

# Energy Choice

# Matters

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## PUCT Proposal for Adoption Drops Distinction of Fixed Product Types

PUCT Staff removed the concept of a "limited" versus "guaranteed" fixed product, and would prohibit the application of termination fees near the end of contracts, in a proposal for adoption to implement new REP disclosure rules (35768).

Chief among the changes from the published draft is that REP products will either be categorized as fixed, indexed, or variable -- removing the distinction between limited and guaranteed fixed. A fixed price product would be defined as a product for which the price (including recurring TDU charges) for each billing period of the contract term is the same throughout the contract and may vary from the disclosed amount solely to reflect actual changes in the TDU charges, changes to the ERCOT fees or Texas Regional Entity fees or changes resulting from federal, state or local laws that impose new or modified fees or costs on a REP that are beyond the REP's control.

An indexed product would be a product for which the price, including recurring TDU charges, can vary according to a pre-defined pricing formula that is based on publicly available indices or information and is disclosed to the customer. A variable price product is one for which price may vary according to a method determined by the REP.

For a variable price product, the REP would be required to disclose on its website and through a toll-free number the current price and one-year price history, or history for the life of the product, if it has been offered less than one year. The Electricity Facts Label (EFL) of a variable price product shall include a notice of how the current price and historical price information may be obtained. The

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## PJM Submits RPM Changes to Update CONE, EAS Offset; Allow Energy Efficiency to Bid

PJM submitted to FERC non-consensus tariff changes to the Reliability Pricing Model (RPM), which would increase the Cost of New Entry, maintain but tweak the historic approach to the Energy and Ancillary Services Offset, and allow energy efficiency to bid in to the auction. The language will serve to guide ongoing stakeholder discussion to improve the capacity market, and was required by a FERC September order which denied a complaint from RPM Buyers' regarding the auction (Matters, 12/8/08).

PJM's tariff changes would update the Cost of New Entry (CONE) to reflect substantial changes in construction costs since 2005, when the current CONE was determined, and would eliminate the escalation factor used in the current gross CONE estimating methodology, to better equate the gross CONE estimate with the time period used to estimate energy and ancillary services revenues.

PJM said there was little dispute CONE needed to be raised to reflect higher construction and material costs. A consultant's report concludes that the cost of new entry is \$135,600 MW/year for Region 1 (mostly New Jersey TOs), \$125,409 for Region 2 (Pennsylvania-Maryland TOs) and \$128,310 for Region 3 (AEP, Dominion, ComEd, Dayton).

Based on stakeholder input, PJM proposes to keep the historic estimating approach for the Energy and Ancillary Services Offset, but would also include an offset to reflect the scarcity revenues the Reference Resource would receive in the Delivery Year.

Under the filed language, PJM would implement a full true-up for scarcity pricing revenues received during the Delivery Year, reflected in the first Delivery Year for which a base residual auction (BRA) has not yet been conducted. PJM would also establish a method for setting the net CONE for

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## Wind Generators Appeal ERCOT Reactive Power Interpretation to PUCT

Competitive wind generators appealed ERCOT's interpretation of Protocol §§ 6.5.7.1(2) and 6.7.6(5), relating to reactive power requirements, to the PUCT, claiming ERCOT's interpretation is inconsistent with the language of the Protocols, accepted operational practices of wind generators, interconnection agreements approved by ERCOT, and Generation Asset Registration Forms (GARFs) accepted by ERCOT.

In response to a Protocol Clarification/Interpretation Request, ERCOT reported that all Generation Resources required to provide Voltage Support Service (VSS) must have and maintain a Unit Reactive Limit (which is based on a power factor capability of +/- 0.95 of the unit's maximum capability) irrespective of the real-time operating capability of the unit. In other words, all Voltage Support Service Generation Resources, regardless of whether they are capable of providing reactive power at the unit's Unit Reactive Limit at lower real power output levels, must maintain reactive power as if the units were operating at full capacity, providing reactive power at the URL at all times.

The question of whether a Generation Resource must provide reactive power at its Unit Reactive Limit at all times is significant because certain Generation Resource units, including Wind Generation Resource (WGR) units, produce reactive power at their Unit Reactive Limit only when operating at full output. These units produce less reactive power as real power output is reduced. Some conventional Generation Resources also do not produce Unit Reactive Limit reactive power at lower real power output levels, although the number of affected conventional Generation Resources is not yet certain, Wind Generators said.

ERCOT's interpretation was published without an effective date, and it is Wind Generators' understanding that ERCOT believes the interpretation is effective retrospectively -- that it represents what has always been the correct interpretation of the relevant Protocols, and so the requirement has been in effect ever since the relevant Protocol provisions were made effective.

As a consequence, all Wind Resources and some other conventional Generation Resource units may have been in violation of the ERCOT Protocols for years, Wind Generators noted.

"This is the case despite the fact that ERCOT has known and understood operationally that WGRs have always provided reactive power according to the capability of units, dependent upon the output of the units at a given time. Further, ERCOT has accepted Interconnection Agreements and GARFs for years that are inconsistent with the Interpretation. This Interpretation is also inconsistent with the industry standard for wind generators in every other market in the continental United States," Wind Generators said.

"Given ERCOT's long history of accepting WGR reactive performance until November 13th, 2008, ERCOT's Interpretation is functionally tantamount to a retroactive amendment to the Protocols," Wind Generators claimed.

Wind Generators contended that no formal studies or reports by ERCOT or findings of fact in any proceeding indicate that the ERCOT grid has suffered from an incident in which a deficit of reactive power created the need for ERCOT's Interpretation. There are also no studies that demonstrate a reliability need for Wind Generators to provide reactive power in accordance with the Interpretation, or that establish that conformance with the Interpretation would eliminate actual reliability problems, Wind Generators argued.

ERCOT's Interpretation equates the term "operating capability" used in § 6.7.6(5) with Unit Reactive Limit, a position Wind Generators claim is, "without basis and inconsistent with other language in the Protocols."

The term "operating capability" is not defined by the Protocols but has a use common to the industry that the Interpretation does not consider, Wind Generators asserted. "The operating capability of the plant has been known and understood by the industry as the facility's operating level capability, or the level at which the plant is operating at a given time," Wind Generators claimed.

Language in Protocol § 6.7.6(5) is made superfluous by treating the two terms synonymously, Wind Generators said. Furthermore, the FERC standard for the provision of reactive power is for thermal and

wind generation to provide volt-ampere reactivities (VARs) at its current operating capability -- that is the power factor range standard which takes into account, "any limitations due to voltage level, real power output, etc."

ERCOT's Interpretation is inconsistent with at least 70 interconnection requests that ERCOT has approved, Wind Generators said. Such interconnection agreements do not require or contemplate that the VARs available at the URL be available at lower active power output, Wind Generators said.

Wind Generators requested that the Commission determine that the Protocols, as written, require a minimum reactive capability that is in proportion to the real power output of a generator, overturning ERCOT's Interpretation.

In order to comply with ERCOT's Interpretation, all existing Wind Generation Resource units would likely need to undergo expensive retrofitting to incorporate new equipment and operating systems that would allow them to maintain constant reactive power regardless of operating capability, Wind Generators said. Requiring such retrofits prior to the pending Low Voltage Ride Through (LVRT) study may mean that retrofits done to meet the standard set through the Interpretation are stranded investments when the LVRT Study determines that other or different retrofits may have been needed, or no retrofit at all was required because no reliability problem needed to be addressed, Wind Generators cautioned.

Complainants included E.ON Climate & Renewables North America Inc, Horizon Wind Energy, Invenergy Wind North America, Edison Mission Energy, and AES Wind Generation.

## **Texas CHP Report Cites Wholesale Market Rules as Barrier**

Wholesale and retail market rules were cited as one barrier to Combined Heat and Power in Texas in a report prepared for the PUCT by Summit Blue Consulting.

Wholesale market rules may act as barriers for some CHP facilities since facilities cannot use CHP systems to sell electricity to a nearby facility without using a REP and paying wheeling charges. Direct sales could be advantageous

because they would allow multi-party CHP investment in systems that have greater economies of scale, the report said.

Another aspect of the wholesale market that may not favor CHP is that REPs may be less interested in CHP facilities, because the energy requirement for the facility is likely to be low, as well as more variable than for a typical customer. One of the industry interviewees surveyed for the report explained that, from the perspective of REPs, "Purchasing for the load requirements in excess of the cogeneration capacity is very difficult and leads to a great deal of uncertainty."

In addition, interviews suggested that in the restructured market there is relatively little demand for and interest in surplus power from cogenerators. REPs may not be interested in marketing surplus power if the supply is variable and relatively small, the report said.

### ***Briefly:***

#### **Exelon Denies Interest in Reliant**

Exelon denied Friday that it had made an offer for Reliant Energy, rebutting a report in the Houston Business Journal which had quoted an unnamed Reliant source. "Exelon has not made an offer to acquire Reliant or any part of Reliant and we do not plan to make an offer," Exelon said.

#### **PUCT to Open Proceeding on Out-of-Cycle Switching Fees**

The PUCT intends to open a proceeding to address out of cycle switching fees, Staff said in its proposal for adoption on REP disclosures.

#### **PUCT Releases Draft Scope of Competition Report**

Texas legislators should clarify that the PUCT has the authority to order utilities to deploy advanced meters, as rapidly as possible, with the appropriate cost recovery provided under the Commission's advanced metering rule, says a draft PUCT Scope of Competition Report (35631). The draft also suggests that legislators should ensure that PUCT enforcement investigations remain confidential to ensure investigations are not compromised, similar to confidential protection afforded to investigations by the State Securities Board and other state agencies. Legislators should also remove provisions in PURA which incent gas-fired generation, the draft says.

## **PUCT Sets TDU Advanced Metering Prepaid Workshop**

PUCT Staff will hold a workshop on the TDU Advanced Metering Prepaid project (36233) on Jan. 15.

## ***REP Disclosures ... from 1***

EFL shall also include a description of how the price may change, or contain the following notice in Bold Type in no smaller than 12 point font: "The price of this product may vary at the sole discretion of {insert REP name}. This price is the present price, this price may change. Please review the historical price of this product available at {insert website address and other locations (if available)}".

Under the proposal, a change in a variable priced product would require 45 days' notice. Approved changes in fixed price products (e.g., changes in TDU/ERCOT fees) would also require 45 days' notice as well.

Staff disagreed with REPs advocating for the removal of TDU charges from the price, or making the price only reflect energy charges (Matters, 9/25/08).

While REPs argued that Commission-defined product labels would stifle innovation, Staff disagreed. Staff, "believes it is important for customers to understand the type of product they are purchasing ... [and] the best way to achieve this desired outcome is to have categories for different types of products and descriptors that provide information that customers will find helpful in evaluating plans they are purchasing."

Although Staff agrees that some predictable products will fit into the variable category, it believes that it will be helpful for the customer to realize that the prices for products they purchase may vary over the life of the contract. Staff also declined to require all variable contracts to have a term of 31 days or less. "While it might be beneficial for some contracts to have a term length less than 31 days, some variable contracts might require investment in a product such as a thermostat that the REP would need an opportunity to recover the cost of," Staff said.

In addition to the provisions on the EFL for variable price products, the proposal holds that Electricity Facts Labels for non-fixed price products are to list the price for the first month of

service on the product, reflecting all recurring charges to the customer. For a fixed price product, the EFL shall provide the total average price for electric service reflecting all recurring charges to the customer.

The proposal removes provisions regarding promotional rates in EFLs, consistent with the determination that the EFL will contain the first month's rate only, which may or may not be a promotional rate. However, the EFL will have to document how the price can change from the rate listed.

The updated proposal adds a line item to the EFL disclosing whether the REP buys excess distributed generation, but does not require specific terms of such purchases to be listed.

## **Termination, Renewal**

The proposal for adoption also removes the provision requiring proration of termination fees, but holds that termination fees cannot be applied within 60 days of contract expiration (and no time after the issuance of a contract expiration/renewal notice), in order to allow customers to choose an alternate provider. Originally, REPs were to have prorated termination fees by reducing the fee by the ratio of the portion of the original term that has expired to the original term (in months).

"The purpose of this measure is to give the customer a period prior to the expiration of a contract to shop for a new energy plan to replace the one that is expiring, without the threat of a termination fee if the transfer to another REP occurs prior to the expiration of the contract," Staff explained.

As the end of a contract's term nears, the REP's benefit from hedging its contract with the customer has, for the most part, been realized, Staff said. In such cases, "Prohibiting the collection of the termination fee provides a significant benefit to the customer at some cost to the REP," Staff noted.

REPs would be required to send a written notice of contract expiration separate from the bill at least 50 days prior to the date of contract expiration but no more than 60 days in advance of expiration, even for contracts with automatic renewal provisions that were disclosed at contract initiation.

"Customers have the right to be informed when the initial portion of their contract is

expiring. If the contract has automatic renewal provisions, it is equally important for the customer to realize that the automatic renewal is about to start unless the customer takes action. It is important for the customer to know what the rate will be and what EFL the customer will be served under if the contract automatically renews. Even if the customer was provided the information upon enrollment, the customer may have misplaced it and it should be provided again so that the customer has resources available to make an informed decision," Staff reasoned.

Such expiration/renewal notices would not have to include an estimated date for the end of the term, as originally proposed. Rather, REPs could instead provide the billing cycle and month of expiration rather than the estimated date for contract expiration. That would allow the customer to notify its potential new REP of the billing cycle and month, which would likely be the only information needed by the new REP.

The proposal for adoption clarifies customers are not to be disconnected if they take no action when their contract ends, and do not choose a new provider or renew. Instead, REPs, in their expiration notice, should inform customers that if they fail to take action, they will be placed on a month to month plan with no termination penalties. The notice should include the EFL associated with the product, which will include the rate for the first month of service.

Staff rejected pleas from REPs to allow contract expiration notices to be provided in line items on bills, rather than through separate notices.

The proposal would not change the current prohibition on charging customers termination fees if the customer moves, even if the REP can offer the same service in the new area. Even if the customer moves next door, the customer may have different electric needs at the new premises, Staff said.

Residential customers would only need to provide a forwarding address to avoid termination fees when moving. Small commercial customers would need to provide "reasonable evidence" of the move, which Staff did not seek to limit through a definition. The contract terminates on the day the customer no longer occupies the location specified in the contract.

## Other Provisions

The updated proposal maintains the provision that any vagueness, obscurity, or ambiguity in the contract will be construed in favor of the customer.

"Contracts for residential and possibly many small commercial customers have little or no room for the customer to negotiate or change the contract. Therefore, since the REP has unilateral control over the contract, any ambiguity should be construed in favor of the customer," Staff said.

The revised proposal keeps 50 kW as the cutoff for small commercial customers, and will allow larger customers to waive certain customer protections as is currently permissible.

The proposal declines to adopt suggestions from consumer advocates to require all REPs to post offers on the Power to Choose website. Staff recognizes that, "there are legitimate reasons why some REPs do not wish to be listed on the commission's power to choose website, such as a desire to grow slowly in order to avoid high collateral requests from suppliers and ERCOT."

Advertisements, including outdoor advertisements, would have to include a REP's certified name, readable at audience level, which may prove troublesome for REPs with multiple certificates but a single brand.

The updated proposal does not remove the 250-word limit for terms of service paragraphs, but does allow REPs to post internet links to PUCT rules cited in the contract, rather than having to include or summarize the rules in the terms of service. REPs would not be allowed to charge customers for extra copies of their terms of service or YRAC, which customers may request at any time.

Staff declined to adopt Reliant Energy's proposal to modify language currently prohibiting REPs from suggesting they have been providing retail electric service prior to the time the REP was certified by the Commission. Reliant claimed certain ads by TXU Energy touting its parent's history may not be covered by the rule, but Staff found Reliant has not provided sufficient justification for any change (Matters, 10/21/08).

The proposal would require REPs to comply with the new provisions within three months, rejecting REPs' request for an extended deadline.

## **RPM ... from 1**

the unconstrained portion of the PJM region, and would commit to address changes to the provisions on automatic adjustments to CONE after the results of the May 2009 auction are known and can be reflected, as appropriate, in such modified methodology.

While PJM contends there is not ample time to implement changes to the methodology for determining Locational Delivery Areas (LDAs) and reliability requirements for the May auction, PJM did propose changes to ensure already-defined LDAs that are sufficiently constrained have the opportunity to price-separate in the RPM auctions.

RPM identifies an LDA that is constrained, or approaching constraint, as one that has a Capacity Emergency Transfer Limit (CETL) that is less than 105% of the LDA's Capacity Emergency Transfer Objective (CETO). But that screen could prevent LDA price separation that might otherwise be warranted by economic conditions, PJM said.

Accordingly, for purposes of determining which LDAs to model separately (with their own demand curves) in the May 2009 auction, PJM proposes increasing the CETL/CETO threshold from 105% to 115% and separately modeling the PSEG North, EMAAC, SWMAAC, and MAAC LDAs (among others) without regard to the CETL/CETO ratio.

PJM's proposal would allow energy efficiency to participate in the RPM auction, and to receive capacity revenues for four years. That structure has been opposed by some competitive retailers because it will shift capacity obligations onto other customers, and their LSEs, since the overall load forecast will not be adjusted to capture the efficiency-driven load reduction, but individual customers' allocation of capacity obligations will be reduced to account for the efficiency measures (forcing other customers to bear a larger share -- Matters, 12/4/08).

PJM would eliminate the Interruptible Load for Reliability (ILR) program from RPM starting with the Delivery Year that begins June 1, 2012, because the current ILR option creates the wrong incentives by allowing providers effectively to withhold ILR capacity from the auction, potentially increasing the clearing price and avoiding a potentially significant

commitment charge.

Under the current RPM rules, ILR providers have little incentive to offer into the RPM auction as a Demand Resource rather than wait to certify as ILR just a few months before the Delivery Year. That's because for a resource located in an unconstrained portion of the region, the credit paid to certified ILRs is the same as the auction clearing price paid to resources that commit in the BRA. PJM reported that it certified ILRs for the 2008/2009 Delivery Year in excess of the forecast level at an additional cost to LSEs of over \$79 million.

PJM also proposed adjusting the Incremental Auctions to account for situations in which too much capacity has been procured. RPM currently has no mechanism to respond to a decrease in the load forecast or other circumstances which indicate that the base residual auction procured more capacity than needed.

Under the new proposal, PJM would allow sellers to buy out of their prior capacity commitments if the Reliability Requirement has decreased by more than 500 MW, and the difference is equal to more than one-third of the short-term resource megawatts held back from the base residual auction. In such cases, PJM would offer to sell back capacity equal to the difference between the prior and updated Reliability Requirements, at a price equal to the weighted average capacity clearing price at the time of such auction.

PJM's filing does not address concerns regarding limitations on sales into RPM by resources under the Fixed Resource Requirement Alternative.

"This particular issue was more polarized than most, with stakeholder positions ranging from elimination of FRR altogether to keeping FRR and eliminating the limit on sales (with or without a must-offer requirement)," PJM reported, and thus it did not file indicative language.