

Energy Choice Matters

January 27, 2009

PUCT Staff Submit Proposal to Complete Switches Within Seven Days

PUCT Staff submitted a proposal for publication to complete ERCOT switches in less than seven days, by eliminating the ERCOT postcard and requiring TDUs to read meters within six days of a switch request (36536). The proposed changes would be reflected in the Tariff for Retail Delivery Service and Subst. R. §25.474.

The six-day requirement would be considered an "expedited meter read for the purpose of a switch," and would differ from an out-of-cycle meter read. The proposal requires the TDU to perform either an actual read or estimated read in the six calendar-day period. No charge would be imposed on the REP for the expedited read.

The six-day expedited process will typically take longer than out-of-cycle reads (which by tariff could be scheduled for longer than six days after a request, but typically are for the next day), but is meant to accelerate the switching timeline while lessening the burden and costs that would have been created by processing all switches under the out-of-cycle provision. The out-of-cycle meter read option will remain as a discretionary service available for a fee.

While Staff noted REPs will have to update their backoffice systems, Staff downplayed the impact on small or micro business REPs, noting that many use third party vendors for EDI services, and that such vendors, rather than REPs, would make the communication modifications needed due to the new rules.

TDUs would be given an opportunity to recover costs from the expedited meter read process upon proving the process has caused a "significant" increase in meter-related expenses. Such costs would

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Generators Assail NU/Nstar/HQ Proposal for Rebundling Energy, Transmission

A proposed arrangement among Nstar, Northeast Utilities and H. Q. Energy Services U. S. (HQUS) amounts to an, "attempt to rebundle the sale of energy with transmission service," which would take 1,200 MW of load out of the competitive market without providing an opportunity for existing or new resources to compete for such load, Indicated Generators said in a protest at FERC. The group included Mirant, NextEra Energy Resources (FPL Energy), and TransCanada Power Marketing (EL09-20).

Nstar and Northeast Utilities have proposed a 1,200-MW transmission line connecting Canada to southern New Hampshire to support a long-term PPA with HQUS, and have sought an exemption from open access and other Order 890 requirements based on the participant-funded nature of the project (Matters, 12/16/08).

But whether intentional or not, the Nstar/NU line, "bears the earmarks of an exercise of monopsony power," which would flood the market with supply, thereby "artificially" depressing prices, Indicated Generators claimed.

"The problem here is that two regulated utilities with standard offer supply obligations have negotiated a supply agreement to serve their load with energy and capacity from outside ISO-NE ... At bottom, NU and NSTAR thus seek to abandon ISO-NE's competitive energy markets in favor of bilateral arrangements that would recreate, albeit in a slightly altered form, the same unduly discriminatory circumstances that led the Commission to require the unbundling of the generation and

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BlueStar Says Staff Definition Would Weaken ABC Rules

A proposed Illinois Commerce Commission decision which would include Staff-suggested definitions for "attempts to procure" and "attempts to sell" electricity as part of rules to license agents, brokers and consultants would greatly weaken the protections afforded under the ABC Law, BlueStar Energy Services said in exceptions to the draft.

Staff added the definitions in response to recommendations from several brokers and competitive suppliers, who argued that a prior draft could have required professionals (such as accountants or lawyers) that perform activities that do not directly involve the representation of a buyer or seller in a proposed transaction for the provision of electric service to be licensed under the rules (Matters, 1/15/08).

Staff thus refined the definition of "attempts to procure" to mean: [1] taking action which constitutes a substantial step, such as but not limited to; soliciting offers, preparing a compilation of bids, or evaluating prices and terms, toward the purchase of electric power and energy; [2] by an individual or entity with authority from one or more retail electric customers to purchase or enter into a contract to purchase the services of a retail electric supplier on said retail electric customer's behalf.

BlueStar, however, contended that the second part of the definition does not reflect how the market actually works. In BlueStar's experience, the vast majority, if not all, of retail contracts are executed directly by the end use customer and the supplier, irrespective of whether or not an ABC was involved in advising the customer. The definition, BlueStar said, would thus exclude practically everyone, since ABCs rarely contract on behalf of customers.

The definition of "attempts to procure" should be altered to require that those individuals and entities that hold themselves as experts in the field must be licensed by the Commission, BlueStar recommended. "The requirement of having power to sign contracts for a customer is irrelevant and should be discarded," BlueStar said.

BlueStar suggested replacing the second part of the definition with language covering any entity that, "holds itself out as expert,

authoritative, or experienced in the field of electric power procurement, or other words calculated to give that impression."

BlueStar also noted that the proposed definition of "attempts to sell" differs from statute because the proposal only covers ABCs that receive compensation, salary or other remuneration from an electric supplier. Statute, BlueStar pointed out, did not limit the source of compensation to an electric supplier, but rather speaks to compensation, "from any third party."

The Illinois Energy Professionals Association and Retail Energy Supply Association, however, sought to enumerate specific actions which are not covered by "attempts to procure." Specifically, ILEPA/RESA argued that the phrase "attempts to procure" should not include evaluation of pricing; review and advice on terms and conditions of retail electric service or the comparison of offers regarding retail electric service; or the rendering of legal advice, accounting, or any other professional service that is incidental to the procurement of retail electric service.

ILEPA/RESA also repeated arguments to allow for telephonic disclosure of ABC remuneration, and to limit intervention and complaints in ABC proceedings at the ICC, which were rejected by the proposed decision.

Customers Rebut Turris Commission Explanation

Nine customers of broker Turris Associates challenged Turris' response to the Connecticut DPUC regarding customer complaints about the commission embedded in their electricity contracts, and the nature of the electricity products provided (Matters, 1/22/09). The group included Southington Water District and several local boards of education.

A central issue in the complaint is a 1 mill/kWh broker fee collected from customers, when customers were only informed of a 0.665 mill fee. Turris had told the DPUC that the remaining 0.335 mills was commission for its partner Arum Associates, and that Arum had the responsibility, and had failed, to disclose the extra commission to customers.

However, the group of customers, including the Southington Water District, alleged that the 1 mill broker fee was being collected by Turris

even before Turriss entered a formal agreement with Arum Associates. Turriss never disclosed any additional fees to be paid to Arum Associates in any event, customers claimed.

The customers also rebutted Turriss' claim that customers were represented by counsel Jennifer Janelle in negotiating all of the electricity contracts with Constellation NewEnergy.

The customers alleged that Raymond Sanzone, president of Turriss, made representations to customers concerning the contracts, including that they could get out of the contract and return to standard offer service rates at any time, and that customers could assign or sell power from their contract to other customers in Massachusetts or New Hampshire, because rates in those areas were higher. Such actions are not permitted under the CNE contracts, customers said.

Customers requested that if their allegations are proven true, that there be an accounting and repayment of losses incurred under the contracts, including due to the additional commission as well as, "other losses related to the inappropriateness of the CNE electricity contract versus standard offer rates." Customers complained of capacity charge pass-throughs included in the contract, which, for Southington Water District, have contributed to costs that are \$60,000 higher than what the district would have paid under standard offer rates, according to the customers.

NextEra Seeks to Overturn CEI Fuel Rider Deferrals

NextEra Energy Resources (FPL Energy) petitioned for rehearing of PUCO's decision to allow the deferral of Rider FUEL costs at Cleveland Electric Illuminating, if purchased power costs exceed amounts collected through the rider.

Rider FUEL will recover purchased power costs above the current base generation prices at the FirstEnergy distribution utilities, resulting from an RFP for interim supplies through March 31, 2009.

Though FirstEnergy had requested deferral of any difference between actual costs and the amounts authorized in Rider FUEL, PUCO found a quarterly reconciliation mechanism would

ensure appropriate recovery, and denied deferral of such costs at Toledo Edison and Ohio Edison. However, at Cleveland Electric Illuminating, PUCO did authorize appropriate accounting authority to defer, with carrying costs, any amount for purchased power that exceeds the authorized amount in Rider FUEL for future recovery plus the current unbundled generation revenues for CEI's customer classes.

NextEra called the decision anticompetitive, and contrary to various sections of the Ohio Revised Code that make it state policy to ensure customers have the availability of competitive supply, and to promote large-scale governmental aggregation.

NextEra noted PUCO rejected a deferral of generation costs in FirstEnergy's electric security plan (ESP), after Staff testified such deferrals would be anticompetitive and would distort Standard Service Offer (SSO) prices.

"If the deferrals are authorized only for SSO generation rates, FirstEnergy will succeed in doing in this proceeding what it was prevented from doing in the ESP Proceeding - implementing an anti-competitive deferred generation charge for SSO customers only," NextEra said.

The deferral would also give FirstEnergy's SSO suppliers a competitive advantage over competitive retail suppliers, NextEra argued, as FirstEnergy would pay SSO suppliers the full rate, and assume the suppliers' obligation to finance and collect the future revenues created by the deferrals. On the other hand, if competitive retail suppliers were to attempt to compete with the SSO by matching FirstEnergy's deferrals, they would be required to finance and collect their future revenues themselves, NextEra noted.

Thus, absent a reversal of the deferral decision, NextEra alternatively argued FirstEnergy should provide customers on competitive supply a bill credit equal to the SSO deferral amount, which would then be collected via a nonbypassable charge when the deferrals are paid off. Such a mechanism would make the deferrals competitively neutral.

NextEra has executed a letter of intent to provide electric supply to the Northeast Ohio Public Energy Council's 600,000 eligible customers in Ohio Edison's and Cleveland Electric Illuminating's service territories.

NextEra and NOPEC are in the process of finalizing a full requirements power supply agreement to serve NOPEC's load, commencing in April 2009.

Customers Oppose Fuel Deferrals at Dayton Power

Dayton Power & Light's request to defer fuel and purchased power costs for the next two years was opposed by a host of parties, including the Ohio Consumers' Counsel and Kroger.

As part of its electric security plan, DP&L proposed retaining the Standard Service Offer rates contained in the Rate Stabilization Plan for 2009 and 2010, but deferring fuel and purchased power expenses incurred from January 1, 2009 through December 31, 2010, which DP&L says are not being recovered in current rates. Deferrals would be paid back over 10 years starting in 2011.

Kroger attacked the deferral mechanism as depriving customers of the of the "benefits of the bargain" contained in the Rate Stabilization Plan, which increased DP&L rates by 11% of the tariffed generation rates in effect January 1, 2004, and also established the Environmental Investment Rider, which annually increases generation rates by 5.4%. The Rate Stabilization Plan provided assurance of increased revenues for DP&L in exchange for rate stability, Kroger noted.

As such, collecting fuel deferrals under the Rate Stabilization Plan constitutes a "one-sided 'second bite at the apple'" that should be rejected outright, Kroger said.

Kroger protested that under DP&L's fuel deferral proposal, customers would be responsible for the incremental cost of any purchased power expense, but would not receive a reciprocal credit from non-jurisdictional sales made by DP&L. "Such an asymmetrical arrangement is unreasonable," Kroger argued.

Kroger also contended DP&L has not provided clear evidence that the Company is unable to recover its fuel and purchased power expense under current rates.

Briefly:

Proposed House Rules Would Eliminate Regulated Industries Committee

The Texas House Regulated Industries

Committee, which currently has jurisdiction over electricity issues, would be eliminated under proposed rules for the body filed by Rep. Burt Solomons, R-Carrollton, and which coincide with the rise of new Speaker Joe Straus, R-San Antonio. Regulated Industries' work would be divided among existing committees, with State Affairs picking up some electricity issues. The elimination of the Regulated Industries committee would also leave current chair Rep. Phil King, R-Weatherford, without a post. King had been an ally of former speaker Tom Craddick, and had been instrumental during the 2007 legislative session in crafting a final version of SB 482, the retail market reform bill, such that it did not survive a floor vote.

Eltife Files Bill to Delay SWEPCO Transition to Competition

Texas Sen. Kevin Eltife, R-Tyler, filed legislation meant to delay the introduction of competition in the AEP-SWEPCO service area, by establishing a transition to competition that requires legislative approval before competition can be implemented. The bill would require that a transition to competition be developed (similar to the ERCOT process of determining a qualified power region, an unbundling process, and price to beat), but would also require the PUCT to report to legislators on whether the utility can offer fair competition and reliable service to all retail customer classes. Lawmakers would then vote on whether to authorize retail competition at SWEPCO.

FreeEnergyBid.com Seeks Texas Aggregator License

FreeEnergyBid.com applied for an aggregator certificate at the PUCT. The online broker currently offers service to Texas and Illinois electric customers and Illinois gas customers. CEO Michael J. Gilbert was previously a sales rep for Ambit and Zurvita (MXenergy's multi-level marketer), and has background in the wireless industry and web software development. Gilbert founded and runs a consulting business for small businesses and start-up entrepreneurs.

TXU Cutting Prices for New Customers

TXU Energy announced it is lowering prices for new customers up to 15%, starting February 1. During the last legislative session in 2007, TXU

cut prices 15% for customers on its legacy price to beat product.

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be recovered through a surcharge which could not be used to retroactively recover costs, and could not be reconciled. TDUs would not be permitted to create a regulatory asset to recover such costs. The surcharge would be eliminated in the next general base rate proceeding.

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transmission functions in Order 888," Indicated Generators charged.

NRG Energy argued that the price of the capacity HQUS proposes to import is far above the prices currently paid by NU and Nstar, as the Indicated Generators noted the capacity cost of the new generation facilities developed by Hydro Quebec are approximately \$4,000 per kW, not including the cost of the transmission lines. Such costs are substantially more than the \$560 to \$620 per kW cost of new entry used in the Forward Capacity Market. Although the price NU and Nstar will pay is not in evidence, there is the possibility, based on such Hydro Quebec capacity costs, that NU and Nstar will buy capacity from HQUS on a bilateral basis at a cost that far exceeds the price set in the Forward Capacity Market. Yet the introduction of such out-of-market power to ISO-NE as a price taker will only further depress FCM prices, creating a dual pricing system under which HQUS would receive higher prices than existing generators or other new entrants, Indicated Generators cautioned.

However, the Connecticut DPUC, along with the state's Office of Consumer Counsel, supported the structure of the project, noting that bundling transmission costs into the cost of wholesale power is a benefit which will aid comparison of resource options. Including the transmission costs in the wholesale price will allow regulators and consumer advocates to evaluate the economic benefits of the transaction in relation to other power offerings, and also avoid disputes over the allocation of costs for new transmission, the DPUC said.

The DPUC noted that costs of the new transmission will be borne by those LSEs who

choose voluntarily to purchase power and therefore benefit from the construction of new transmission facilities for the PPA. LSEs will be free to buy or choose not to buy the power offered as their own interests dictate, the DPUC said.

The DPUC stressed that while it supported the structure of the transaction, it took no position at this time with respect to the particular rates, terms, and conditions of service that will be embodied in the contracts contemplated by the NU/Nstar proposal.

Generators also attacked NU and Nstar's characterization of the line as a merchant facility. Indeed, EPSA, the New England Power Generators Association and the Independent Energy Producers of Maine alleged that, "The proposed transactional structure set forth for approval represents an awkward and confusing methodology that appears designed to escape evaluation by the Commission under the criteria that have been developed for proposals to charge negotiated rates for new transmission facilities."

Due to the bundled nature of the transmission investment and wholesale power transaction, it will be impossible to determine whether the transmission component is "market-based" as NU and Nstar claim, EPSA and NEPGA said. If the transmission component was a market-based rate, FERC could evaluate the proposed transaction under ten criteria it has applied to other merchant transmission facilities, NEPGA and EPSA said.

Several generators distinguished the NU/Nstar project from the Cross Hudson case, a project FERC determined was a generator lead line and not an integrated transmission facility, and thus not subject to open access.

EPSA and NEPGA noted the proposed DC tie to be built by NU and Nstar would not connect to a specific generator, as a lead line would, but is rather meant to access "system power" from Quebec. As the NU/Nstar line will be interconnected with, and integrated into, the ISO-NE transmission grid, the line does not qualify for open access waivers, PSEG Power added.