

# Energy Choice Matters

October 24, 2008

## Pa. PUC Rejects POR Changes at Columbia Gas

The Pennsylvania PUC declined in an order on Columbia Gas' rate case to adopt provisions of a settlement that would allow Columbia to disconnect customers for failure to pay competitive supplier receivables purchased under POR, but did encourage Columbia to re-file a POR proposal after examining the PUC's current customer service and quality standards in light of its SEARCH initiative to enhance competitive markets (Matters, 9/12/08).

Under Columbia's current rules for choice service, Columbia, at its sole discretion, may offer to purchase a supplier's receivables at a discounted rate (currently 5%). Columbia cannot disconnect customers for failure to pay supplier charges under POR, nor can it require supplier arrears owed under POR to be paid before reconnecting service.

As part of a settlement, Columbia had proposed reducing its POR discount from 5% of receivables to 2.25% of receivables (and ultimately to 1.86% after Columbia's recovery of implementation expenses, the same unbundled uncollectible expense charge added to the Supplier of Last Resort price to compare), if it was permitted to disconnect service for non-payment. But the ALJs assigned to the case concluded that no party established that the POR revisions would enhance competition, and recommended their exclusion due to customer service quality standards enacted in 1999.

However, at yesterday's PUC meeting, Chairman James Cawley noted in a motion that, "it is difficult to understand how the substantial reduction in POR ... charges from 5.0% to 2.25% would not benefit competition for mass market customers, given this meaningful cost reduction to serve customers quantified by the Company in this proceeding." Cawley found that suppliers persuasively argued that the POR changes would enhance choice participation because the revisions would expand suppliers' capability to serve customers with lower credit scores.

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## ICC Staff Suggests Investigation of Nicor Affiliate Relationships

The Illinois Commerce Commission Staff suggested there may be deficiencies in Nicor Gas' current affiliate transaction agreement and recommended a proceeding be instituted to investigate certain issues raised in an ongoing rate case (Matters, 9/29/08, 08-0363).

Allegations originally contained in testimony from the Coalition for Equal Access and Fair Utility Rates (which has subsequently been withdrawn from the case) prompted Staff to issue several discovery requests to Nicor, and the answers to those requests have prompted Staff to seek a larger investigation.

The proceeding, which Staff suggested be initiated within 120 days of an order in the rate case, should review:

- 1) Criteria for when it is appropriate to apply the prevailing price and when it is appropriate to only charge fully distributed costs to affiliates using Nicor Gas services;
- 2) Consideration of Nicor Gas employees that are dedicated full-time to Nicor Gas' affiliates;
- 3) Facilitation of affiliate endeavors through utility activities; and
- 4) Annual reporting and auditing requirements to the Commission.

Staff reported that Nicor Gas charges Nicor Services (Nicor's unregulated HVAC/appliance service firm) fully distributed costs for billing services (about 11¢ per bill) rather than the prevailing price (25¢, which is paid by competitive supplier Nicor Solutions and other alternative gas suppliers). Staff does not agree with Nicor's justification for the different rate -- that Nicor Services uses a different billing

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## Final New Jersey Master Plan Drops Recommendation for Lower CIEP Cutoff

New Jersey's final Energy Master Plan jettisons a draft's commitment to expand hourly pricing, and offers no concrete recommendation on the pricing structure for large commercial and industrial customers.

The draft plan had recommended lowering the 1 MW cutoff for the Commercial and Industrial Energy Pricing (CIEP) class, which receives real-time pricing, to 600 kW by 2010 and 500 kW by 2012 (Matters, 7/11/08). Those recommendations were absent from the final plan.

Instead, the final plan merely states that efforts for peak demand reductions should be focused on customers over 500 kW, tepidly stating, "BPU staff will focus on the technologies and rate structures that would be most effective at achieving this [peak reduction] goal while mitigating its impact on customers that may be adversely impacted due to the inability to reduce their peak demand."

The master plan does state that real-time pricing for large customers should be "considered" to encourage expanded participation in demand response programs, though no timeline or cutoff is suggested.

The plan also directs the BPU staff to set up a series of pilot programs for mass market customers to determine which technologies and rate structures will be most effective at achieving the state's demand reductions goals. These pilots will help determine how customer behavior changes with different rate structures, communication networks, and end user technologies such as advanced metering infrastructure.

The BPU is also to "intensify" its examination of the BGS auction, thoroughly reviewing not only the details of the current auction process but also the concept of the auction itself. According to the master plan, the price resulting from the auctions has nearly doubled since 2002.

New Jersey is to also continue its wholesale advocacy, with the goal of modifying or replacing PJM's Reliability Pricing Model, "with something that will produce better results while being more cost-effective and takes into consideration energy efficiency and demand response efforts."

The first five years of RPM's capacity prices will cost New Jersey customers more than \$7 billion, the plan found.

The master plan calls for a big role for the state's utilities in energy efficiency and demand reduction efforts. The utilities can be extremely effective at meeting the state's energy efficiency and demand response targets because of their existing customer relationships and access to the state's 3.7 million buildings, the plan said. The BPU staff will consider the local economic advantages of having the installation of energy efficient equipment performed by third-party installers.

Aside from real-time pricing, efforts to boost demand response include procurement of demand-side resources by electric utilities as a complement to the BGS auction, so that the effect of a known quantity of demand response on peak electricity prices can be reflected in the BGS price. Direct load control programs offered by the utilities are also to be considered.

The plan calls for peak demand to be reduced by 5,700 MW by 2020, while also setting a goal of reducing energy consumption by 20% by 2020.

The master plan calls for stimulating growth in renewable and alternative energy technologies, which "may" result in New Jersey producing 30% of its energy supply from renewable energy sources by 2020.

## PUCT Adopts REP Certification Proposal for Publication

The PUCT yesterday voted to adopt Staff's proposal for publication which would set new financial and certification standards for REPs, adding some more questions for stakeholders to comment on (35767, Matters, 10/9/08).

One addition made at the Commission's open meeting was that under the proposed rules, REPs would have to report their amounts of deposits held on a quarterly basis, in addition to broader financial reports. Staff would also be given the ability to demand financial information and other evidence of ongoing certification compliance from REPs in between the required quarterly reports, to allow the Commission to review finances as needed in response to market conditions.

The proposal also seeks comments on

whether the Commission can pre-approve the transfer of a REP certificate under PURA. While Chairman Barry Smitherman does not think the Commission has authority to compel REPs to seek approval of certificate transfers under PURA (Matters, 10/9/08), Commissioner Kenneth Anderson offered a different view. PURA, Anderson noted, provides that a person may only provide retail electric service upon certification as a REP. In the case of a transfer of the certificate, you would have a new person, Anderson explained, raising the question of whether a certificate may be transferred at all. It's not the certificate that gives a REP authority to sell power, it's the person being certified and meeting the PUCT standards, Anderson noted.

Commissioner Donna Nelson's additional questions regarding the interrelation among the certification, disclosure and POLR rules, and concerning provisions for REPs whose type of financial certification changes, were also accepted (Matters, 10/23/08).

## **Large Customers Call for Added Mitigation in MISO ASM**

Proposed tariff changes from the Midwest ISO providing incentives for generators to offer and maintain ramping capability should be rejected in favor of additional mitigation measures, the Coalition of Midwest Transmission Customers told FERC in comments on proposed tariff revisions meant to address unwarranted occurrences of scarcity pricing observed during MISO's ancillary services markets (ASM) operational testing (ER09-24, Matters, 8/18/08).

The large customer group also urged FERC to suspend the effective date of MISO's ancillary services markets until the Commission accepts effective mitigation measures to address ramp withholding.

The customer coalition objected to two of the four revisions submitted by MISO, specifically:

- Adjusting the Tolerance Band calculations to account for sharing of ramping capability between products and to increase a Resource's Tolerance Band based upon the amount of offered ramping capability utilized through the dispatch of Energy, or through both the dispatch of Energy and the deployment of Regulating Reserve, providing Market Participants with an incentive to submit more consistent ramp rates

as part of their Real Time Offers; and

- Changes to the Real-Time Offer Revenue Sufficiency Guarantee Payment (RTORS GP) and Day-Ahead Margin Assurance Payment (DAMAP) eligibility rules to incent Market Participants to maintain their ramping capability in real-time at or above levels offered in the Day-Ahead Energy and Operating Reserve Markets.

MISO, large customers claimed, has failed to demonstrate that providing additional incentives for generators to offer or maintain offered ramp capability is appropriate.

"What MISO's filing does reveal are significant shortcomings in MISO's and the IMM's [Independent Market Monitor] ability to detect and remedy market power," customers alleged.

Customers noted that FERC has concluded that the theoretical prospect of generators withholding ramping capability to artificially trigger scarcity pricing would constitute physical withholding.

"This behavior has moved from the realm of the theoretically possible to the realm of actual occurrence," customers charged.

"During operational trials, generators (apparently routinely) submitted ramp rates in real-time that were less than those submitted for use in day-ahead. This behavior apparently went undetected by MISO's IMM [and] ... apparently was never reported by MISO's IMM to the Commission," the customer coalition alleged.

Rather than mitigating such "market power," MISO's incentive proposal, "force[s] customers to pay more money to generators in the hope that such behavior subsides," customers claimed.

Customers want MISO to report why its existing market monitoring measures failed to detect and report physical withholding behavior, and to suggest mitigation measures.

Ameren and Duke Energy both expressed concern about MISO's proposal to reduce the Market-Wide Regulation reserve Price Demand Curve to a level that would preclude scarcity pricing.

MISO proposed reducing the Market-Wide Regulation reserve Price Demand Curve price from its current level of \$1,000/MWh to a price curve that will be set monthly as the product of (1) the average cost of gas in the first three weeks of the preceding month based on a spot

gas price index and (2) the average heat rate of all peaking units offered into the day-ahead and real-time markets in the previous year.

The proposed change treats a symptom but does not fix the underlying problem, Ameren said. While the change will produce a lower price during times scarcity is inaccurately invoked, it does not address the real problem, which is the incorrect invocation of scarcity pricing. Duke agreed, noting the MISO proposal is an "odd request" since the scarcity price, which is being changed, has nothing to do with the causes of false scarcity determinations.

"More importantly, sending too low a price signal will fail to incent the necessary investment in Resources to ensure adequate supplies of Regulation reserves," Ameren cautioned. Additionally, even if there are sufficient Resources for the Midwest ISO to meet its Regulating Reserve needs, if the energy price is higher than the price for Regulation reserve, a market participant will offer Energy rather than Regulating Reserve absent the correct pricing incentives, Ameren said.

Duke believes the change goes too far because it will dampen prices, and prevent scarcity pricing, even during times when there are actual scarcity conditions, because it does not distinguish between "true" and "false" scarcity conditions.

## **Briefly:**

### **Accent "Ramping Up" Acquisition Efforts**

Accent Energy has set its sight on undercapitalized retail suppliers, its CEO Lance Schneier said yesterday. "We're looking for opportunities where we can enhance the financial outcome for retail energy providers who may not have the expertise, capital, cost structure or maybe even the patience to operate in the future," Schneier said. While Schneier has always considered growth by acquisition an important element of Accent's strategy, as the supplier bought Texas retailer Dynowatt in 2007, it's taken on a bigger role with today's opportunities. "Difficult credit markets, enhanced regulatory oversight, increased competition and margin compression make the current retail energy marketing environment not a place for the faint of heart or more importantly, for the undercapitalized or inexperienced," Schneier

said. Accent is also enhancing its use of the internet for comparison shopping and online enrollment, and said it is also in the process of reviewing all its sales interactions and partners, given regulators' renewed focus on oversight and customer protection.

### **PRS Approves Modified PRR 776**

ERCOT's Protocol Revision Subcommittee (PRS) recommended to TAC approval of PRR 776 as amended by the Texas Industrial Energy Consumers to reflect recommendations from the Independent Market Monitor (Matters, 9/18/08). Instead of adding \$100 to the MCPE during Non-Spinning Reserve Service (NSRS) deployment as originally proposed, the revised PRR directs ERCOT to calculate and post in the Day-Ahead Market the combustion turbine proxy cost during NSRS deployments for each Operating Day. If the actual MCPE during NSRS deployment is greater than the combustion turbine proxy cost, the MCPE will be the actual MCPE. If the MCPE during NSRS deployment is less than the combustion turbine proxy cost, the MCPE will be adjusted to the lesser of the following:

- (i) the MCPE that would have occurred if the NSRS deployment had not occurred, or
- (ii) the combustion turbine proxy cost.

TIEC said the revised PRR provides a more accurate price signal while still increasing the ability of load to respond, although it does create a limited "blind spot" when the actual MCPE is lower than the combustion turbine proxy cost.

### **PUCT Directs Parties to Pick Hearing Date for CenterPoint AMS Case**

The PUCT yesterday instructed parties in CenterPoint Energy's Advanced Metering System deployment docket to develop a procedural schedule with a hearing date in order to prod ongoing settlement discussions (35639, Matters, 9/19/08). Commissioners noted that hearing dates can focus parties on settling, and were concerned that a settlement which once seemed "imminent" is taking longer than expected with the next legislative session approaching.

### **BGE Home Products To Exit WGL Commodity Market Nov. 1**

The Maryland PSC took notice of BGE Home

Products & Services' exit from commodity service in the Washington Gas Light market, effective November 1. BGE Home is currently serving only residential customers in the WGL service territory (Matters, 8/26/08).

### **PUCT OKs Suez LaaRs Settlement**

The PUCT approved a settlement with Suez Energy Marketing NA under which Suez will pay \$116,000 for failing to deploy 95% of its scheduled Load Acting as a Resource within 10 minutes of ERCOT instruction (35650, Matters, 9/11/08). Chairman Barry Smitherman, who this spring urged the Staff to seek a higher penalty than the \$73,000 contained in an original settlement, stated that he "like[d]" the new amount.

### **PUCT Tells CREZ TSPs to Focus on Dec. 1 Hearing**

The PUCT called motions to sever certain "priority" transmission projects from its docket (35665) for selection of Transmission Service Providers to build Competitive Renewable Energy Zone projects unproductive and urged parties to focus on a Dec. 1 hearing in the case. While an ALJ had already refused to sever certain projects from the main docket, Chairman Barry Smitherman took the opportunity to give parties a sense of the Commission, and said he doesn't like the idea of a small group of TDSPs getting together and deciding they've got a deal to the exclusion of competing transmission providers. Smitherman and Commissioner Donna Nelson also questioned whether severing priority projects and assigning them using ERCOT's Regional Planning Group would be quicker than addressing the projects through docket 35665.

### **FERC Revokes MBRs of Take Two, LLC**

FERC revoked the market-based rate authority of Take Two, LLC for failure to file its Electric Quarterly Reports.

## ***Columbia POR ... from 1***

Cawley's motion, approved by the Commission, reversed the ALJs' finding and concluded that POR programs that treat utility-supply and competitive-supply customers equally regarding termination rights remove

barriers to the development of competition.

However, Cawley also noted that the ALJs appropriately identified various regulatory impediments and consumer protection issues related to Columbia's plan to terminate customers for non-payment of competitive supply charges, and the PUC accordingly adopted the ALJs' ultimate decision to deny Columbia's proposed revisions to its POR program due to past precedent.

But the PUC also instituted a review of its consumer protection guidelines to determine if they are still appropriate given the adoption of the SEARCH Action Plan in September. Upon completion of the review and any modifications to the guidelines, the Commission encouraged Columbia to re-file an appropriate POR program.

Commissioner Tyrone Christy voiced his skepticism of POR in a terse statement.

"I have some reservations regarding POR programs and their ability to enhance retail competition to the residential sector. I also have concerns that the POR programs may have the unintended result of increasing non-shopping customer bills. In general terms, I remain to be convinced that any meaningful savings are possible in the retail residential gas supply market from retail competition. I question the wisdom of continuing to try to make retail competition work on the residential level where, to date, competition has been so limited," Christy said.

In the interim, Columbia's uncollectible expense will be unbundled and appropriately divided to distribution costs and the price to compare to enhance price transparency.

Columbia will also shorten the time it takes for switch requests to take effect, starting in August 2009 at the time of annual cashouts of choice deliveries. The timeline will be reduced to 15-30 days, instead of the current 45-60 days, which in most cases will allow customers to see their switch on their next bill after the switch.

Imbalance penalties for marketers will be reduced from \$75/Mcf to \$40 on days the system is not under stress. Columbia will also give marketers faster access to customer billing data to allow them to trade imbalances more effectively and reduce potential penalties.

Columbia is also eliminating a 20¢/bill consolidated billing fee and other administrative fees applied to suppliers.

## ***Nicor ... from 1***

program than the one used for alternative gas suppliers.

Staff also testified that the use of Nicor Gas' call center and website to facilitate affiliate endeavors while withholding similar functions for non-affiliated companies needs to be investigated, though the full testimony on this point was not available at press time. According to testimony from CEA Fur, Nicor Gas employees and contractors actively market products and services offered by Nicor affiliates such as Gas Line Comfort Guard (GLCG) and HVAC maintenance and repair contracts on inbound customer calls to the utility call center. CEA Fur also said that residential customers seeking to start Nicor Gas utility service online are presented with a checkbox to purchase the Nicor Services Gas Line Comfort Guard product on the same form which they use to enroll for utility service.

Nicor Gas employed 46 individuals as of the end of last year who were employees of Nicor Gas for payroll and benefit plan eligibility purposes, but who were fully dedicated to the business of Nicor Enerchange (33 individuals) and Nicor Inc. Nicor says that all the costs of such individuals were charged to the affiliates, and that because those work groups are small, it is more efficient to utilize the Nicor Gas payroll system to pay them and also provide them with retirement and welfare benefits. Staff said there is insufficient time in the instant proceeding to verify that Nicor Gas appropriately accounts for individuals devoted to its affiliates.

Further, the affiliate operating agreement provides that Nicor Gas and its affiliates are to be billed monthly for Consolidated Pool charges, such as accounting, finance, legal, and information systems. The Consolidated Pool charges are billed on a two-factor methodology of gross payroll and total assets.

Therefore, even if Nicor Gas is recovering its fully distributed costs of the 46 employees from its affiliates, there is a risk that Nicor Gas' share of the Consolidated Pool charges is overstated unless that calculation reduces Nicor Gas' gross payroll for the affiliate personnel, Staff said. It is likely that Nicor Gas should also reduce its total assets factor as well, to reflect the computer, telephone, and other assets used by the 46

affiliate individuals. Such issues could be more fully vetted in a dedicated proceeding on affiliate relations, Staff noted.

The current affiliate operating agreement contains no reporting requirement, Staff observed, arguing that reporting and monitoring are they keys to ensuring there is no cross-subsidization by the utility to its affiliates. Staff suggested modifying the affiliate agreement to include reporting requirements similar to those introduced at Peoples Gas and North Shore Gas.