatch instructions and prevent the exertion of market power by generators committed to provide Operating Reserves through the submission of inflexible operating parameters.

Among the changes is the development of "segmented" make-whole payments available for Operating Reserves sellers when the total offered price exceeds the total energy market value of the pool-scheduled resource. Segmenting the make-whole payments is intended to motivate Market

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PUCT Issues Preliminary POLR Designations for 2009-10

TXU Energy, Reliant Energy, Constellation NewEnergy, MXenergy and CPL Retail Energy are the REPs that have volunteered to be POLRs in the upcoming 2009-2010 POLR term, as the PUCT released a preliminary finding of all eligible POLRs (35630).

The PUCT also designated non-volunteer POLRs (see below), which reflect the five eligible REPs that have the greatest market share based upon MWhs served, by customer class within each POLR area.

Under the PUCT's POLR system, non-volunteer POLRs are assigned customers when the number of customers involved in a mass transition exceeds the level that volunteer POLRs have agreed to accept. There are no volunteer POLRs in the large non-residential customer class for the 2009-10 term.

A breakdown of volunteer and non-volunteer POLRs follows. For brevity, the list reflects the general corporate retail entity with a POLR obligation. A list of all REPs eligible to be POLRs by service area and customer class can be found in project 35630.

REPs may challenge their POLR eligibility or selection as a non-volunteer POLR by Oct. 1.

Residential Non-Volunteer POLRs

REP	Oncor	CNP	TNMP	TNC	TCC
CPL Retail					X
Direct Energy	X	X			
First Choice			X	X	X
Gexa		X	X		
Green Mountain	X				
Reliant Energy	X	X	X	X	X
Stream SPE	X	X	X	X	X
TXU Energy	X	X	X	X	X
WTU Retail				X	

Small Non-Residential Non-Volunteer POLRs

REP	Oncor	CNP	TNMP	TNC	TCC
Champion Energy		X	X		
Constellation				X	X
CPL Retail					X
Direct Energy	X	X	X		
First Choice			X		
Just Energy					X
Reliant Energy Retail Services	X	X	X	X	X
Reliant Energy Solutions	X	X	X	X	X
Strategic Energy	X	X			
TXU Energy	X			X	
WTU Retail				X	

Medium Non-Residential Non-Volunteer POLRs

REP	Oncor	CNP	TNMP	TNC	TCC
Constellation	X	X	X	X	X
CPL Retail					X
Direct Energy	X	X	X		
First Choice			X		
Just Energy					X
Reliant Energy Retail Services		X	X		
Reliant Energy Solutions	X	X	X	X	X
Strategic Energy	X			X	X
TXU Energy	X	X		X	
WTU Retail				X	

Large Non-Residential Non-Volunteer POLRs

REP	Oncor	CNP	TNMP	TNC	TCC
Champion Energy					X
Constellation	X	X	X	X	X
CPL Retail					X
Direct Energy			X		
First Choice			X		
Reliant Energy	X	X	X	X	X
Sempra Energy	X	X	X	X	
Suez Energy	X	X			X
TXU Energy	X	X		X	
WTU Retail				X	

Residential Volunteer POLRs

REP	Oncor	CNP	TNMP	TNC	TCC
CPL Retail			All Areas		
Reliant Energy			All Areas*		
TXU Energy			All Areas		

Small Non-Residential Volunteer POLRs

REP	Oncor	CNP	TNMP	TNC	TCC
CPL Retail			All Areas		
MXenergy		X		X	
TXU Energy			All Areas		

Medium Non-Residential Volunteer POLRs

REP	Oncor	CNP	TNMP	TNC	TCC
Constellation			All Areas		
TXU Energy			All Areas		

"X" indicates POLR designation
For POLR designations, TCC Includes AEP Texas Central and Sharyland.
CNP: CenterPoint; TNMP: Texas-New Mexico Power
TNC: AEP Texas North
*Excluding Sharyland

Md. PSC Orders Allegheny to Answer Warrior Run Questions

The Maryland PSC Staff has recommended that the issue of Allegheny Power's actions regarding reactive power compensation and sales from AES' Warrior Run generating plant be set for hearing, and the Commission directed Allegheny to respond to several issues raised by Staff and the Commission in connection with Allegheny's actions to fulfill its obligation to maximize Warrior Run ancillary services revenues.

Allegheny is currently subject to an out-of-money, long-term PPA with the Warrior Run facility, which customers have been forced to subsidize.

The Commission asked why Allegheny Power affiliate Allegheny Energy submitted Reactive Power Compensation filings with FERC for generators similar to Warrior Run in October 2003 but failed to request or make a filing for Warrior Run prior to the PSC's letter order directing the filing.

Allegheny was directed to respond by October 31.

LS Power and Luminus Seek 40% of Calpine Stock

LS Power Development and Luminus Management intend to increase their share of Calpine to 40% of Calpine's common stock, and submitted a section 203 application at FERC out of an abundance of caution, believing the transaction qualifies for blanket authorization.

The Applicants currently own 15.9% of Calpine stock and have FERC approval to hold 20%. LS Power and Luminus state that they will not be in a position to control decision-making regarding Calpine's sales of electric energy by virtue of their ownership of 40% of Calpine's common stock.

Various LS Power affiliates own 40% of the outstanding voting securities of Dynegy, but do not control any operations at Dynegy. LS Power and Luminus Management also have a pending application at FERC to acquire up to 20% of the common stock of TransAlta Corporation.

Applicants claimed that the Calpine stock purchase wouldn't result in horizontal or vertical market power, even assuming Applicants had control of Dynegy, Calpine and TransAlta.

Pa. PUC Sets Final Alternative Energy Portfolio Rules

The Pennsylvania PUC issued final regulations that govern compliance with the Alternative Energy Portfolio Standards Act by suppliers and distribution companies, while Vice Chairman Tyrone Christy recommended a reciprocity requirement that would only allow an out-of-state alternative energy project to qualify for Pennsylvania compliance if Pennsylvania projects qualify for alternative energy credits in that project's state.

The final rules, which did not include the proposed reciprocity provision, cover qualifications and certifications, compliance payments, alternative energy credit banking, cost-recovery and market integrity, and an alternative energy credit registry.

By 2021, retail suppliers and distribution companies must supply 18% of electricity using alternative energy resources. Compliance with the portfolio standards is deferred until an electric distribution company's generation rate caps expire.

Christy said that currently, Pennsylvania's electric customers are required to subsidize the development of alternative energy projects in states that either do not have an alternative energy portfolio, or that have a portfolio but have restricted eligibility in such a way that projects in Pennsylvania can not participate. A reciprocity requirement would aid Pennsylvania economic development, Christy said.

DPUC Approves Fourth Quarter Generation Rates

The Connecticut DPUC approved the fourth quarter Last Resort Service rates at Connecticut Light & Power and United Illuminating. At CL&P, generation service charges (including bypassable federally mandated congestion charges) are:

Rate 21, 39, 41, 55, 56, 57, 58

October 2008	$0.12685/kWh
November 2008	$0.11948/kWh
December 2008	$0.13376/kWh

At, UI, last resort generation service charges are:

Rates GST, LPT

October 2008	$0.110806/kWh
November 2008	$0.110659/kWh
December 2008	$0.121398/kWh

Bidding did not produce peak/off-peak differentiation in any rate class. UI also reported that Consolidated Edison Energy won all of its Last Resort Service supply for the fourth quarter of 2008.

Briefly:

TNMP Accepting EDI Transactions in Some Areas

Texas-New Mexico Power has completed restoration in 10 communities and can accept EDI transactions for those ten communities, which are: Angleton, Bailey's Prairie, Brazoria, Friendswood, Hillcrest Village, Holiday Lakes, League City, Old Ocean, Sweeny and West Columbia. EDI transactions for the remaining communities remain suspended, but TNMP expects complete restoration by Sunday night. CenterPoint has reduced outages to 449,000 customers (20% of its total).

PUCT Final Order Not Posted for Ike Protections

The PUCT had not posted a written order suspending deposit and disconnect rules for customers impacted by Hurricane Ike as of press time, but a news release issued yesterday by the Commission did not list any provisions which were not covered by our story yesterday (36150, Matters, 9/25/08).

Md. PSC Sets Hearing on Reliability Gap

The Maryland PSC has set a hearing on possible reliability gap RFPs (Case 9149) for Oct. 3 (Matters, 9/23/08). While the Commission understands several stakeholders contend a capacity shortfall is unlikely, or that the Commission should not take action to secure additional capacity at this time, the hearing will focus on exploring the options presented in comments to obtain new capacity to alleviate a potential reliability problem. Parties should not view that direction as representing or foreshadowing any decision on the part of the Commission, the PSC said.

Pa. PUC Examining Billing, Disconnect Rules

The Pennsylvania PUC has issued proposed rules to update regulations dealing with residential utility billing, payment and disconnection to create consistency with legislation, as well as to reflect to technological advances such as electronic billing and payments, e-mail and the Internet. The draft would revise regulations at 52 Pa. Code Chapter 56, to ensure they are consistent with Act 201 of 2004, also known as Chapter 14. The rulemaking addresses provisions such as billing information, including transfer of accounts and electronic bill payments; security deposits; interruption and discontinuance of service; disputes, termination disputes, and complaints; and public information procedures and record maintenance. Chapter 14 seeks to eliminate opportunities for customers capable of paying their utility bills to avoid payment, and to provide utilities with the means to reduce their uncollectibles.

Met-Ed/Penelec Propose Voluntary Prepay Plan to Blunt Rate Hike

Met-Ed and Penelec have proposed an optional pre-payment plan to allow residential and small commercial customers to phase-in higher rates expected when rate caps expire Dec. 31, 2010. Interest of 7.5% would be paid on prepayments. PUC approval is required.

D.C. PSC Adopts SOS Procurement Schedule

The District of Columbia PSC adopted the recommended SOS procurement schedule of a working group with the proviso that bid dates may be adjusted once Delaware and Maryland publish their next SOS procurement dates, to avoid procuring load on the same day (FC 1017, Matters, 8/28/08). The Commission adopted the consensus modification to award winning bids on the same day that bids are submitted. First tranche bids are due Dec. 8, 2008, and second tranche bids are due Jan. 5, 2009. If needed, third tranche bids would be due Feb. 23. Retail prices would be posted Jan. 30 if only two tranches are conducted, or March 20 if a third tranche is conducted.

Pa. PUC OKs New Supply Rates at Citizens, Wellsboro

The Pennsylvania PUC approved new Generation Supply Service Rates for Citizens' Electric (10.0812¢/kWh) and Wellsboro Electric (10.4050¢/kWh), effective Oct. 1.

TXU Offers Green Sweepstakes

TXU Energy yesterday launched the Good For Texas Sweepstakes under which Texas residents can win, via random drawing, various green and conservation products. Customers may enter online or at the State Fair. The grand prize is a 2009 Chevrolet Tahoe Hybrid, and First Prize is a 2 kW Solar PV Panel System with an approximate retail value of $18,000 and free installation (with an alternate prize for those in multi-family housing or other restricted locations). Six weekly winners will each receive a $575 Lowe's Gift Card while five weekly winners will receive a $500 bill credit from TXU. A 10-pack of compact fluorescent light bulbs will be awarded daily.

R.I. Selects Offshore Wind Developer

Rhode Island selected Deepwater Wind from seven competitors to develop a $1+ billion wind energy project off the state's shores that is to provide 1.3 million megawatt hours per year of renewable energy.

ABC Rules ... from 1

The requirements would not apply to the following:

• Any entity licensed as an alternative retail electric supplier pursuant to 83 Ill. Adm. Code 451 offering retail electric service on its own behalf;

• Any person acting exclusively on behalf of a single alternative retail electric supplier on the condition that exclusivity is disclosed in writing to any third party contracted in such agent capacity;

• Any person or entity that is attempting to procure on behalf of or sell retail electric service to a third party that has an aggregate billing demand of all of its affiliated electric service accounts in Illinois of greater than 1,500 kw, and

• Certain political subdivisions and public institutions of higher education.

The language of the first exception bears note. The exception only applies to an *entity* which is a licensed ARES. Even though contracted sales forces may be branded and act as an ARES' own sales force, they would legally be a separate entity which is not an ARES, and would thus not qualify for an exemption from the rules, under our reading of the language. Only a sales force which is part of the entity holding an ARES license (i.e., an internal sales force of employees) would seemingly be exempt. All other agents, no matter how they brand their sales, would at a minimum have to disclose their exclusive relationship with the ARES in writing.

The in-writing exclusivity requirement carries another wrinkle in that third-party call centers typically use voice verification (now permissible in Illinois). While customers do receive a written Terms of Service, the contract is legally executed on the verified phone call. The draft does not state when an ABC acting exclusively for one ARES must disclose such exclusivity: before, concurrent to, or after contracting (a point noted by BlueStar Energy Services who argued exclusivity should be disclosed when *contacting* customers). If such disclosure is required before or concurrent to contracting, a one-call ARES sales pitch and enrollment seemingly would no longer be possible by an exclusive ABC call center, because an ABC initially calling the customer would have to send the customer something in writing before executing the voice verification contract. If such disclosure is not required until after contracting, customers may still find an exclusivity disclosure from an ABC they have never heard of (since the sales call was conducted under the name of the ARES) out of place and strange when they are receiving a Terms of Service, welcome letter and other materials from their new ARES.

If such legal interpretation is how the Commission will view this language, and it is ultimately adopted, we believe it would make the ICC the only state utility commission to regulate such supplier-branded "sales contractors" in retail electricity (as opposed to a true "intermediary" like a broker-consultant marketing under its own name). While other states have licensing requirements for brokers and/or aggregators, we are not aware of any state that separately regulates a contracted sales force of an ARES that acts and functions like an internal, employee-based force, but is outsourced to a separate entity for matters of cost, expertise and convenience. Since, to the customer, such contracted sales agents are essentially the ARES itself (since they are branded as the ARES' own sales force and many times are the only sales force of ARES's choosing not have sales agents as direct employees), the agents are instead regulated through ARES licensing, under various rules and requirements on ARES marketing, contracting and enrollment, and making the ARES responsible for any actions taken on its behalf.

In any event, moving to parts of Staff's draft which are more clear, any person or entity required to be licensed as an ABC shall:

a) Disclose in plain language in writing the nature of the services offered (such as analyzing a customer's consumption data, evaluating supplier offers, or recommending a particular supplier);

b) Disclose in plain language in writing to all persons it solicits the total anticipated remuneration to be paid to it by any third party over the period of the proposed underlying customer contract. Any such disclosure must be made prior to entering into the contract and signed by the customer;

c) Not hold itself out as independent or unaffiliated with any supplier, or both, or use words calculated to give that impression, unless the person has no contractual relationship with any retail electricity supplier or affiliates;

d) Not utilize false, misleading, materially inaccurate, defamatory, or otherwise deceptive language or materials in the soliciting or providing of its services;

e) Maintain copies of all marketing materials disseminated to third parties for a period of not less than three years;

f) Maintain copies of all disclosure statements required in subsections (a) and (b) for a period of not less than three years;

g) Not present electricity pricing information in a manner that favors one supplier over another, unless a valid pricing comparison is made utilizing all relevant costs and terms; and

h) Comply with the requirements of Sections 2EE, 2FF, 2GG, and 2HH of the state's Consumer Fraud and Deceptive Business Practices Act.

Under Staff's draft, ABC activities covered by the rules include any actions assisting customers in electricity sales or procurement, including issuing RFPs for customer supply, providing advice on pricing arrangements or comparing supply offers.

The Commission is to issue or deny ABC licenses within 90 days of a complete application, with an opportunity to extend review for another 90 days.

Applicants may demonstrate technical competency through experience in the electric industry of at least one year, and may show managerial competence by at least one year of management experience.

ABCs would be required to maintain a license or permit bond of $5,000.

Annual reports from ABCs would have to list, broken down by retail suppliers that the licensee had any contractual relationship with during the prior calendar year:

1) The type of contractual relationship (such as subcontractor, affiliate, commission compensated);

2) The number of non-residential customers to which the licensee sold retail electric supply on behalf of each ARES;

3) The number of residential customers to whom the licensee sold retail electric supply on behalf of each ARES;

4) The number of non-residential customers for which the licensee procured retail electric service on behalf of the customer or attempted to procure on behalf of the customer; and

5) The number of residential customers for whom the licensee procured retail electric service on behalf of the customer or attempted to procure on behalf of the customer.

Violations would result in progressive disciplinary action with suspension of the license for no less than one month for the first violation; suspension of the license for not less than 6 months for the second violation within a 5 year period; and suspension of the license for not less than 2 years for a third or subsequent violation within a 5 year period.

Operating Reserves ... *from 1*

Sellers to follow PJM dispatch, and to encourage the resource to continue operating when its minimum run time has expired and when it has already fulfilled its output commitment to produce energy for the Day-ahead Energy Market.

Specifically, for resources committed in the Day-ahead Energy Market, the proposal would segment the Operating Day into multiple segments based on (a) the number of hours that the Market Seller committed to produce energy in the Day-ahead Energy Market or the resource's minimum run time, whichever is greater, and (b) for each synchronized start of the resource, the number of hours that the resource was operated at PJM's direction in the Real-time Energy Market beyond the longer of its Day-ahead schedules or minimum run time in the same calendar day.

Segmenting is meant to combat the destruction of a resource's previously earned LMP margin in cases where the LMP during hours of PJM-directed extended operation is below the resource's offer. Under current procedures, some LMP margin is lost during such circumstances because the current Operating Reserve make-whole payment is calculated based on the unit's operation for the entire 24-hour calendar day. By segmenting the make-whole payment and providing separate make-whole compensation specifically for the hours of extended operation, the owner of the resource can retain any margin earned in the earlier hours and be made whole separately for the extended period of operation, PJM explained.

PJM rules permit Generation Capacity Resources and Demand Resources to submit operating parameters as part of their energy market offers, which allows PJM to respect resources' physical characteristics when scheduling their operation.

The current PJM market power mitigation rules provide that when PJM determines that the owner of a unit has the potential to exercise market power, PJM caps that unit at its cost-based energy offer. The mitigation rules, however, do not provide for any limitation of the operating parameters that may be submitted as part of a unit's cost-based energy offer. Concern has been expressed by the PJM Market Monitor that market power could be exerted through the submission of inflexible operating parameters for the sole purpose of increasing a unit's Operating Reserves credits.

To address such concerns, PJM proposed that certain pre-determined limits ("parameter limited schedules"), based on the physical parameters of the units, should be applied when certain system conditions exist and a unit has the potential to exhibit market power. Such conditions could exist when (i) the unit owner fails the three pivotal supplier test, and (ii) PJM declares a Maximum Generation Emergency, or anticipates such an emergency.

Further, PJM proposed excluding nuclear units from receiving the payment of Operating Reserves credits unless PJM has specifically requested that the unit reduce its output during a period when the LMP at the unit's bus exceeds the unit's offer price. The change reflects the reality that PJM does not rely on nuclear units to provide Operating Reserves because unless such units are specifically requested by PJM to reduce output, they are scheduled to operate at their economic maximum output and therefore provide no reserve.

Under PJM's modifications, deviations by one generator could offset deviations by another generator, provided the two generators are connected at the same electrical location. The change will reduce Operating Reserves charges to generators, reflecting the fact that equal and opposite deviations at the same electrical location do not cause Operating Reserve costs to be incurred.

PJM proposed that dispatchable pool-scheduled and self-scheduled generation resources that follow dispatch won't be assessed Balancing Operating Reserve deviations, and those that do not follow dispatch will be assessed Balancing Operating Reserve deviations pursuant to the calculations set forth in the PJM Manuals.

PJM would conduct a Balancing Operating Reserve Cost Analysis to refine how it allocates Balancing Operating Reserve costs. Currently, such costs are allocated to deviations between Day-ahead schedules and real-time quantities, but PJM recognizes that certain Balancing Operating Reserve costs are incurred for reasons other than differences between day-ahead schedules and actual conditions, such as increased loop flow not anticipated in the Day-ahead Energy Market and unplanned transmission line outages or deratings.

The proposed Cost Analysis would separate Balancing Operating Reserve charges related to deviations between Day-ahead schedules and Real-time quantities from those that should be allocated to real-time load and exports.