

Energy Choice

Matters

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Pa. PUC Eases Burden on Electric Suppliers in Reporting Requirements

The Pennsylvania PUC changed how competitive Electric Generation Suppliers (EGSs) will report annual sales and other market data in response to a petition for reconsideration from the Retail Energy Supply Association.

In August, the PUC issued final rules concerning market reporting that required distribution companies and EGSs to report on customer count and sales by the distribution rate classification (Matters, 8/8/08). The final order differed from an earlier draft which would have required customer reporting by peak load contribution.

RESA objected to the change to customer reporting by rate class, arguing that such grouping would impose a severe burden on EGSs' backoffice systems, given that each utility has its own unique rate schedules. RESA proposed that customer sales be reported by general customer type (residential versus non-residential), with the non-residential class further divided by customer usage volume, rather than peak load contribution.

On reconsideration, the Commission agreed, finding that its original order did not sufficiently review the impact of the utility rate classification method on the EGSs. The PUC issued a new order on market reporting which calls for EGSs to report customer sales by the following categories:

- Residential;
- Small Non-Residential (annual usage from 0 up to and including 120,450 kWh);
- Medium Non-Residential (annual usage from 120,451 up to and including 2,409,000 kWh), and

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Pa. PUC Opens Rulemaking on Gas Supplier Security Requirements

The Pennsylvania PUC opened a rulemaking to change the level and forms of security needed by natural gas suppliers, as part of its effort to increase competition in the retail natural gas market (Matters, 9/12/08).

The Commission's SEARCH initiative (Stakeholders Exploring Avenues for Removing Competition Hurdles) had called for the rulemaking, to lower barriers to market entry and increase supplier participation.

The proceeding will address the use of suppliers' accounts receivables in POR programs to fulfill either a part or all of the security requirements. The rulemaking will also review adopting standard language for financial instruments used for security, and the development of reasonable criteria for distribution utilities to use in establishing the amount of security necessary for licensing purposes.

The current criteria used by distribution companies to set the amount and form of supplier security were established in each company's restructuring proceeding and thus vary by service area. Such variability has been cited by suppliers as a barrier to market entry.

Current supplier security requirements are based on the peak day demand estimate for capacity, number of days' potential exposure in a billing cycle, and commodity estimates for quantity and cost. Offsets to the amount of security that a supplier must provide may include calls on capacity, receivable purchases or receivable pledges.

Suppliers have stated a preference for the use of corporate guarantees to post security, and have reported that utilities' acceptance of only certain financial instruments deters market entry.

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PUCT Defers Action on Distributed Renewable Generation Rule

The PUCT deferred action on a proposed rule concerning distributed renewable generation to work on legal questions such as whether the Commission can waive the requirement for distributed renewable generation owners to register as power generation companies in ERCOT.

Also requiring more consideration is whether third-party ownership of distributed renewable generation, which aids financing, would disqualify a customer from the self-generation exemption in the definition of an electric utility. The Commission is to review the rule at its December 18 open meeting, and may leave some of the questions to legislators in the next session, rather than adopt a rule which may inhibit distributed renewable generation installation.

Although aspects of most concern to REPs were not the central focus of the Commission's discussion during yesterday's open meeting, Commissioner Kenneth Anderson did say he was troubled by the potential for a customer to go through a burdensome registration process for distributed renewable generation, only to be unable to negotiate a buyer for the excess power. The draft rule would not impose any price floor on the sale of excess generation to REPs, leaving the question of price to negotiation between the REP and customer.

Commissioner Donna Nelson also voiced concern that the rule's provision for negotiation of excess generation sales may make it easier for distributed generation to be installed in non-competitive areas, where negotiation with REPs would not be required. The fact that a distributed generation owner might not find a buyer for excess generation could be a disincentive for installation, Nelson noted.

Chairman Barry Smitherman said he hoped market forces would answer such concerns through the emergence of a REP focused on serving distributed renewable generation customers, such as a solar REP.

Pa. PUC Adopts EDI Standards, Sees Need to Accommodate Curtailment Providers

The Pennsylvania PUC adopted revised Electronic Data Exchange Standards for electric deregulation (v2.6), filed by the EDI working group on June 30, 2008 in docket M-00960890F0015.

The new version clarifies when suppliers must be re-certified by utilities due to inactivity. Suppliers will be considered inactive if they have not submitted an 867 monthly usage transaction within the past 12 months. An active supplier is considered active for all features for which it has successfully tested, even if it has not used a particular procedure recently.

Distribution companies will give suppliers 30 days written notice before they are considered inactive.

When making changes to systems, including systems used by outsourced vendors, suppliers and utilities must give their trading partner 60 days written advance notice, and offer to test with up to two trading partners.

The new standards adopt an updated Change Control procedure for modifying the EDI protocols, mirroring the New Jersey process. Change control requests are to be sent to parties via listserv at least five days before the relevant working group meeting to discuss the change, with the goal of approving or canceling the request within two working group meetings.

The updated version also removes references to concepts that have not materialized, such as competitive metering and third-party billing (in which neither the supplier nor utility bills the customer). The working group will revisit such issues as needed.

Chairman James Cawley stressed that the EDI working group will need to address in the future critical issues required to facilitate energy efficiency and demand response programs, in addition to the more traditional retail choice data requirements. Specifically, curtailment service providers, conservation service providers, and other customer representatives will need to join the group and develop standards for access to historical and current usage data to implement conservation programs, Cawley noted.

Accelerated and automated access to

historical interval data and capacity determinants will be critical in removing current barriers to conservation and demand-side programs, Cawley said, stating improvements need to be made to the utility procedures for accessing such data.

Cawley reported that during the Commission's recent en banc hearing on conservation, the Commission heard that some Pennsylvania utilities were taking over a month to fulfill usage data requests by curtailment service providers, going to the extremes of requiring customer authorization forms to be mailed on the customer's company letterhead. "Such practices should be streamlined and automated if we are to achieve our conservation and demand side objectives," Cawley said.

Michigan PSC Orders Competitive Suppliers to File Renewable Plans

The Michigan PSC yesterday acted to implement new renewable power provisions for various LSEs contained in Public Act 295 of 2008, via a temporary order (U-15800).

Under the order, alternative electric suppliers must file by February 25, 2009, renewable energy plans addressing how the suppliers will meet the renewable energy standards. Suppliers must state whether the number of MWh of electricity used in the calculation of their renewable energy portfolio will be weather-normalized, or based on the average number of MWh of electricity sold by the supplier annually during the previous three years on a three-year running average. Once the plan is approved by the Commission, the calculation option shall not be changed. A technical conference on alternative electric supplier compliance is scheduled for January 5, 2009.

Thirty days before the filing deadline, an alternative electric supplier shall file with the Commission's Executive Secretary a notice of intent to file an application in its assigned implementation docket (Matters, 10/22/08). The notice of intent shall be accompanied by a proposed notice of opportunity for comments that will be reviewed and approved by the Commission's Executive Secretary, and returned to the supplier in time for the supplier to arrange publication and service of the notice of

hearing in accordance with the Executive Secretary's instructions.

On or before the filing deadline, an alternative electric supplier shall provide a description of its filing to all existing customers by mail, or by placing a description of its filing on its website and by sending a written notice to all customers notifying them where and how to review the description. The alternative electric supplier shall also provide such information with marketing materials provided to all prospective customers. On or before the filing deadline, an alternative electric supplier shall inform all existing and prospective customers of the deadline for submitting comments and how they may submit comments to the Commission.

The PSC's order also sets rules for utility renewable plans and energy optimization plans, including cost recovery in the power supply cost recovery (PSCR) clause.

The temporary order will be in effect no longer than one year, to be supplanted by a more thorough examination of the Act's requirements.

FERC Authorizes CAISO to Revert to Pre-MRTU Tariff if Needed

FERC accepted a proposal from the California ISO granting the CAISO authority to temporarily suspend the effectiveness of all or a portion of the Market Redesign and Technology Upgrade Tariff, and revert to pre-MRTU market operations, if, during the first 30 days after MRTU implementation, events occur that preclude the proper operation of the MRTU software and systems (ER08-367).

The Western Power Trading Forum had opposed the authority, arguing that the CAISO has sufficient authority under several provisions of the MRTU Tariff to address almost any conceivable circumstance. WPTF raised concern that CAISO's proposal would allow it to pick and choose provisions of the MRTU Tariff to include or exclude from operation (Matters, 2/4/08).

FERC agreed with CAISO in finding that, "there must be an available option if a situation arises that the tariff does not address," and found that reversion to pre-MRTU policy should be available as a last resort option.

The Commission stressed that CAISO should rely on the existing provisions in the MRTU Tariff for mitigating significant operational issues. "Only if the MRTU Tariff fails to address an issue at hand, then, and only then, should the CAISO use its authority to revert to the existing CAISO Tariff," FERC said.

Virginia SCC Continues Choice for Green Products, For Now

The Virginia State Corporation Commission preserved for the time being a limited exemption from the state's re-regulation law which allows customers to continue to choose a green competitive electric supplier, in orders approving REC products from Dominion Virginia Power and Appalachian Power.

Under 2007 legislation, the state's power market was mostly closed to competition, but customers retained the right to purchase "electric energy provided 100 percent from renewable energy" from a competitive supplier, so long as their utility was not offering, "an approved tariff for electric energy provided 100 percent from renewable energy." The law also contained an exemption from the choice restriction for customers in excess of 5 MW.

Dominion and Appalachian both submitted proposals for renewable products under which customers would pay for the utilities to procure RECs to offset 100% of customers' usage. The utilities argued such products met the legislative standard to end the renewable shopping exception.

However, the SCC ruled that under the REC products the utilities are, "not offering electric energy to customers." RECs are not "electric energy," the Commission held; they are certificates with certain attributes. The REC proposals are, "not a tariff to sell electric energy from a renewable facility to retail customers," the SCC said.

Thus, the REC products fail to meet the statutory guidelines for ending the ability of customers to choose a competitive green energy supplier, the SCC determined. Customers may continue to choose an alternate supplier for green energy, but the market may not have any active suppliers. Pepco Energy Services, the lone renewable supplier active in Virginia's mass market, had been winding down operations for

residential customers in anticipation of an SCC ruling closing the green shopping exception, and ongoing uncertainty as to how long the exception would last even with a favorable ruling in the instant cases. The utilities may file new plans meeting the SCC's definition of renewable electric energy, which makes committing to long-term customer renewals difficult.

PPL Year-Round Time-of-Use Pilot Approved

PPL's year-round Time-of-Use pricing pilot received approval from the Pennsylvania PUC yesterday. The pilot is open to 1,200 residential customers, with the goal of making time-based pricing an option for all customers by 2010 (Matters, 9/12/08).

The pilot includes a peak (11 a.m. to 6 p.m.) generation rate of 8.3¢/kWh from June through September, and an off-peak rate of 4.2¢/kWh during those months. During non-summer months, the peak rate will be 7.5¢ and in effect from 6 p.m. to 8 p.m. The off-peak rate for winter months is 4.6¢.

A website will give customers access to their historical hourly usage and allow them to determine if they save money.

PPL's existing summer-only Time-of-Use program will also continue.

ICC Criticizes MISO Module E Market Monitoring Plan

A report outlining how the Midwest ISO Independent Market Monitor (IMM) will monitor and mitigate the Module E Resource Adequacy construct is inconsistent with FERC order and existing tariff provisions, the Illinois Commerce Commission said in urging tariff changes (ER08-394-008).

FERC's October 20 Module E Financial Settlement order required the IMM to, "specify the methods it will use to determine whether market power is being exercised and whether additional mitigation measures are needed, and what additional mitigation measures might look like."

"These are matters that will have a significant impact on rates," the ICC noted, urging the inclusion of market power monitoring methods and additional market power mitigation measures in the MISO tariff (Matters, 10/21/08).

FERC's Financial Settlement Order specifically stated that, "proposed section 69.3.5.h does not adequately define the scope of the Independent Market Monitor's role."

However, reports from MISO and the IMM on monitoring measures did not propose modifications to the "inadequate" tariff language in Section 69.3.5.h to address the Commission's determination and concern, the ICC argued.

As it stands, Section 69.3.5.h provides the Midwest ISO and not the IMM with authority over market power monitoring, the ICC said. The ICC requested that the Commission direct the Midwest ISO or the IMM to propose market monitoring methods and market power mitigation measures for inclusion in the tariff and to revise Section 69.3.5.h accordingly.

Additionally, the ICC argued that several existing provisions of the Midwest ISO tariff must be modified to accommodate the market monitoring procedures suggested by the IMM. Section 50.2 of the Midwest ISO's existing Module D states, "The IMM will not monitor bilateral Energy or Capacity markets ... except to periodically assess the effect of these markets on the Energy Markets, or the effects of the Energy Markets on these markets."

The ICC reads such language as explicitly precluding the IMM from monitoring bilateral capacity markets.

The IMM has stated that it does not believe that section 50.2 of the Midwest ISO tariff would preclude or otherwise encumber its proposed market monitoring process, but the ICC found such a position "difficult to reconcile" with the actual wording of Section 50.2.

Accordingly, the ICC urged that Section 50.2 of the Midwest ISO's tariff Module D be modified to provide for the explicit monitoring of bilateral capacity markets by the IMM.

Briefly:

PUCT Adopts Rules for RPS Opt-Out Provision

The PUCT adopted as proposed rules to implement the ability of transmission-level voltage customers to opt-out of the state's RPS program (Matters, 11/27/08). The rule recognizes that the applicable statute does not require REPs to charge a customer anything different as a result of the new opt-out provisions.

Treatment of the costs attributable to the REC program can be negotiated between REPs and customers eligible for the opt-out.

EnergyUSA-TPC Granted Authority to Market in Dominion Peoples

The Pennsylvania PUC granted an amendment to the gas supplier license of EnergyUSA-TPC to add the service territory of Dominion Peoples.

SPP Delays Report on Entergy Integration

Southwest Power Pool said it will not file its study of integrating Entergy Texas into its power region until December 17, to conduct additional analysis to address questions regarding certain transmission projects raised at its December 1 stakeholder meeting. SPP had originally intended to file the report today, which will examine the potential selection of SPP as the Qualified Power Region needed for any Entergy transition to competition.

Direct to TPV Door-to-Door Ontario Sales

Direct Energy announced a pilot under which it will third-party verify door-to-door and telephonic sales in Ontario during a six-month pilot, to address customer confusion. Results of the trial will be shared with the Ontario Ministry of Energy and the Ontario Energy Board, Direct said. The TPV will ask customers if they understand that ending their new contract early could trigger fees, and that if they are already served by another retailer, that provider may charge fees for canceling. If the pilot project is successful, Direct Energy would support replacing the current reaffirmation process with a doorstep third-party verification process. Under reaffirmation, retailers are required to contact every new customer between 10 and 60 days after they sign a contract to verify they want to proceed. As only reported in *Matters*, legislation has been introduced in Ontario's assembly to require greater disclosure in the reaffirmation letters, including a comparison with regulated rates and the listing of termination fees from the customer's current supplier (Matters, 11/25/08).

Charlevoix Relinquishes Mich. AGS License

The Michigan PSC approved Charlevoix Energy Trading's application to relinquish its alternative natural gas supplier license. Charlevoix Energy Trading has sold its assets to Seminole Energy,

and Seminole subsidiary Lakeshore Energy Services is serving Charlevoix's former customers.

Mich. PSC Names Wind Board Members

The Michigan PSC named 11 members of a Wind Energy Resource Zone Board, including John Miceli, energy market analyst for Wolverine Power Cooperative, who will represent alternative electric suppliers. The board is to report by June 2, 2009 on wind energy production potential in Michigan and available lands for wind projects.

Dominion Retail Asks for Extension of Deadline for Conn. Operational Plan

Dominion Retail asked for an extension until January 16, 2009 to comply with the DPUC's requirement to submit an operational plan addressing all customer-relation functions, including marketing and contracting. The requirement was part of a final order that found Dominion's relationship with Levco Tech required changes (Matters, 12/4/08). Dominion petitioned for the extension from the order's filing date of January 3 because the order requires "wholesale changes" to the previously approved manner in which Dominion conducts business in Connecticut.

Ninth Circuit Remands Western Contracts Case to FERC

The Ninth Circuit U.S. Court of Appeals vacated a prior opinion on long-term contracts entered into during the Western electricity crisis and remanded the issue to FERC, consistent with a June Supreme Court ruling (Matters, 6/27/08). The remand decision did not decide whether the Mobile-Sierra doctrine applies to the California PUC, which was not a signatory to the long-term contracts at issue in the case, and the remand was without prejudice to petitioners' ability to raise that question before FERC or the court again. In June, the Supreme Court remanded the contracts to FERC, though its decision was not based on the Ninth Circuit's reasoning regarding the public interest standard of review. Rather, the Court directed FERC to examine whether the contracts raised consumer prices over the long-run, rather than just immediately, and to address whether there was a causal connection between unlawful activity and the

contract rates.

ISO-NE Forecasts Winter Peak

ISO New England projected a peak demand of 23,030 MW for the winter, under normal weather conditions, above the 2004 winter peak of 22,818 MW set in January 2004. ISO-NE reported 33,750 MW of generation capacity and 1,800 MW of demand-side resources available for the winter.

MISO Names John Bear CEO

The Midwest ISO announced that current COO John Bear will succeed CEO T. Graham Edwards effective January 16, 2009. Prior to joining MISO several years ago, Bear was regional president at Reliant Resources.

PJM Approves \$1.6 Billion in Grid Upgrades

PJM's board approved \$1.6 billion in transmission additions and upgrades, including a 500-kV line in Northern New Jersey to be built by PSE&G. The regional plan also approved using a direct current line for the portion of the Mid-Atlantic Power Pathway which crosses under Chesapeake Bay, a change from the alternating current crossing originally approved.

Pa. Reporting ... from 1

- Large Non-Residential (annual usage greater than 2,409,001 kWh).

Distribution companies will continue to report sales and switching statistics by rate class. For a utility with a generation rate cap, the customer rate classes will be those defined in its tariffs. For a utility not under a generation rate cap, the customer rate classes will be defined by the default service program approved by the Commission.

While the PUC was hesitant at this early point in the development of competitive markets to impose a burdensome reporting requirement on either distribution companies or suppliers, the Commission noted that the different classifications for distribution companies and suppliers may not provide sufficiently useful information, and stated, "we may have to return to this issue in the future."

Pa. Security ... from 1

The Commission also revised its consumer guidelines to allow utilities to terminate service to customers for failure to pay supplier charges under a POR program.

The PUC extended the deadline for natural gas utilities to file POR programs until March 31, 2009. The deadline for such POR submissions had originally been December 31, but National Fuel Gas Distribution Company and T.W. Phillips Gas & Oil Company asked for the extension. If utilities do not file POR proposals, they must file cost of service studies in subsequent proceedings on rates to permit unbundling of certain supply costs.

The Commission indicated that it will establish interim guidelines for the design and operation of POR programs in the near future, and establish a proceeding and tentative order proposing revisions to the Guidelines for Maintaining Customer Services at the same level of quality no later than the end of the first quarter of 2009.