

# Energy Choice Matters

*February 16, 2009*

## **PUCT Staff Find Hudson Energy JV Name to be Duplicative**

In a move that only adds uncertainty to an already nebulous issue for REPs, PUCT Staff found a REP application from Hudson Energy JV, a subsidiary of REP Hudson Energy Services, to be deficient, due to the lack of a trade name distinct from its parent (Matters 1/28/09).

Staff cited P.U.C. Subst. R. 25.107(e)(1)(B), which states that business names shall not be "deceptive, misleading, vague ... or duplicative of a name previously approved for use by an existing REP certificate holder."

Staff believes that the proposed name Hudson Energy JV, "is particularly confusing for retail electric customers because the applicant is duplicating the parent company's territory and services," recommending that Hudson submit a new trade name for the applicant.

While the rule has been invoked during the application review process before, prompting applicants to submit new names, there does not seem to be any bright-line test for what naming structure is considered duplicative or vague, as several REPs hold multiple certificates with the same or very similar names.

As recently as October, two new Reliant Energy affiliates -- Reliant Energy Texas Retail (certificate #10178, docket 36276) and Reliant Energy Services Texas (certificate #10177, docket 36283) -- received REP certificates, with only those legal names, and no other trade names listed under Part 7 of their certificate applications (although "Reliant Energy" was listed as the trade name in use at each's Texas office).

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## **Mich. ALJ Would Deny AG's Plea for PSCR Surcharge for Returning Choice Customers**

A Michigan PSC ALJ rejected arguments from the Attorney General that choice customers returning to Detroit Edison bundled service should pay higher power supply cost recovery (PSCR) surcharges in order to hold bundled customers harmless, in a draft decision on reconciling Detroit Edison's 2007 PSCR (U-15002-R).

The Attorney General sought to impose a PSCR underrecovery surcharge of \$0.02342/kWh for returning electric choice customers, while limiting the surcharge on other bundled customers to \$0.00028/kWh, to recover \$26.9 million in incremental PSCR costs related to increased load returning to Detroit Edison. As a result of higher bundled sales from more returning choice customers than forecast, Detroit Edison paid more for fuel and purchased power than it had planned at the beginning of 2007. According to the AG, Detroit Ed purchased 8,422 GWh of power rather than its projection of 5,028 GWh, at a cost of \$70.81/MWh, versus the \$24.52/MWh costs for all power, purchased and internally generated, inclusive of emissions control costs.

The AG's proposal was opposed by PSC Staff, Detroit Edison, and the Association of Businesses Advocating Tariff Equity, since current PSC return to bundled service provisions do not call for surcharges on customers following Commission notice and minimum stay procedures. Furthermore, Detroit Edison argued that increased revenues from returning customers were used

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## FERC Approves New Forward Capacity Market Provisions

FERC accepted several revised and new market rules for ISO New England's Forward Capacity Market, which mainly provide for processes to implement existing market rules whose details had not been codified yet. The new language mostly relates to the reconfiguration auctions and use of bilateral contracts to supplement supply obligations (ER09-356).

In approving the ISO-NE filing, FERC agreed with a protest from Mirant concerning the role for local transmission owners in deciding whether to approve a Capacity Supply Obligation Bilateral contract, taking into account local reliability issues. ISO-NE had stated it intended to "defer" to individual transmission owners in deciding whether to approve a Capacity Supply Obligation Bilateral, which FERC found to be inconsistent with the principle that an RTO's decision-making authority should be independent of any single market participant. Since NEPOOL said in an answer that the local transmission owners' role will still remain subject to the ultimate oversight of ISO-NE and FERC, the Commission required ISO-NE to revise the language in a compliance filing to capture that intent, and reflect that the ISO will make the final determination on accepting a Capacity Supply Obligation Bilateral.

FERC also ruled that ISO-NE's proposed requirement for price reporting of bilaterals does not require parties to disclose their negotiated price associated with the Capacity Supply Obligation Bilateral to ISO-NE, but simply provides parties the optional ability to use its settlement software.

The Commission refused to accelerate ISO-NE's proposed timeline for a stakeholder process to address to most contested issue -- ISO-NE's use of different reliability standards in different contexts. Generators had urged that any filings to implement revisions resulting from the stakeholder process should be made prior to several Forward Capacity Market deadlines in December 2009, such as the deadline for de-list bids.

However, FERC noted that the complex nature of the process may not lend itself to such a quick resolution. Accordingly, it did not require ISO-NE to file any changes before the ISO's proposed filing date of February 20, 2010, which will still allow the changes to be implemented ahead of the fourth Forward Capacity Auction, but will create uncertainty for suppliers facing deadlines ahead of that filing date.

### ***Briefly:***

#### **N.Y. PSC Says HEFPA Prohibits Residential Prepaid Products**

"There is no place for prepayment among the services to be offered to residential customers in New York State," the New York PSC ruled in its final written order on advanced metering infrastructure functionality (09-M-0074, Matters, 2/15/09). While a few parties in previous advanced metering proceedings proposed that prepayment capability be included in smart meters, the PSC found that, "there is no prospective use of prepayment meters that does not conflict with HEFPA [Home Energy Fair Practices Act]." Under the Public Service Law and Commission regulations, customers have the right to a reasonable billing interval, and written notice, among other things, before service can be terminated for nonpayment, the PSC said, which could not occur with prepaid products.

#### **Hess Wins UI LRS Load**

Hess Corporation won all of United Illuminating's available Last Resort Service load for the second quarter of 2009, UI reported to the DPUC last week.

#### **Gasearch Applies to Serve Smaller C&Is at Dominion East Ohio**

Ohio-based marketer and aggregator Gasearch applied at PUCO to serve small and large commercial retail choice customers at Dominion East Ohio. Gasearch has been serving General Transport C&I customers at DEO since 2000, and currently serves 130 meters, for about 724,000 mcf annually.

## **Energy Advisory Service Seeks D.C. Broker License**

Energy Advisory Service applied for a natural gas aggregator-broker license at the District of Columbia PSC. EAS intends to broker commercial accounts.

## **TMERGE in Default of MISO Obligations**

The Midwest ISO reported that marketer TMERGE, LLC has been found to be in default for failure to cure a Total Potential Exposure violation. Prior to the default, TMERGE voluntarily terminated its Market Participant status. It's the third MISO participant to have been publicly identified in default by MISO since January, as MISO resettles Revenue Sufficiency Guarantee charges to impose the fees on virtual supply offers. In a separate filing, MISO withdrew its prior request for FERC guidance on when it can release the amounts owed under a default publicly (Matters, 1/22/09). MISO said it would first discuss the issue at the stakeholder level, and bring any proposal before FERC in a formal tariff filing. MISO members have made numerous inquiries regarding the identity and amount owed by Market Participants in default, but MISO at this point has treated such information as confidential, as its tariff is silent on whether such data can be disclosed prior to the MISO determining such amounts are uncollectible, at which time the information is posted on OASIS.

## **ERCOT Issues Second Uplift from Summer Defaults**

On February 19, ERCOT will send invoices totaling \$1.66 million to QSEs representing LSEs based on their Load Ratio Share in November 2008, representing the uplift of short-payments by defaulting QSEs for invoices due 6/21/08 – 07/12/08. The uplift is the second associated with the summer 2008 defaults of QSEs Pre-Buy Electric, LLC, National Power Company Inc., Hwy 3 MHP LLC, Sure Electric, and Leach Energy Trading LLC. The payment due date is February 26, with funds distributed to previously short-paid entities on February 27. A total of \$4.7 million was short-paid due to

the summer defaults.

## **PUCT to Reconsider Energy Services Group REP Applications**

A PUCT ALJ withdrew a prior order dismissing the REP applications from subsidiaries of Energy Services Group, in light of supplemental information provided by the applicants. Staff was given until Feb. 27 to review the additional materials, which address Staff concerns about the use of the same individuals for compliance with managerial and technical qualifications at all six applicants, as well as three current REPs (Matters, 2/13/09).

## **Texas Utility Solutions Re-files for Transmission Service**

QSE and competitive metering provider Texas Utility Solutions petitioned the PUCT for a declaratory order of its eligibility as a transmission service customer for wholesale transmission service from CenterPoint Energy. Texas Utility Solutions, a registered power marketer, argued both PURA and the PUCT Substantive Rules deem power marketers as eligible to receive the service. Texas Utility Solutions had originally sought relief from the Commission in January, (Matters, 1/19/09), but the petition was dismissed because Texas Utility Solutions had not first pursued alternative dispute resolution.

## **Ameren Merchant Generation Earnings Up in 2008, Fall in Q4**

Core earnings, which exclude mark-to-market impacts, at Ameren's unregulated generation subsidiary were \$336 million for the year 2008, up from \$304 million in 2007, on improved generating plant output and higher realized margins. GAAP earnings for non-rate regulated generation in 2008 were \$352 million compared to \$281 million in 2007. Fourth-quarter GAAP earnings for the merchant unit were \$68 million, down from \$84 million a year ago. In projecting flat consolidated earnings for 2009, Ameren said it expects, among other things, that lower power prices for unsold merchant generation will continue throughout 2009 and perhaps

longer. Ameren Corporation reported consolidated 2008 net income of \$605 million on a GAAP basis, compared to 2007 net income of \$618 million, ahead of a Tuesday earnings conference call with investors.

### **PPL EnergyPlus Signs 10-Year Deal for Solar RECs**

PPL EnergyPlus has signed an agreement to purchase New Jersey Solar Renewable Energy Certificates from SunPower Corp. over the next ten years. SunPower said it expects to use revenue from the sale of the solar RECs to finance the construction of approximately 2.5 MW of new solar power projects in New Jersey by 2010.

### **CME Group Launches 34 New Electricity Swaps**

CME Group Inc. announced 34 new electricity swap futures contracts, scheduled to begin trading on February 22 for trade date February 23, covering PJM, New York ISO, ISO New England, and the Midwest ISO. Peak contracts will be 80 megawatt-hours in size and off-peak contracts will be five megawatt-hours.

### **AES to Retire Two N.Y. Units**

AES informed the New York PSC that will retire two units totaling less than 100 MW on December 31, 2009, consistent with a consent agreement between the IPP and the state's environmental department. The units are AES Greenidge Unit 3 (55 MW) in Torrey, New York, and AES Westover Unit 7 (40 MW), in Union, New York.

### **Pepco Energy Services Wins DESC Contract**

Pepco Energy Services was awarded a \$7.6 million fixed price, three-month contract for electric services from the Defense Energy Support Center for army, air force and federal civilian installations in Maryland and New Jersey.

### **Md. PSC Suggests Lifting Ownership Restriction on Net Metering**

Large scale solar installations could be facilitated in Maryland by removing the

requirement that customers are only eligible for net metering where they own and operate the facility to be net metered, the Maryland PSC said in a report to lawmakers on net metering. Removing this requirement would allow developers to finance, build and own systems, and retain RECs from production, while allowing the customer to net meter the electricity, the Commission said. Developers of large-scale rooftop solar installations on commercial properties prefer to own and operate such systems, the PSC noted, which now disqualifies them from net metering. Combined Heat and Power should also be considered for net metering eligibility, the PSC added. The 2.45 MW of installed net metered generation as of 2008 is only 0.16% of the state's 1,500 MW limit, and thus the Commission does not view the limit as a barrier to distributed generation. The 2.45 MW installed is a nearly seven-fold increase from the 2007 total of 364 kW.

### ***REP Names ... from 1:***

In each case, Staff noted that current REP certificate holders had "similar names" related to the same parent company (e.g. Reliant Energy, Inc.), but recommended approval of the applications since there was no name in current use that is "identical" to those in the application. However, in more recent Reliant applications, the name issue may have been interpreted differently (see below).

Similarly, Direct Energy (certificate #10040) acquired Strategic Energy, and last September received approval to change Strategic's REP certificate (#10011) to Direct Energy Business, LLC. Not only do both certificates use the Direct Energy name, but more specifically Direct Energy, under certificate #10040, had previously in 2003 received approval to use the trade name Direct Energy Business Services for certificate #10040. The PUCT's REP list does not list any amendment to the certificate removing that name (and the name was still listed as a trade name in Direct's June 2008 annual report).

Likewise, REP certificate #10036 belongs

to SUEZ Energy Marketing, NA, Inc., while certificate #10053 belongs to SUEZ Energy Resources, NA, Inc. TXU Energy Retail Company (#10004) and TXU SESCO Energy Services Company (#10041) are other separately certificated entities with similar names.

Perhaps the best example of what can only be described as ambiguity in the rules' application or interpretation can be seen in Liberty Power, which holds four REP certificates. Originally, Liberty Power Corp. was certified as REP #10059. In 2005 it sought a second REP certificate for legal entity Liberty Power Texas LLC, whose name was found by Staff to be duplicative. Liberty then amended its application to be certified as LPT L.P. (#10118). However, Staff did not raise the same objection in 2006 when Liberty Power applied for, and was granted, two additional REP certificates with the name Liberty in them: Liberty Power Holdings (certificate #10131) and Liberty Power Delaware (certificate #10132).

A REP desiring to transact under one brand may seek additional certificates for several reasons, driven in large part by third parties. Creditors, for example, may require that the REP ensure load associated with a specific credit facility be bankruptcy remote, requiring a unique legal entity which requires a unique certificate. Similarly, a REP's creditor or supplier may restrict the types of contracts the REP sells to reduce counterparty risk. The REP, not wanting to be limited in such fashion, creates another certified entity to serve customers on products it can't serve due to counterparty restrictions.

But REPs seeking new certificates are put in a box when it comes to naming because of several Commission substantive rules. First, P.U.C. Subst. R. §25.107(e)(1) requires that, "All retail electric service shall be provided in the names under which the certificate was granted."

Furthermore, under the currently published Substantive Rules for customer protection (which are due to be replaced shortly, though a final written order from the Commission has not yet been released in

docket 35768), all advertisements must include the REP's certified name and certificate number. The requirement will generally remain under the Staff proposal adopted by the Commission in January, as all print ads, electronic ads on the internet, and websites must include the REP's certified name or Commission authorized business name, and certificate number, though final language has not been released (P.U.C. Subst. R. §25.475).

Thus, to ensure consistent branding, and cut down on costs (e.g. producing different ads with the names of specific legal entities), REPs have an incentive, if seeking multiple certificates, to have the names as similar as possible, and, if permitted, be allowed to use the same generic trade name for several legal entities. But in doing so, they run up against the Commission's rule preventing duplicative or otherwise confusing names.

Although it is not clear from filings if the reasons are related, Reliant Energy has applied to relinquish the REP certificates of two of its subsidiaries: Reliant Energy Solutions (#10006) and StarEn Power (#10012), rather than seeking amendments to the certificates, as originally intended. Only Reliant Energy Solutions currently serves load.

Reliant had informed the PUCT that the two REPs had been folded into the legal entity Reliant Energy Retail Services, LLC (REP #10007), and sought amendments to reflect the new legal structure (Matters, 1/22/09).

However, on Friday, Reliant withdrew the amendment requests, instead filing to relinquish REP certificates #10006 and #10012, and to add the trade name Reliant Energy Solutions to the REP certificate of Reliant Energy Retail Services (in place of trade name Reliant Energy Green Resources). Customers of Reliant Energy Solutions would be served by Reliant Energy Retail Services, although still under the trade name Reliant Energy Solutions.

***PSCR ... from 1:***

to offset the Regulatory Asset Recovery Surcharges.

The ALJ agreed, finding that the AG's proposed surcharge for returning customers should be rejected, since it is inconsistent with the Commission's return to service requirements. Only customers not following those requirements, which set various notification deadlines and minimum stays, should be liable to pay the incremental cost of electricity, the ALJ said.

The ALJ also refused to disallow certain replacement power costs associated with an outage at Detroit Edison's Harbor Beach Unit 1.