

Energy Choice Matters

January 9, 2009

Revised REP Disclosure Proposal Includes All-In Fixed Product, Auto-Renewals Longer than 31 Days

PUCT Staff issued a revised draft proposal for adoption addressing REP customer disclosure requirements which incorporates various comments from Commissioners at the December 18 open meeting, such as the inclusion of an all-in fixed product, an indexed product not tied to a formula, and an automatic renewal lasting longer than 31 days in some circumstances (35768, Matters, 12/19/08).

Staff's revised draft again distinguishes between two types of fixed-priced products -- an "all-in fixed price product" and an "energy fixed price product." The all-in fixed product is defined as a product with a term of at least three months for which the price (including recurring charges) for each billing period is the same and will not change throughout the term of the contract. The energy-fixed product is defined as a product with a term of at least three months for which the price (including recurring charges) for each billing period of the contract term is the same throughout the contract term, and may vary from the disclosed amount solely to reflect actual changes in the TDU charges, changes to the ERCOT or Texas Regional Entity administrative fees charged to loads, 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.

Additionally, Staff's draft includes an additional type of product under the definition of indexed product. Consistent with requests from Commissioners Donna Nelson and Kenneth Anderson, an indexed product would include a retail electric product for which the price including recurring charges can increase no more than a defined percentage as indexed to the customer's previous billing month's price and as disclosed in the Electricity Facts Label at the time of enrollment, in addition to the original

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Maine PUC Directs CMP, BHE to Pursue ISO-NE Reforms

The Maine PUC directed Central Maine Power and Bangor Hydro-Electric to aggressively pursue reforms of their relationship with ISO New England, but did not find that the IOUs should immediately pursue withdrawal from ISO-NE (2008-156).

While a final written order was unavailable yesterday, the Commission's decision mostly tracks a recommended decision reached by two hearing examiners (Matters, 12/18/08). The Commission agreed that the status quo was "undesirable" for Maine, for reasons ranging from inequitable cost allocations to poor representation of consumer interests in ISO-NE's decision-making processes.

Still, the Commission found there were components of the ISO-NE structure which do benefit Maine's energy markets and its consumers. ISO-NE provides beneficial management of energy supply markets, a functioning forward capacity auction, and sophisticated energy dispatching and grid balancing systems, the PUC noted.

Furthermore, withdrawal from ISO-NE poses its own risks, PUC Chair Sharon Reishus said in a statement, and thus pursuing improvements at the ISO prior to the IOUs' signing new long-term agreements with ISO-NE is the best course of action.

Less clear absent a written decision is what avenue the PUC intends to pursue if CMP and BHE are unable to win the required reforms at ISO-NE. The recommended decision suggested leaving ISO-NE while taking certain services from the ISO a la carte, but in exceptions generators questioned the costs and logistics of such an option (Matters, 1/1/09).

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ERCOT Suggests Hybrid Switching Timeline to Mitigate Inadvertent Gain

A "hybrid" approach could allow switches in ERCOT to occur as quickly as three days while avoiding inadvertent gain issues associated with the elimination of the ERCOT postcard and rescission period, ERCOT said in comments at the PUCT (36536, Matters, 1/6/09).

Under ERCOT's hybrid option, customers wishing to receive an expedited switch would waive the rescission period and ERCOT postcard, and would be switched on an out-of-cycle read. These switches could be completed in approximately three days. However, all other customers would be switched using the existing switching process, complete with existing customer protection rules, including a right to rescind the switch.

The hybrid approach is consistent with customer protection waivers routinely granted to industrial, large commercial, and aggregated customers, and is similar to an ad-hoc solution that has sometimes been used for customers caught in a mass-transition event and wanting to effectuate an immediate switch, ERCOT said. The approach would greatly lessen the potential for a "marked" increase in inadvertent gain issues that would result from elimination of the rescission period (Matters, 1/8/08).

The Texas Ratepayers Organization to Save Energy argued it is important to retain the ERCOT postcard, which serves as a control against REPs switching a customer's service without authorization. ROSE noted more than 23,000 customers cancelled switches using ERCOT's call-in line provided on the postcard in 2008, which ROSE said allows consumers to solve a problem directly without initiating the PUCT complaint process. Such cancellations also reduce the load on the already overworked PUCT Customer Protection Division, ROSE noted.

Eliminating the postcard will encourage more slamming and complicate the resolution of a slamming problem for residential consumers, ROSE argued.

While ERCOT has noted speeding the postcard timeline would require expensive system changes (thus recommending either the current postcard timeline be maintained, or

completely eliminated), ROSE said ERCOT is spending \$12 million a month on nodal contracts and is proposing to use its budget surplus to recover nearly \$1 million in investment losses due to the financial crisis. "It is hard to accept that resources are unavailable for improving the customer notification process," ROSE said.

ROSE also recommended that the Commission explore using estimated reads to lower costs and speed up the switching process, "and that REPs assume the cost of the estimated or the out of cycle meter read as a cost of doing business."

ICC Rules Against Multi-Year Renewable Contracts in 2009 Procurement

The Illinois Power Agency will not be permitted to undertake the acquisition of multi-year or long-term renewable resources in the 2009 procurement, the Illinois Commerce Commission said in a written order accepting the IPA's procurement plan.

As discussed yesterday (Matters, 1/8/09), the ICC approved a three-year laddering process for procuring default service supplies, initially through an annual RFP. The written order expands on the contested issues in the case, such as renewable contracting, REC benchmarking, and procurement frequency.

The Commission found that there are potential risks as well as potential benefits associated with long-term renewable contracts. But since it is unclear at this point whether the potential risks exceed the potential benefits, the ICC ordered that multi-year contracts for renewable resources shall not to be used in the 2009 procurement, in order to protect ratepayers.

The only allowable exception would be if there is a change in law that would require the use of multi-year or long-term renewable resources during the June 2009 to May 2010 acquisition period. While the Attorney General suggested SB 1987, which is awaiting signature from the governor, would require long-term renewable contracts, the Commission ruled that even if signed into law, the bill does not contain such a requirement, as it addresses REC benchmarking, not contract length.

As to benchmarking renewable resources against market prices, the ICC ruled current law

does not require benchmarking (but does not prohibit it either). SB 1987, if signed into law, would require benchmarking, but it would not take effect until June 1, 2009, and thus would not affect the 2009 procurement which will be conducted this spring.

All things considered, the Commission found that the use of benchmarks associated with the acquisition of renewable resources for the 2009 procurement event should not be required. However, the IPA and procurement administrator will be permitted to develop benchmarks for the 2009 procurement event, in consultation with Commission Staff and the procurement monitor, provided that adequate market price data is available, and provided that adverse effects on other renewable requirements in the law are avoided or resolved. Such benchmarks could be used upon receipt of prior Commission approval of them, but the Commission reserved the authority to reject such benchmarks, and to direct REC procurement without them, if it is determined that adequate data is not available or for other appropriate reasons.

The ICC accepted Staff's recommendation that the number of megawatts awarded for each contract type and for each contract term should be publicly disclosed after a Commission vote accepting the bids, provided there are at least three winning bidders in the procurement event. The Commission ruled that the winning quantities and average prices for all products, and not just the 24 basic building block products, will be publicly released as well.

Aggregated numbers of megawatts awarded by contract type and term do not constitute "supplier and bidder information" which must be kept confidential by statute, the ICC said. By releasing the information identified by Staff, the procurement process will be enhanced through improved transparency, while not increasing the risk or cost to participating suppliers and thus customers, the Commission noted.

The ICC's final order also found that the procurement plan should not include the conclusion that a single procurement event increases portfolio risk or the exercise of market power, due to a lack of analysis to support such a conclusion. In the Commission's view, no conclusions can be drawn at this time regarding the advisability of performing multiple

procurement events in a procurement year.

Recommended Decision Would Restore Some ConEd Power Your Way Funding

Consolidated Edison should restore \$730,000 of the \$1.6 million Power Your Way outreach and education program, two ALJs said in a recommended decision in ConEd's rate case, but the bulk of the restored funds would go to promotion of green products (Case 08-E-0539).

ConEd applied to end the \$1.6 million Power Your Way campaign which mainly deals with disseminating information regarding retail access and ESCOs. Staff favored the proposal as well, with informational activity expenses subsumed under ConEd's general outreach and education budget, since ESCOs should bear costs of promoting retail access.

The Retail Energy Supply Association and Small Customer Marketer Coalition objected to the plan, arguing most of the activities funded were educational and not promotional (Matters, 12/1/08).

The ALJs recommended that \$730,000 of the \$1.6 million be restored in order to cover the costs of a Green Power Campaign (\$650,000), a Green Power bill insert (\$72,000), and ConEd's maintenance of an up-to-date list of retail electric suppliers (\$8,000).

The recommended decision would approve \$12.9 million of ConEd's requested \$17.6 million for informational and institutional advertising. Elements endorsed by the ALJs include advertising for energy conservation tips, emergency preparedness, and supplier diversity. However, if any portion of the amount budgeted for energy efficiency tips duplicates funding anticipated in the energy efficiency portfolio standard case, the ALJs would endorse a larger downward adjustment.

ConEd's requested \$4.6 million to help inform customers and the public about how utility rates underwrite improvements in infrastructure would be rejected by the draft as a "luxury" given the current economic downturn. "The notion that customers would want to pay almost \$5 million per year to hear about where their money is going in an average economy is hard to accept," the ALJs said.

The draft would approve creation and funding

of a state regulatory affairs department at ConEd, including seven new positions, with six located in New York City and one in Albany. While Staff objected to the funding, based on overlap with the existing public affairs group at ConEd, the ALJs found that ConEd has justified a need for the department. The ALJs recommended only funding 45% of ConEd's requested \$775,000 in labor and \$73,000 for other operations and maintenance expense for the new office, based on a historic hiring practices adjustment to account for when the positions would likely be filled during the rate year.

TAC Tables PRRs 776, 791

ERCOT's Technical Advisory Committee tabled consideration of Protocol Revision Request (PRR) 776, Automatic MCPE Adjustment During Intervals of Non-Spinning Reserve Service Deployment, for 30 days to address stakeholder concerns (Matters, 10/24/08).

ERCOT has concerns that PRR 776 has the potential to reduce or eliminate available supplemental reserves. ERCOT has historically informed NERC that Non-spinning Reserve Ancillary Service contributes to its supplemental reserves, and is used to restore operating reserves after system events. ERCOT is required to fully restore its Contingency reserves within the Contingency Reserve Restoration Period by NERC Standard BAL-002 R6.

ERCOT believes that PRR 776 would convert spinning reserves to a minimum up balancing requirement which would be deployed as demand increases. By deploying a subset of the available Non-Spinning Reserve Service (NSRS) through Balancing Energy, the ERCOT System Operator would not have a known source to restore reserves after system events, ERCOT said.

A working group is to address such concerns, as well as "mechanical" issues raised by Luminant.

The PRR has become linked in some stakeholders' minds with PRR 791, Shortage Pricing Mechanism, as both PRRs deal with scarcity pricing. PRR 791 would create "Virtual QSEs" that can establish pricing during periods of energy shortage. PRR 791 was tabled as well.

Briefly:

FirstEnergy Solutions Wins 75% of FirstEnergy Ohio Utilities' Supply

FirstEnergy Solutions won about 75% of the supplies available in an RFP conducted by affiliated Ohio utilities Ohio Edison, Toledo Edison and Cleveland Electric Illuminating, FirstEnergy disclosed in an SEC filing. FirstEnergy Solutions was the successful bidder for 75 of the available tranches up for bid, with each tranche equaling approximately 1% of the total load of the utilities. Approximately 50% of FirstEnergy Solutions' estimated electric sales for the first quarter of 2009 are expected to be supplied under this agreement, FirstEnergy said. Three other bidders split the remaining load in the RFP, which was for supplies from January 5 through March 31, 2009 (Matters, 1/5/09).

Edison Mission Appeals FERC RSG Decision

Edison Mission Energy appealed to the D.C. Circuit U.S. Court of Appeals FERC's November 10, 2008 ruling ordering refunds of Revenue Sufficiency Guarantee charges in the Midwest ISO (EL07-86 et. al.). FERC's ruling made previously exempt virtual suppliers subject to paying RSG charges, and ordered resettlement of such charges dating back to August 10, 2007 (Matters, 11/12/08).

PECO Launches Website on Rate Cap Expiration

PECO has launched a new customer education website (www.peco.com/know), which PECO said will be the central location for customers to learn about the transition from capped electric rates to market-based rates, scheduled to occur on Jan. 1, 2011.

Constellation NewEnergy Selects Acorn for Customer Profitability Analysis

Constellation NewEnergy selected consultant Acorn to enhance its customer profitability analysis, Acorn said yesterday. CNE will utilize Acorn's performance analyzer platform for understanding the costs to serve, acquire and retain customers, which CNE called essential to determining the appropriate level of service and pricing for customers.

REP Disclosure ... from 1

definition of a product tied to a pre-defined pricing formula that is based on publicly available indices or information. The Electricity Facts Label for an indexed product that increases no more than a defined percentage as indexed to the customer's previous month's price would be required to disclose how customers can obtain a one-year price history of the product, similar to the requirement for variable products.

Under Staff's updated proposal, the only permissible changes to terms and conditions of any product type are changes in price for a variable price product, and changes in terms or conditions of contracts with contract terms equal to or less than 31 days, each of which would require 45 days written notice. Changes in the term of a contract would require the customer to enter into a new contract.

The customer notice for such contract changes would have to state that if the new terms are not acceptable to the customer, the customer may terminate the contract, and no termination penalty shall apply for 60 days from the date that the notice is sent to the customer, but may apply if action is taken after the 60 days has expired. For pricing increases for variable price contracts, the notice would need to state that the new price cannot be charged to customers until 45 days after the notice is sent to the customer.

As suggested by Anderson, Staff's draft would allow automatic renewals lasting longer than 31 days (but no longer than the original term) if the new price and all other terms are equal to or more beneficial to the customer, and the original contract includes an auto-renewal clause.

The revised draft changes the timelines for contract expiration notices, such that REPs would be required to send a separate written notice of contract expiration separate from the bill at least 50 (rather than 60) days prior to the date of contract expiration, but no more than 60 (rather than 75) days in advance of expiration. No termination penalty would apply 31 days prior to the expiration date as stated in the expiration notice, rather than 60 days as under the earlier draft.

With respect to customer relocation, Staff's

updated proposal deletes the provision stating that the contract terminates on the day the REP receives reasonable evidence that the customer no longer occupies the location specified in the contract.

Staff clarified the draft to state that advertisements must list the REP's certified name, or Commission authorized dba.

Staff's updated proposal extends a REP's compliance deadline to five months, rather than three. REPs would not be required to file a copy of each product's Terms of Service and Electricity Facts Label quarterly with the Commission under Staff's latest draft.

Timelines in the proposal may need to be changed depending on decisions made regarding the switching timeline, Staff noted.

Maine-ISO-NE ... from 1

As noted in the recommended decision, the PUC found that ISO-NE's allocation methodologies encourage over-reliance on transmission investment, and that ISO-NE lacks adequate barriers against transmission cost overruns, which the PUC said have run above \$4 billion in the region since 2004. ISO-NE's governance structures do not sufficiently represent consumer interests, the Commission said.

The Commission called for several specific reforms to be addressed in negotiations. Among them:

- Formalized consideration by ISO-NE of costs consumers bear as a consequence of its decisions, inclusion of a board member or members with knowledge of consumer issues, and establishment of a regional consumer advocate to provide closer monitoring of ISO activities;
- Cost allocation methodologies that do not spread 100% of approved transmission investment costs across ratepayers in the entire region - which is a disincentive to cost-control in any given state;
- Greater consideration of renewable energy goals set by the New England states and of fuel diversification needs when planning regional systems, and
- Better controls on cost over-runs and greater consideration of transmission alternatives.

The Commission will hold proceedings to assess progress of negotiations to reach these objectives in late June or early July. Should reform negotiations fail, the Commission is to subsequently consider further action, including the possibility of non-renewal of the Maine utilities' existing agreements with ISO-NE. The Commissioners ordered the utilities to report back on negotiations periodically.

Commissioner Jack Cashman plans to submit a minority report in substantial agreement with the overall decision, but also calling for the utilities to immediately begin a stakeholder process for development of in-state alternatives to continued membership in ISO-NE.