Energy Choice Matters
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Pa. ALJ Orders Emergency Relief to Prevent Changes to Equitable's Agency Program

A Pennsylvania PUC ALJ granted Hess Corporation's petition for interim emergency relief to prevent Equitable Gas from making any changes to its Agency Program during a pending rate case, including assigning Agency Program customers to Equitable's marketing affiliate, Equitable Energy.

"Without the requested emergency relief, Equitable will have unfettered discretion to end or modify its Agency Program in a way that could lead to preferential treatment toward its affiliate at the expense of and irreparable harm to competitive suppliers like Hess and the general public," the ALJ ruled.

Equitable's Agency Program is a tariff-based program that permits Equitable to act as an agent for customers to secure gas supply, storage services, and transportation capacity to transport a customer's gas to Equitable's city gate. Essentially, Equitable serves as agent for the customer to obtain gas supply and then delivers that supply using Rate GDS, General Delivery Service. Currently, Equitable has approximately 1,377 customers in its Agency Program.

In response to a Hess discovery request, Equitable revealed that it intended to exit the Agency Program by the end of the year. That intention was never disclosed in its general rate increase filing. Equitable also said it had no current plans to make a tariff filing to remove the program from its tariff, and said it had not communicated to customers the possible end of the program.

During a hearing, Equitable gave no assurance that it would not assign any Agency contracts to affiliate Equitable Energy during the pendency of the rate case. Equitable refused to give specifics of its plan to wind down the program by Dec. 31, 2008, but stated it intended to keep the Agency Program for the limited circumstances of addressing those situations where Equitable is in danger of

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Calif. Draft Would Allow Tradable RECs for RPS Compliance

Tradable RECs (TRECs) could be used for California RPS compliance under a proposed decision from a California PUC ALJ yesterday (R. 06-02-012, Matters, 9/16/08).

"The use of TRECs for RPS compliance will provide more options and flexibility for RPS-obligated load-serving entities (LSEs) to comply with RPS mandates in both the near and longer term," the ALJ said.

"Over time, it will also provide additional resources and incentives for the development of RPS-eligible generation," the draft decision states, citing the available revenue stream to developers from TRECs. Furthermore, a TREC market will provide important pricing information to developers and the investment community, potentially providing greater confidence in the long-term financial viability of renewable energy projects, the ALJ reasoned.

TRECs would have to be recognized by the Western Renewable Generation Information System (WREGIS), which has a few limitations with respect to RECs from distributed generation. WREGIS cannot register a system smaller than 1 kW, although certain solar facilities may be aggregated to reach that level. WREGIS rules hold that RECs cannot be recognized in WREGIS unless the energy associated with the RECs is metered to an accuracy of +/-2%, which excludes some distributed generation facilities lacking that level of metering accuracy.

In order to promote market liquidity while preserving the value of TRECs for RPS procurement planning, TRECs could be held for up to three years from their date of creation before they must be

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MXenergy Paying $350,000 Thus Far in Conn. Rate Relief for Complaints

MXenergy has offered some 9,000 Connecticut customers various types of rate relief in connection with two errors that have generated a series of customer complaints and prompted the DPUC to open an investigation (Matters, 8/27/08).

To date, MXenergy has processed or is processing over 2,200 rate relief requests totaling more than $350,000. Customers had complained that MXenergy was charging prices inconsistent with their original agreements.

MXenergy reported two main errors have driven complaints.

First, MXenergy staff erroneously discarded renewal letters that had been prepared to be sent out in May for 1,900 customers at United Illuminating on a six-month fixed-price contract that expired with the June billing cycle. Staff mistakenly thought the customers were on month-to-month variable offers which did not require renewal, and thought the renewal letters were prepared in error. MXenergy discovered the error and eventually sent renewal letters out in July.

MXenergy also said some Third Party Verifications (TPVs) for some fixed-price contracts did not inform customers that their electricity service would continue on a month-to-month basis upon the expiration of the fixed-price rate. The TPVs did state, however, that the fixed rate was in effect through June 2008. About 80 customers at UI also erroneously received a welcome letter stating their price was fixed for 36 months.

Second, welcome letters for customers enrolling on a introductory rate offer which rolled onto monthly market-variable pricing with the June billing cycle did not clearly communicate the change to monthly market pricing.

In total, some 6,000 customers at Connecticut Light and Power and 3,000 customer at UI were affected by the various problems. MXenergy said the communication issues were limited to Connecticut.

MXenergy noted that when the problems arose, it was using two different Customer Information Systems for customers at CL&P and UI, but has since migrated all of its Connecticut customers onto a single CIS. While MXenergy did not say the two split CIS systems were the direct cause of the problems, they were likely a contributing factor, MXenergy said.

Calls to MXenergy's Maryland call center more than tripled from 12,000 per month in April to over 40,000 in September. While MXenergy added nine reps for a total of 29, the call center's average speed of answer degraded from 41 seconds in April to 5 minutes and 19 seconds in August and nearly 6 minutes in September.

In response to an interrogatory, MXenergy disclosed that its in-house sales staff are compensated on salary plus a commission, but noted no internal staff sold in Connecticut.

Outside telemarketing firms are compensated on a $/hour basis. These firms compensate agents on a hourly rate plus commission for a sale confirmed via TPV.

Outside door-to-door contractors for residential sales are paid straight commission. C&I door-to-door contractors may be paid a base salary plus commission or straight commission. Commissions for door-to-door sales are paid only on approved sales with a TPV that are enrolled at the utility.

MXenergy identified seven accounts with sales violations that have occurred since April. Six of the violations were from one rogue agent who masqueraded as the customer during TPVs. The agent was subsequently fired.

MXenergy reported that it had used Untied Light & Power for some of its Connecticut sales, an independent sales agency whose founders were master agents for AT&T. Initially Untied Light & Power was marketing MXenergy to its existing telecom customers, but MXenergy said it is not currently using United Light & Power in its sales efforts.

DPUC Orders CNG, SCG to Clarify Compliance with Treatment of Interruptible Customer Load

The Connecticut DPUC ordered Connecticut Natural Gas and The Southern Connecticut Gas Company to clarify compliance statements made after a final order from the DPUC regarding the prohibition of including interruptible customer loads in the analysis and design of the distribution system (Matters, 10/6/08).

During two rate proceedings, it was revealed that the two LDCs were including interruptible customer loads in their peak day analysis to design their distribution systems, but were also denying requests from interruptible customers to switch to firm service, claiming such switches would harm reliability (despite such loads being included in system design).

The DPUC ordered the LDCs to attest, "that all future interruptible customers loads will not be included in the analysis and design of the distribution system," but the LDCs' affidavit instead attested that they will not include future interruptible customer load, "in any future **peak day** analysis and design of their respective distribution systems," (emphasis supplied), which the DPUC found to not meet the Order's requirement.

The LDCs' affidavit also included a statement that was not required as part of the Department's Order which stated, "[t]he Companies do not include the loads of interruptible customers in the distribution system peak day design analysis and long range planning." The DPUC requested clarification regarding that statement and ordered the LDCs to reconcile it with sworn interrogatory responses stating interruptible loads were included in such analyses.

Briefly:

N.Y. PSC Sets Phase II UBP Conference

The New York PSC has set for November 13-14 in Albany a technical conference regarding changes to the Uniform Business Practices and to initiate Phase II of the proceeding (07-M-1514, Matters, 10/28/08). Items left to Phase II of the proceeding include review of the years-old petition of Accent Energy to allow customers to access their utility account numbers remotely (to facilitate enrollment at event/mall kiosks); the petition of U.S. Energy Savings to institute a "contest period" that would permit an ESCO to prevent a customer believed to have been slammed from being switched, upon customer verification; review of ESCO consolidated billing; review of the timeliness of utility supply price reporting, and review of utility affiliate rules. Parties wishing to add Phase II issues to the agenda should email LuAnn Scherer at luann_scherer@dps.state.ny.us by November 11.

Dominion Retail Renews Residential Marketing in Massachusetts

Dominion Retail is ramping up mass market sales efforts in Massachusetts, offering a three-year fixed product for 11.9¢/kWh at Nstar and 12.25¢ at National Grid. Dominion Retail, which has been one of the few retailers to try and make a go the Massachusetts residential market on an intermittent basis, says a favorable purchase of a block of wholesale power has enabled its new offers. Nstar's current residential fixed rate is 12.547¢ and runs through Dec. 31. National Grid's fixed residential rate is reset at 12.654¢ starting Nov. 1 and runs through April 30, 2009. Dominion Retail is using mailings to market the product.

Nicor Withdraws Intervention in Progressive Energy Group License Case

Nicor Gas withdrew its intervention in the licensing application of alternative gas supplier Progressive Energy Group, with Nicor stating it, "no longer has an interest in participating in this proceeding." Nicor had raised various objections to Progressive Energy Group's licensing based on allegations the marketer did not meet technical and managerial requirements for certification (08-0478, Matters, 9/2/08). An ALJ has already issued a draft decision which would grant Progressive Energy Group a license (Matters, 9/11/08).

Commerce Pegs Pro Forma Gain on ERCOT Sale at $7.6 Million

Commerce Energy reported a pro forma gain of $7.6 million on the sale of its ERCOT book to Ambit Energy (Matters, 10/28/08), based on the initial $11.2 million sale price (future adjustments may push the total price to $15 million), Commerce said in an SEC filing. Commerce reported that if the sale had been completed on August 1, 2006, the first day of the fiscal year ending July 31, 2007, its revenue for the nine months ended April 30, 2008, would have decreased by $116.8 million, to $202.7 million, based on unaudited pro forma statements. Commerce's net loss for that period would have shrunk from $11.8 million to $3.9 million on a $23.6 million decrease in selling/marketing and general and administrative expenses, offset by a $15.7 million drop in gross profit, based on the pro forma analysis.

MidAmerican Willing to Discuss Re-regulation in Md.

MidAmerican Energy Holdings would be willing to discuss re-regulation of Maryland's utilities, senior vice president William Fehrman said in response to a question from deregulation critic Sen. E.J. Pipkin during a finance committee hearing yesterday, which probed MidAmerican's acquisition of Constellation Energy. Fehrman said he'd be open to Baltimore Gas & Electric owning its own plants, and BGE has already offered to conduct a study of new utility generation as part of the merger, as exclusively reported here (Matters, 10/20/08). Senators expressed disappointment at the low selling price for Constellation, noting the value of its baseload plants, and Pipkin tried to create controversy by claiming the PSC has already given "tacit" approval to the deal, citing Constellation's statement disclosing the positive reaction from unnamed state officials. PSC Chair Doug Nazarian told senators the PSC would conduct a thorough review.

Suez Signs Dallas Through 2010

The City of Dallas has signed an agreement with Suez Energy Resources NA for 100% of its load through 2010. Some 40% of the power will be renewable, consisting primarily of wind energy, Suez said. Suez previously had won a one-year deal from Dallas, which has a peak demand of 225 MW.

Exelon Projects Up to $3 Billion in NRG Merger Synergies

A merger between Exelon and NRG Energy would create $1.5 to $3 billion of value through synergies, Exelon said yesterday, estimating the annual reduction in operating expenses of the combined company at 3%-5%. Again stressing the combined fleet's diversity, Exelon added that the combined company would continue to rely on low-cost and less volatile fuel sources, including uranium, as well as Powder River Basin and lignite coals, which account for roughly 90% of the generation of the combined companies. Exelon also said the deal will be accretive in the first full year following closing, based on analyst consensus estimates.

DPUC OKs CL&P Standard Service Bids

The Connecticut DPUC accepted the October 28 procurement for standard service load at Connecticut Light and Power, awarding portions of CL&P's 2009, 2010 and 2011 standard service load. Retail rates are to be published by November 15.

GE Looks to Collaborate on Smart Appliances

GE Consumer & Industrial said it will introduce a suite of energy management enabled appliances (smart appliances) in the first quarter of 2009 designed to reduce peak load. The appliances will be enabled to receive a signal from the "local utility" and react based on the appliance's internal programming without customer interaction. GE said it is looking for utility companies to collaborate in the endeavor, but did not specify whether the program can accommodate other types of LSEs. Smart refrigerators, ranges, laundry pairs, dishwashers and microwaves will be offered that can be programmed to avoid energy usage during periods of higher rates based on a signal from the utility. Such prices will also be displayed on appliances for customers to see, who may override the programming.

Exelon Generation Buys Wind Offtake Agreement from Constellation

Exelon Generation has purchased an offtake agreement for 198 MW of output from the 396-MW Twin Groves Wind Farm in Bloomington, Ill., from Constellation Energy Commodities Group. The farm is owned and operated by Horizon Wind Energy. Exelon Generation said the purchase brings its wind power portfolio to 352 MW installed, claiming the total makes it the biggest wholesale wind marketer east of the Mississippi.

FERC Sets Agenda for MISO Market Services Conference

FERC released in docket ER08-637 a speakers list and schedule for its Nov. 12 technical conference on the Midwest ISO's Market Service proposal, which would extend the benefit of LMP markets to transmission owners who wish to retain the operation of their assets (Matters, 10/13/08). The technical conference will address concerns including whether the proposal would destabilize the Midwest ISO and the extent to which the proposal is consistent with Order No. 2000.

Equitable ... *from 1*

losing base load to a competing LDC.

The ALJ found Equitable's lack of assurance that it will not transfer existing Agency customers to its affiliate while the rate case is pending "worrisome" given its stated deadline of winding down the program by Dec. 31.

Assignment of Agency contracts to Equitable Energy or the transfer of information relating to Agency customers to Equitable Energy upon expiration of the Agency contracts, "clearly would have an adverse effect upon Hess as a competitor," the ALJ said. If Agency customers become Equitable Energy customers, perhaps entering long-term contracts of one year or more, other marketers will be deprived of any meaningful opportunity to compete for those customers, the ALJ observed.

"As a competitor in this marketplace, Hess must be assured that it is competing on a level playing field with Equitable Energy for customers on Equitable's system," the ALJ ruled, noting that after-the-fact analysis undertaken after Equitable has acted to terminate its Agency Program will prove "woefully inadequate" to protect Hess' competitive interests and that of the general public. "In light of this uncertainty, the status quo must be protected until one can determine what measures are necessary to assure fair competition in this marketplace," the ALJ found.

The ALJ noted that the Commission has announced a "strong policy against direct or indirect discrimination by LDCs in favor of their marketing affiliates." Such policy would be rendered meaningless if the Commission could not enjoin perceived threatening behavior to maintain the status quo pending an investigation on the merits of such action, the ALJ concluded.

As part of the emergency order, Equitable Gas is prohibited from assigning Agency contracts or facilitating the transfer of customers to Equitable Energy until a final order in its rate case. Until a final order is issued, Equitable must inform Agency customers with expiring contracts that they may choose to return to LDC sales service, or can choose service from a competitive supplier, including Equitable Energy, but indicating that choosing Equitable Energy does not produce benefits regarding distribution service.

Agency Program customers have been steadily declining, from 2,298 customers, who consumed 7.4 million Mcf of gas in 2005, to the current 1,377 customers consuming 5.6 million Mcf. Of a subset of customers leaving the Agency Program, 80% are now served by a non-affiliated marketer, 9% are served by Equitable's affiliate, Equitable Energy, and 11% returned to tariff service.

Still, Equitable receives a margin of $9.1 million from the Agency Program, which the ALJ found to be, "a significant value that Equitable has every incentive to keep within its corporate family."

For the years 2005 through 2007, all Agency customers received their gas supply from Equitable Energy.

TRECs ... *from 1*

committed to use for RPS compliance. Once retired for RPS compliance, TRECs could again be banked in accordance with the current flexible compliance standards.

Since TRECs come from RPS-eligible generation, and the supply of new RPS-eligible generation not already committed to RPS compliance is likely to be limited, the supply of TRECs in the next few years will be similarly limited, the ALJ found.

To protect ratepayers from excessive payments for TRECs in the early stages of the TREC market due to the expected TREC shortage, a transitional price cap of $50/REC would be imposed on RECs used for RPS compliance by IOUs, which means an IOU may not use for RPS compliance a TREC for which it paid more than $50 on a levelized basis. The penalty is the same amount translated from the current $50/MWh penalty for failure to meet RPS targets using bundled renewable energy.

"Price volatility and high prices are not a necessary outcome of the predicted situation of short TREC supply, but they are a significant risk," which ratepayers should not be required to bear in the short term, the ALJ explained.

The price cap would be temporary, and would expire at the earlier of January 1, 2012, or when all IOUs attain the 20% RPS goal. The draft notes the cap's price may be adjusted over time as needed.

The price cap's temporary protection would not damage the basic structure of the TREC market or undermine the financial incentives for new renewable construction that are among the longer-term benefits of a TREC market, the draft said.

Since it is unlikely that LSEs will be able to use only short-term TRECs from existing facilities to meet RPS compliance goals in the next three years, the draft refrains from placing artificial restrictions on the nature of TREC procurement for RPS compliance, such as limits on TREC use or linking TREC use to the coincident use of long-term PPAs for bundled renewable energy (as currently required for use of short-term bundled PPAs for RPS).

An LSE that currently has a contract for bundled renewable energy would be able to "unbundle" and sell RECs from that contract on both a spot and a forward basis. Once the RECs are transferred, the LSE with the original bundled contract would not be able to use either the REC or the underlying energy for RPS compliance; the RPS compliance value would be been transferred to the purchaser with the REC.