

# Energy Choice Matters

November 11, 2008

## **PUCO Staff Favor AEP ESP With Changes**

PUCO Staff recommended adoption of AEP's electric security plan (ESP), with modifications, including rejection of AEP's proposed POLR charges, and a suggestion to not use deferrals for generation rate increases. With the changes, Staff found the ESP to be preferable to a market rate option (08-917-EL-SSO et. al.).

Staff recommended against a deferral of generation rate increases in the ESP that would cover AEP's Columbus Southern Power and Ohio Power utilities. "Our experience with deferrals shows that they cause many problems and should be avoided whenever possible," Staff said.

A proposal by Staff to adjust AEP's proposed Fuel Adjustment Clause (FAC) baseline as well as non-FAC escalators would mitigate the rate shock that deferrals seek to avoid, Staff said. Staff recommended using current fuel costs as the baseline for the FAC, rather than 1999 costs as proposed by AEP, and also favored trimming non-FAC generation rate increases.

AEP had proposed increasing the non-FAC generation rates of Columbus Southern Power by 3% annually and Ohio Power 7% annually during the ESP. Those amounts may have been reasonable when proposed, but are not appropriate for the recessionary, and possibly deflationary, period the economy is now entering, Staff said. Any expectations of price increases need to be revised downward, with Staff suggesting non-FAC generation escalators of 1.5% at Columbus Southern Power and 3.5% at Ohio Power.

However, if some price mitigation is desired, Staff suggested that any rate shock be levelized over the three-year span of the ESP, but not deferred past the ESP's life. Any process should not result in collection of fuel costs through an unavoidable charge beyond the ESP period, Staff said.

Staff further faulted AEP's proposed nonbypassable POLR rates as excessive and unnecessary  
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## **Retail Suppliers Push for Evidentiary Proceedings to Review Mass. Renewable Retail Access Plans**

Retail suppliers in Massachusetts are urging the Department of Public Utilities to conduct full adjudicatory proceedings on the required plans from utilities to provide retail access to green energy marketers, but National Grid says the Green Communities Act prohibits such proceedings in its case, while Nstar has sought to resolve the matter through a comments-only process, not evidentiary hearings.

The Green Communities Act requires utilities to file plans providing for retail access to competitive sellers of renewable energy generation attributes, whether or not bundled with electricity, to ensure that distribution companies do not hold a market advantage over competitive suppliers of renewable energy.

However, National Grid notes that the Act also holds that utilities currently providing retail access to renewable marketers are not required to file a plan. National Grid has claimed its current GreenUp program meets the Act's requirements (Matters, 9/15/08).

Direct Energy countered that only the Department can determine if an existing retail access program meets the Act's requirements, and thus evidentiary proceedings are appropriate.

Furthermore, Direct called the utilities' filed plans vague, ambiguous and incomplete. Without the discovery opportunity allowed under hearings and the presentation of evidence, it will be impossible to determine whether the plans meet the non-discriminatory requirements of the Green Communities Act, Direct said, in comments supported by the Retail Energy Supply Association.

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## **Sempra Still Excited About RBS Joint Venture Despite Down Quarter**

Sempra Energy CEO Donald Felsing has never been more excited about the commodities business despite a \$3 million equity loss for the RBS Sempra Commodities joint venture in the third quarter.

Felsing told analysts that the number of recent exits in the commodities business plays into RBS Sempra's strength as both a financial and physical player, adding that October was a "great" month. Sempra affirmed its previous earnings guidance of \$250 million to \$350 million for the joint venture in 2008.

Still, the reduced liquidity did hurt third quarter results, mostly from an unfavorable position in the Northwest where limited liquidity did not permit adjustment. While all of RBS Sempra's product lines were affected in the quarter, losses were limited to power marketing. The joint venture recorded only \$60 million of trading margin for the quarter, with negative \$81 million in margin from power marketing.

The net loss for Sempra Commodities, which includes the RBS joint venture as well as Sempra's Rockies marketing operation, was \$8 million, compared with net income of \$87 million in the year-ago quarter.

Sempra Generation saw higher earnings of \$94 million, up from \$58 million a year ago, on \$25 million in mark-to-market gains, and \$8 million from lower income tax expense as a result of Sempra Generation's recent solar investments.

Net income for parent Sempra Energy was up at \$308 million, versus \$305 million a year ago.

## **Entergy Texas Rate Application Must Include Competitive Generation Tariff**

The withdrawal of a competitive generation (CGS) tariff in a non-unanimous stipulation in Entergy Texas' rate case violates PURA § 39.452, the PUCT said in a written order remanding the case back to the State Office of Administrative Hearings (34800).

PURA § 39.452(b) requires Entergy to propose a competitive generation tariff to allow

eligible customers the ability to contract for competitive generation and further requires that the Commission must either approve, reject, or modify the proposed competitive generation tariff. Entergy had proposed a competitive generation tariff as part of its original application, but under the non-unanimous stipulation, signatories agreed to address the competitive generation tariff in the 2009 rate case and withdrew the proposed tariff.

Two ALJs, in recommending the stipulation, found that Entergy did not violate PURA § 39.452(b) when it withdrew its proposed competitive generation tariff, implying that the lack of a competitive generation tariff is inconsequential because Entergy, "will not be transitioning to competition as part of this proceeding."

In rejecting the ALJs' proposal for decision to accept the stipulation, the Commission concluded that withdrawal of the competitive generation tariff is not permissible under PURA.

"The CGS tariff is not an optional feature of Entergy's chapter 36 rate filing and the withdrawal prevents the Commission from meeting its statutory obligation. Further, the requirement to file a CGS tariff is not conditioned upon Entergy transitioning to competition," the Commission said.

The rate case was remanded to SOAH for various cost allocation issues as well.

## **EnerNOC Loss Widens, Cross-Selling of Procurement and Curtailment Strong**

EnerNOC's net loss widened to \$3.1 million in the quarter, from \$2.5 million a year ago, as selling and marketing expenses nearly doubled to \$8.2 million, and general and administrative expenses increased \$5 million to \$11.7 million.

EnerNOC said it has thus far sold 40 MW of demand response to existing energy procurement customers acquired in its South River Consulting purchase. It's also compiled an energy services procurement portfolio of over 600 million kWh from its existing demand response customers. EnerNOC serves 533 energy procurement customers.

Sales of high margin energy efficiency and energy procurement solutions for the quarter were \$2 million, compared to \$300,000 a year

ago.

While EnerNOC sees California as a "fertile" growth market for demand response, it expects to gain more traction in the state with its monitoring-based commissioning energy efficiency solution. It spent 2007 refining the solution, and has seen "strong traction" in commercializing the product this year.

EnerNOC ended September with 1,760 MW of demand response under contract, and said it has signed another 100 MW after the quarter's end. EnerNOC feels good about hitting 2,000 MW by year-end. Growth has been due to "significant" expansion in PJM, continued strength in New England, and continued diversification into new markets.

Revenues hit a record \$44.2 million from \$19.1 million a year ago. Cost of revenues was \$25.8 million, versus \$11.3 million in the year-ago quarter.

Gross profit for the third quarter was \$18.4 million, compared to \$7.9 million for the same period in 2007. Gross margin was 41.6%, compared to 41.2% a year ago.

## **Marketers Say Mich. Net Metering Must Respect Contracts**

Net metering rules to be promulgated by the Michigan PSC pursuant to new legislation must respect the negotiated nature of alternative electricity supplier contracts, Constellation NewEnergy said in comments to the PSC.

2008 PA 295 increases net metering to 1.0% of the system peak from the preceding year compared to much lower current levels which vary by utility, such as 0.1% of peak at Consumers Energy.

Constellation urged the Commission to recognize the "key distinction" between competitive supply and bundled utility sales -- utilities sell almost entirely on tariffs with rates and terms approved by the Commission, while competitive suppliers conduct business with customers on the basis of contracts, many individually negotiated.

Based on this design, the net metering program cannot extend to existing contracts between a competitive supplier and a customer, Constellation argued. The prices negotiated between the parties, along with other attendant terms and conditions, were struck in the

absence of a legislative net metering requirement.

Additionally, Constellation recommended that, on a prospective basis, the Commission should simply order that suppliers have a duty to negotiate in good faith with a customer desiring to engage in net metering with the goal of reaching agreement via contract. The Commission could mediate problems if an agreement cannot be reached, CNE suggested. Further, the Commission should clarify that nothing prevents an arms-length agreement between a competitive supplier and an eligible customer that either: (i) sets forth the ownership or title of renewable energy credits; or (ii) sets forth different prices, terms, and conditions for the provision of net metering service, including but not limited to the provision of the appropriate metering equipment for non-residential customers, CNE said.

Energy Michigan and others pointed to a potential inconsistency in the legislation. While one part of the law states that net metering customers shall not receive credits for electric utility transmission or distribution charges, another section states customers with facilities under 20 kW are to receive the "full" retail rate, implying wires charges in addition to generation. If the Commission interprets the full rate as including distribution, Energy Michigan recommended that competitive suppliers pay generation credits, while utilities pay associated distribution credits.

Detroit Edison argued that net metering rules must be consistent with 2000 PA 142 which, among other things, prevents avoidance of nonbypassable securitization surcharges and costs.

## ***Briefly:***

### **New Brunswick Power Generation Seeks Maine Retail License**

New Brunswick Power Generation Corp. applied for a Competitive Electricity Provider license for medium and large C&Is in Maine. It also applied to be a Standard Offer Provider. New Brunswick Power Generation, a provincial crown corporation owning 3,300 MW, applied to serve customers at all the IOU territories plus the cooperatives.

### **Duke Updates AAC Adjustment**

Duke Energy Ohio updated its application to

adjust Rider AAC (Annually Adjusted Component), resulting in a proposed revenue requirement that's \$5.3 million lower than the \$141 million originally requested. The modifications reflect actual rather than estimated Section 199 federal income tax deductions (creating a \$5.6 million increase versus the original application), and updates to the projected environmental reagent expense for 2009 (resulting in an \$11 million decrease).

### **BlueStar Files Amended ABC Complaint**

BlueStar Energy Services has filed an amended complaint against three Illinois brokers to state its interest in the case, as directed last week by an ALJ (Matters, 11/10/08). Per BlueStar's amended complaint, "BlueStar's interest in this matter arises from the fact that it is a participant in the regulated electricity market along with Respondents and that, as such, BlueStar has a cognizable interest in a regulated marketplace in which competition is fair and all of the participants play by the rules." BlueStar has alleged American Energy Solutions, Affiliated Power Purchasers International, and Lower Electric failed to disclose their remuneration for brokering in customer solicitations as required by the new ABC law, with certain exceptions.

### **PUCT Approves Two REP Certificate Relinquishments**

The PUCT approved separate applications from VarTec Energy (Comtel Telcom Assets) and ARC Energy to relinquish their REP certificates. Neither had served customers since licensing.

### **Reliant Joins AREM**

Reliant Energy has become a member of the California-based Alliance for Retail Energy Markets.

### **PECO Issues RFP for RECs**

PECO issued its second RFP to procure RECs to meet its Alternative Energy Portfolio Standards obligations, and is seeking fixed-price, five-year agreements to purchase up to a total of 410,000 credits a year. PECO anticipates entering into the agreements by February 2009, with purchases beginning no later than December 31, 2009. Navigant Consulting will serve as an independent RFP monitor.

### **Brazos Enters LaaRs Settlement With PUCT Staff**

Brazos Electric Power Cooperative and PUCT Staff have entered a settlement agreement under which Brazos would pay \$6,000 for violating Load acting as Resource (LaaR) scheduling requirements. On Sept. 5, 2007, Brazos failed to deploy 95% of its 3 MW of LaaRs within 10 minutes of ERCOT instruction. The settlement is subject to Commission approval.

### **BPU Considering GATS for Distributed Generation RECs**

The New Jersey BPU is considering allowing the use of Class I RECs generated by behind-the-meter facilities in New Jersey issued by PJM Environmental Information Services' Generation Attribute Tracking System (GATS). Currently, such behind-the-meter Class I facilities are issued RECs from a state program run by Clean Power Markets under contract with the Board. The Board is to consider the matter at its Dec. 8 meeting and is accepting comments through Nov. 23.

### ***AEP ESP ... from 1***

(Matters, 11/4/08). Staff agreed with testimony offered by marketers and consumers in finding that the risks of customers returning to POLR service can be avoided, typically by making returning customers pay a market rate.

While AEP raised concerns about political backlash against such rates and questioned cost recovery, Staff noted cost recovery could be assured by appropriately sourcing generation for returning customers. If the ESP specifically provided that the additional power could be procured on the market, then the companies would be protected, Staff reasoned. Either the returning customers would pay market prices, or the incremental costs of the purchased power would be recovered through the FAC.

If some POLR charge is still deemed necessary by the Commission, it should be significantly below what AEP is requesting, Staff said, suggesting the current POLR rates would be more reasonable.

While Staff found the ESP to be more reasonable than market rates, Staff did adjust AEP's estimated market rates downward before

conducting its analysis, to reflect today's lower prices, and to remove retail marketing costs and certain transmission costs. Staff's calculations lowered the projected market rate at Columbus Southern Power 15% to \$74.71/MWh from \$88.15, and reduced the Ohio Power market price 14% to \$73.59/MWh from \$85.32.

Staff removed certain ancillary service costs and the Auction Revenue Right credit from the market rate estimates because such costs, while normally included in market rates, would not be included in the ESP and thus must be removed for an apples-to-apples comparison.

Capacity costs would also be lower than projected, though Staff could not provide exact estimates, since AEP does not purchase capacity requirements from the RPM auction. It instead self-supplies capacity under the Fixed Resource Requirement option.

The cost advantage from using the self-supply option could be as much as the difference between the RPM value of capacity and AEP's depreciated book value of its capacity, Staff reasoned. The cost advantage of the self-supply option instead of the RPM option would give AEP generation an extra edge in a competitive procurement conducted pursuant to a market rate option, Staff said, making it likely AEP would win more load at a cheaper price in any competitive procurement auction.

Some retail administration costs, which include marketing, personnel, overhead, taxes and profit, were removed by Staff since marketing costs would not apply under a market rate option, since suppliers would only be wholesale sellers, not retailers.

## ***Mass. Green ... from 1***

Direct is not seeking to re-litigate Nstar Green (Matters, 5/2/08), it insisted. However, the Act compels the DPU to ensure that competitive suppliers have access to Nstar's basic service customers in offering green products on the same terms as Nstar does with Nstar Green, Direct noted.

Furthermore, a Memorandum of Understanding between Nstar and REC broker Mass Energy in the Nstar Green case only provides a framework for granting REC brokers access to Nstar customers, Direct added, not a detailed solution. The framework only

addresses REC-only products, and Nstar's retail access plan ignores the requirement to ensure non-discriminatory access for bundled renewable energy products, Direct argued.

Direct also pointed to Western Massachusetts Electric's plan to limit competitive green options to two suppliers, with pre-determined prices and percents of renewable energy offered. The program is similar to one run by sister utility Connecticut Light and Power, but Direct noted that modeling an existing program from another state does not mean the program meets Massachusetts law.

Meanwhile, Mass Energy argued that lawmakers' use of the word "retail access" in the Act was meant to place competitive suppliers of RECs on equal footing with competitive suppliers of electricity, including with regard to customer billing. That means REC-only suppliers should be given access to utility consolidated bills, a proposal rejected as too costly in Nstar Green.

Unitil, however, pointed to "significant differences" in the language of statutory sections requiring distribution companies to provide retail access to: a) competitive retail energy suppliers; and b) competitive suppliers of renewable energy attributes. With respect to competitive retail energy suppliers, the mandatory language is very specific, requiring "procedures for ensuring direct retail access to all electric generation suppliers," Unitil said. The Green Communities Act, on the other hand, requires only the provision of retail access; there is no requirement that the procedures employed ensure access, or that it be direct access, Unitil argued.

Mass Energy also recommended uniform statewide standards for retail access programs, including standards for RECs and licensing and certification of brokers.