

Energy Choice Matters

January 15, 2009

PUCT Sets Three Product Types in Guidance to Staff for Final Customer Disclosure Order

The PUCT reverted to product definitions similar to Staff's original customer disclosure proposal for adoption, and answered other major questions remaining in the docket at yesterday's open meeting, though it directed Staff to incorporate the changes into a final draft that will be voted on at the next open meeting (35768, Matters, 1/9/09)

Though no written language has been developed, the Commission decided to revert back to three product types -- fixed rate, indexed, and variable.

The "fixed rate" product would include a price (including recurring charges) for each billing period of the contract term is the same throughout the contract term, but may vary from the disclosed amount solely to reflect actual changes in TDU charges, ERCOT/TRE fees, or changes in laws or regulation that impose new fees on REPs beyond their control. Commissioners opted to again remove the concept of a distinct, "all-in" fixed price product whose price would never change regardless of changes in laws or ERCOT/TDU fees, due to the apparent lack of interest among REPs in offering such a product.

The indexed product maintains Staff's proposed definition, as Commissioners agreed that so-called "capped index" products -- products not tied to a public wholesale/commodity index but rather indexed to the previous month's price with a ceiling on increases -- belonged in the variable category.

Variable products may change at the discretion of the REP, but may only be month-to-month. REPs will not have to provide advance notice of price changes for variable products, but will have to

... *Continued Page 5*

ICC Staff Revises Draft Rules to Implement ABC Law

The Illinois Commerce Commission Staff rejected most of the substantive recommendations made by a coalition of brokers and competitive suppliers regarding rules to implement the ABC law, including a request that the required remuneration disclosure be made orally for phone solicitations (Matters, 11/25/08).

The ABC law, passed in 2007, requires agents, brokers and consultants to, among other things, be licensed by the ICC, and to disclose to customers the remuneration received from suppliers. The ICC is conducting a rulemaking to implement the law.

Under Staff's revised draft, a retail electric supplier offering retail electric service on its own behalf would be exempt from the proposed rules for ABCs. Staff further said current language exempting, "[a]ny person or entity acting exclusively on behalf of a single [retail electric supplier] on condition that exclusivity is disclosed to the customer," addresses suppliers' request that language be added to exempt suppliers' employees. Staff removed the requirement that the exclusivity disclosure must be in writing.

Staff opposed suppliers' recommendation to allow oral disclosure of the required remuneration disclosure and other aspects of the law's code of conduct.

While suppliers suggested revising the ABC complaint procedures to prevent competitors and other disinterested persons from filing complaints, Staff did not support the suggested change, "as it would limit the rights of persons to make a complaint." Similarly, Staff rejected suppliers' request to

... *Continued Page 5*

PUCO Approves FirstEnergy Fuel Rider Through March 31

PUCO approved the request of the three FirstEnergy Ohio utilities to implement a fuel rider to recover the difference between current generation rates, continued from the companies' 2008 plans, and the costs of purchased power resulting from an RFP for interim supplies. PUCO's order limited authorization of Rider FUEL on a temporary basis through March 31, 2009, to the extent that the rider includes the actual, reasonable, and prudently incurred purchased power costs.

FirstEnergy had claimed it would burn \$2 million in cash per day without the rider (Matters, 1/12/09).

Rider FUEL will be a bypassable rider that will apply a retail surcharge on all standard service offer retail electric customers for the difference between costs incurred by the FirstEnergy utilities to purchase power for customers receiving generation service from the utility, and the unbundled generation revenue that will be received by the utilities as set in the current, extended 2008 rate plans. The rider will be reconciled quarterly.

The FirstEnergy utilities were ordered to file by February 2, 2009, information to allow PUCO to conduct a prudence review of the purchased power costs.

PUCO denied FirstEnergy's request for accounting authority to effect deferrals of the fuel rider reconciliation, including carrying charges, at Ohio Edison and Toledo Edison. At Cleveland Electric Illuminating, PUCO approved appropriate accounting authority to defer, with carrying costs, any amount for purchased power that exceeds the amounts collected through Rider FUEL and CEI's base generation rates. The Commission will address recovery of such deferrals in a subsequent order.

Separately, PUCO ordered FirstEnergy to file tariffs consistent with its January 7 order which, among other things, ended regulatory transition charges at Ohio Edison and Toledo Edison (Matters, 1/8/09). The requirement to file the revised tariffs is in no way a reflection of PUCO's consideration of pending rehearing requests of the January 7 order, which set post 2008 rates.

The Ohio Consumers' Counsel criticized approval of fuel rider, calling it, "unfair and

unreasonable," to, "put customers at risk for FirstEnergy's decision to hold an auction without regulatory oversight." OCC noted affiliate FirstEnergy Solutions won 75% of the load in the auction (first reported in Matters, 1/9/09), stating, "Approval of the rider means that customers lose and FirstEnergy Solutions - which took 75 percent of the power at auction - wins."

OCC estimated that for a residential customer using 750 kWh a month, the monthly fuel rider charge will be approximately \$15 for Ohio Edison customers and \$22.50 for Cleveland Electric Illuminating and Toledo Edison customers.

SCE Says Costs of Novation May Increase due to Collateral, Hedged Gas Contracts

Southern California Edison anticipates that obtaining credit facilities potentially required under the novation of California Department of Water Resources power supply contracts will be much more difficult than first thought, with the cost of any collateral posting being "much higher" than SCE initially estimated, it reported to the PUC (R. 07-05-025).

Aside from collateral costs, SCE's estimates of net costs and benefits of expedited replacement of DWR contracts generally remain unchanged.

In SCE's original report on the costs and benefits of expedited replacement of DWR contracts, SCE assumed the DWR contracts would be assigned "as is" with no added collateral requirement. However, SCE also commented that it would incur an estimated annual cost of 125 basis points (current collateral) and 25 basis points (stress case collateral) for a Letter of Credit for every \$100 million of mark-to-market exposure, if the contract terms change as part of novation/assignment, and SCE were required to post collateral.

Given the current financial markets, SCE now believes it is "unlikely" that SCE will be able to secure significant additional credit facilities for collateral support of the DWR contracts, especially in the volume needed to support SCE's potential obligation for its allocated contracts.

To the extent that SCE can obtain credit facilities, SCE said that for current collateral, assuming a cost of 400-500 basis points for a Letter Of Credit, SCE would incur an annual cost of \$4 million to \$5 million for every \$100 million of mark-to-market exposure. SCE cannot, however, estimate the total cost of collateral as it is unknown to what extent a collateral posting will be provided. For stress case collateral, assuming a cost of 200-300 basis points for credit capacity, SCE would incur an annual cost of \$2 million to \$3 million for every \$100 million of potential mark-to-market exposure.

SCE also noted that DWR has master agreements with numerous counterparties that have been put in place for the sole purpose of hedging the natural gas requirements of the DWR contracts. Because these are relatively standard agreements that are put in place in order to enable the trading of standard products, they typically require posting of collateral above a specified threshold. These master agreements have been used by the IOUs, as DWR's agent, to hedge significant volumes of natural gas.

Logically, these hedges should follow the DWR contracts to the IOUs, SCE said. However, if these master agreements and the related transactions executed under them are assigned or novated to the IOUs, the IOUs would likely be required to post additional collateral, thus affecting the novation cost/benefit analysis.

Phase II(b) of the PUC's investigation into reinstating direct access will address what conditions are necessary for wholesale market and regulatory stability conducive to the proper functioning of a competitive retail market, consistent with the public interest.

TURN argued that the Commission should move "cautiously" in this regard, because Phase II(b) is likely to be quite controversial and time consuming. Accordingly, parties should not be required to undertake this work unless and until it appears that significant progress is being made with respect to the negotiation of replacement contracts, TURN said.

Thus, TURN suggested that the Commission should defer launching Phase II(b) until there is some indication of progress with respect to the Sempra and Coral contracts that were identified in D.08-11-056 as the highest priorities for renegotiation, and seen as the biggest hurdles

due to their litigation. Absent progress on those contracts, DWR will not be able to exit the power supply business until October 2011 or July 2012.

"It makes little sense to expend significant party and Commission resources in 2009 unless there is a reasonable likelihood of success in dealing with those two contracts," TURN said.

Absent movement on these two major contracts, TURN suggested deferring Phase II(b) until early 2010. "That would leave almost two full years before the October 2011 date, and two and a half years before the July 2012 date, in which to complete Phases II(b) and III, which should be more than adequate time to conduct the necessary proceedings," TURN noted.

The decision as to the justness and reasonableness of the novated contracts should be straightforward if the contract is novated "as is," or keeps the same length but changes pricing, several parties noted. However, TURN argued that the Commission should not approve a contract in which the utility agrees to pay more than DWR was paying to the same supplier for the same product.

A more difficult situation arises if the replacement contract includes an extended delivery term in addition to revised pricing, TURN said. In such a case, TURN recommended that the revised contract pricing for the additional delivery period should be compared to current market prices for the same product over that same time period.

PUCT Extends Current Nodal Fee Through Feb. 28

Rather than approving a non-unanimous stipulation regarding ERCOT's proposal to increase its interim nodal fee, the PUCT ordered that the current fee of 16.9¢/MWh be continued with a sunset date of February 28, 2009, and strongly instructed ERCOT that ERCOT needs to act on an updated schedule and budget by that time. The non-unanimous stipulation would have set the fee at 22.6¢/MWh (Matters, 1/6/09).

The extended funding will cap monthly expenditures at \$12 million per month, which is ERCOT's current burn rate for nodal.

Commissioner Donna Nelson noted ERCOT's original application for a higher fee (38¢/MWh), with no specific sunset date, would have given ERCOT a blank check, and she was

still concerned about approving extension of the current fee, though ultimately voted for it.

Chairman Barry Smitherman told ERCOT that the nodal program can't be run by committee, and that the market design needs to be locked down. Smitherman recommended hiring a "field marshal" that would report directly to the PUCT to drag the nodal project over the finish line.

ERCOT said the board is to vote on an updated schedule at its February board meeting.

Briefly:

Only 1/3 of Nodal Benefits from Siting, CRA Says

Only \$181 million of \$520 million in net present value benefits from a nodal design in ERCOT come from improved siting, officials from ERCOT and CRA International reported at the PUCT open meeting. Chairman Barry Smitherman, noting some parties have pointed out that all of the efficiency benefit from locational price signals may not be possible because of environmental and siting restrictions (Matters, 1/8/09), asked for a breakdown of the nodal benefits. Some \$339 million in benefits would come from improved dispatch, CRA said, with \$181 million coming from efficient siting. Critics have questioned why generators are a main proponent of nodal when generators will supposedly be subject to a \$5.6 billion wealth transfer to consumers from the nodal market. But Smitherman noted that all generators will not fare equally under the nodal market. Resource owners with more efficient plants will likely be dispatched more often under nodal, which explains their support even if, collectively, wealth is transferred from generators to consumers under the market design.

Energy Services Group Applies for Six Additional REP Certificates

Subsidiaries of Energy Services Group applied for six additional REP certificates in Texas. The legal and trade names are:

Legal	Trade
TexRep5	Norwell Energy
TexRep6	Illumination Power
TexRep7	Saturn Power
TexRep8	Venus Power
TexRep9	Orrington Power

TexRep10 Eddington Energy

Each would meet financial requirements via unused cash resources of \$100,000. Currently four subsidiaries of Energy Services Group have REP certificates in Texas.

One Source Power Group Seeks Texas Aggregation License

Texas broker and channel partner One Source Power Group applied for a Texas aggregators certificate to pool commercial customers as well as cities and other political subdivisions. Principal Gary Patterson has held various business development and sales positions at First Choice Power. Principal Brad Cotton has a background in brokering, third-party vendor services, and retailing.

TCS Energy Seeks REP Certificate

TCS Energy, legally organized as Telecom Consulting And Services, applied for a REP certificate at the PUCT. TCS Energy would meet financial requirements via unused cash resources of \$100,000. Telecom Consulting And Services offers consulting for REPs and telecom providers regarding vendor selection, phone systems, call centers, merchant services, and other backoffice needs.

FirstEnergy Delays New Ohio Distribution Tariffs

FirstEnergy's Ohio distribution companies informed PUCO that they have agreed to delay implementing proposed distribution rates until January 22, 2009, the day after PUCO is expected to rule on the utilities' pending distribution case. The rates have been pending at PUCO for so long that, by law, FirstEnergy could implement the rates absent PUCO approval, with such rates not subject to refund. Though mostly addressing non-competitive delivery services, there is some overlap with generation supply, given the nature of the Ohio market. For example, under FirstEnergy's original application, the utilities would collect deferred fuel costs from the Rate Stabilization Plan from all customers via a nonbypassable fuel rider, a mechanism opposed by marketers during the proceeding (Matters, 12/24/08).

PUCT OKs Occidental LaaR Settlement

The PUCT approved a \$212,000 settlement with

Occidental Power Services for Load acting as Resource (LaaR) violations (Matters, 11/26/08). On December 12, 2007, Occidental Power Services failed to meet the requirement to deploy 95% of its 391 MW of scheduled LaaRs within 10 minutes of ERCOT instruction. Commissioner Kenneth Anderson, although voting to approve the stipulation, expressed concern that the amount was high for a self-reported violation for a company with no history of past violations, and wanted to make sure that the Commission incented self-reporting. Staff noted these types of LaaR violations are apparent to Staff, which prompts companies to self-report since violations will likely be detected regardless. Chairman Barry Smitherman reiterated his view that failure to meet LaaR obligations is a serious matter because the system is relying on that power.

REP Disclosures ... from 1

state on bills how customers may obtain the current rate at any time, such as through a phone number. REPs will have to disclose to only residential customers the historic prices of variable products.

Automatic renewals longer than 31 days will again be prohibited as in the current rule. Month-to-month products cannot include termination fees.

Commissioner Donna Nelson and Chairman Barry Smitherman both argued the ERCOT postcard process, which notifies customers of their switch and the rescission period, should end. Nelson noted consumers buy many other similar services, such as long distance and cellular service, without such a notification, and said that the postcard creates customer confusion, rather than aiding customers. Nelson added that if customers are slammed, customers are made whole after being transferred back to their provider of choice through the inadvertent switch process.

While noting the concerns expressed by TDUs regarding accelerating the switching process by using out-of-cycle meter reads, Smitherman contended that the switching process has to be faster, and that the current 45-day window is an impediment to the competitive market. Using a back of the envelope calculation, Nelson estimated that it

would cost between \$7 million and \$10 million per year to perform an out-of-cycle meter read for every switch, which Nelson said is not an unreasonable amount to ensure competition works efficiently.

ABC Law ... from 1

only allow Staff to request a delay in the licensing case of an ABC, stating that justification for excluding parties from making such requests is lacking.

Suppliers had recommended amending provisions in the proposed rules that would prohibit ABCs from presenting electricity pricing information in a manner that "favors" one supplier, in order to allow the ABC to follow the direction of the customer requesting the pricing information. For example, suppliers noted that the customer may request that the ABC present electric pricing of only certain, specified suppliers, which may be deemed as "favoring" certain suppliers under the rules.

Staff opposed the suggestion, stating that language in the proposed rule does not prohibit an ABC from presenting pricing information of only certain, specified suppliers. Rather, the proposal requires that the pricing information that is provided must be fair, as required by the statute, Staff explained.

For ABC reporting requirements, Staff removed the original proposal which would have compelled ABCs to report on the numbers of customers for which they attempted to procure service. Staff has determined that the number of attempts that did not result in procurement is not necessary, and that only the number of customers who actually procure service through the ABC will need to be reported under the revised draft.