

Energy Choice Matters

March 25, 2009

ICC Staff Does Not Object to Removal of All-In/All-Out Provision in Ameren POR Program

The Ameren Illinois utilities' proposed all-in or all-out provision in their Purchase of Receivables program, "comes at a heavy price," Illinois Commerce Commission Staff said in testimony, adding that Staff, "will not object," to calls from two retail marketing coalitions to remove the provision (08-0619 et. al.).

Ameren has proposed requiring competitive suppliers to place all customers in a customer class grouping on POR in order to participate in the program, to avoid the cherry-picking of good credit customers for dual billing or supplier consolidated billing (Matters, 2/25/09).

While Staff agreed there could be additional cherry-picking by suppliers without the all-in or all-out provision, Staff also said the provision would potentially limit the appeal of the POR program to only suppliers that are not capable of dual billing or supplier consolidated billing. Accordingly, Staff said it will not object to the recommendation by the Illinois Competitive Energy Association and Retail Energy Supply Association to remove the all-in/all-out requirement.

However, Staff said Ameren should track the number of commercial accounts on supplier consolidated billing for suppliers that also use POR and utility consolidated billing. If the number of accounts on supplier consolidated billing grows within a year after the implementation of POR to a level that, in Ameren's assessment, would impact its average historical bad debt rate, Ameren should submit a tariff filing at that time to institute an all-in or all-out POR requirement, Staff recommended.

Dominion Retail, however, supported the all-in/all-out provision in rebuttal testimony, arguing it

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Integrys Marketer Seeks Declaratory Order on Customer Price Disclosure Under Co-op Deal

Integrys Energy Services sought a declaratory ruling from the Illinois Commerce Commission regarding the applicability of Sections 16-115A and 16-115C of the Public Utilities Act, and Section 2EE of the Consumer Fraud and Deceptive Trade Practices Act, to a supply agreement the marketer has with New Illinois Cooperative Energy (NICE).

Integrys Energy Services and NICE previously entered into an agreement whereby NICE will offer its members electricity to be supplied by Integrys Energy Services (Matters, 10/8/08). NICE is responsible for marketing its product to the public, and Integrys Energy Services will not itself be engaged in the sale of the product to customers.

The agreement between Integrys Energy Services and NICE provides that Integrys Energy Services, as an alternative retail electric supplier, will supply NICE's members with electricity at a per-kWh program rate that is based on Integrys Energy Services' costs to supply the program, and includes a fixed margin for Integrys Energy Services, a component for bad debt, and a true-up component. Initially, the bad debt component can vary based on actual customer payment practices. The true-up component is required because the costs to supply the program cannot be

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Calif. Staff: Penalties Possible for Chronic Underforecasting of RA Requirements

California load serving entities may be subject to penalties in the future if a pattern emerges of continued significant differences between actual historical information and load forecasts submitted by LSEs for Resource Adequacy (RA) compliance purposes, California PUC Staff said in a report on the RA program.

Staff reported that as with previous compliance years, the California Energy Commission has been required to "significantly" adjust LSE year-ahead forecasts due to "implausible" LSE customer retention assumptions. After the compliance year, the Energy Commission reviews load forecasts for a given compliance period against actual observed loads from that period.

So-called plausibility adjustments are concentrated in a relatively small number of LSEs, Staff said. Only three electric service providers (ESPs) were responsible for the entirety of all upward plausibility adjustments, and a single ESP required on average 73% of all upwards plausibility adjustments in the 2008 compliance year. Of the three ESPs that required plausibility adjustments in the 2008 compliance year, two of them also required a plausibility adjustment in the 2009 year-ahead forecast, Staff said.

While there have been no enforcement actions taken in response to any repeated pattern of forecast discrepancy for any particular LSE, "there are those [LSEs] that continue to require plausibility adjustments each year," Staff said, noting enforcement action may be possible in the future.

Although plausibility adjustments continue to be a problem, monthly net migration adjustments made to LSE forecasts during the year continue to fall. Net load adjustments since 2006 have fallen an average of 78% when comparing the months of June through December 2006 with the months of June through December 2008.

Staff reported that overall compliance in 2008 was similar to the successful pattern

seen in previous years, though the number of citations issued per year is increasing, from three in 2007 to seven in 2008. LSEs cited in 2008 include 3Phases Renewable (twice); Commerce Energy (twice); Corona Department of Water & Power; Sempra Energy; and Shell Energy. Some \$14,500 was collected from cited entities in 2008.

Although 2008 saw a large improvement in the quality of RA compliance filings, recurrent minor errors still occur. Such errors include: filing late; listing units that are within 60 days of commercial operation date; filing information for the incorrect month; filing units that were affected by the outage counting protocol; inaccurate reporting of demand response, Reliability Must-Run, or import allocations; incorrect CAISO resource IDs; and a number of other small errors.

For every month of 2008, PUC-jurisdictional LSEs satisfied their individual and collective system RA requirements. The total MWs of RA resources procured exceeded the total system RA requirements by between 1% and 25% , depending on the month.

In all months, capacity available to CAISO exceeded the monthly peak load. However, in the peak month of June 2008, actual peak load of 46,789 MW exceeded the aggregate RA obligation of LSEs within the CAISO (45,651 MW). Backstop capacity procurement was not required because LSEs actually provided more RA resources than required, committing 51,038 MW.

The trend from 2007 of reduced use of backstop procurement by CAISO via Reliability Must-Run and FERC Must-Offer Obligation (MOO) procurements continued during 2008. CAISO's FERC MOO costs in 2008 were only 1% of the 2006 value. Staff said the decline in backstop procurement to meet operational needs is a key metric of the success of the RA program.

OCC Files Complaint Against Dominion Retail Over Postcard

The Ohio Consumers' Counsel filed a complaint against Dominion Retail at PUCO over what OCC alleges are "unfair, deceptive

and misleading," marketing practices -- specifically a postcard regarding the move to the Standard Choice Offer at Dominion East Ohio (Matters, 3/16/09).

As previously reported, the mailer, under Dominion Retail's Dominion East Ohio Energy trade name, informed customers that the LDC, "will no longer provide natural gas supply service for your residence," referencing the fact that individual SCO suppliers will now serve specific customers.

However, OCC alleged that such a statement, "is misleading and prone to cause the customer to excess worry or to have concern that they may soon be completely cut off by the gas company."

OCC also alleged that the mailer was misleading because the Dominion East Ohio Energy trade name, "is very similar to the Dominion East Ohio name."

"Only the most observant and knowledgeable customer would be able to distinguish the difference, and then only if the two names were side by side — something that the postcard avoided," OCC said.

Additionally, OCC objected to the postcard's use of the Dominion corporate logo, and the fact that an affiliate disclaimer is on the opposite side of the postcard than the information relating to customers and the SCO. The font size of the affiliate disclaimer, "was smaller than any other font appearing on either side of the post card, and significantly smaller than the Dominion name or logo," OCC said.

OCC also noted that PUCO Staff had previously issued Dominion East Ohio Energy a "notice of Probable Non-Compliance" regarding a previous mailer regarding the SCO sent out during last summer.

OCC requested that PUCO require Dominion East Ohio Energy to allow any customers receiving the postcard who subsequently enrolled with the marketer to cancel the contracts without penalty. Furthermore, the Commission should require Dominion East Ohio Energy to receive approval from PUCO Staff, with an opportunity for OCC review, for all future residential customer letters, postcards, bill inserts, or any other solicitation or customer

contact materials.

PUCO should also prohibit Dominion East Ohio Energy from using the Dominion name and logo as part of its corporate name in Ohio, and on any materials sent to customers, OCC said.

OCC suggested a forfeiture of not more than \$10,000 per day for any violation or failure found by PUCO. OCC alleged Dominion East Ohio Energy's actions violated Ohio Admin. Code 4901:1-29-03(A)(1) and 4901:1-29-05(C), relating to deceptive marketing.

Direct Energy Favors CREZ Dispatch Priority for Existing Generators

Stating that existing generators have, "made the supreme financial commitment," Direct Energy argued that the PUCT should provide existing renewable capacity in a Competitive Renewable Energy Zone (CREZ) with the highest dispatch priority (34577, Matters, 9/30/08).

Commission Substantive Rule 25.174(e) provides that establishing priority may be based upon a number of factors, including financial commitments of the developers in accordance with the CREZ rule, Direct noted.

AES Wind Generation suggested a tiered approach with the following priority:

(1) Existing wind generators with supporting financial commitment testimony in docket 33672;

(2) Planned wind projects with supporting financial commitment testimony;

(3) Existing wind projects without supporting financial commitment testimony; and

(4) Planned projects without supporting financial commitment testimony.

Direct Energy argued that a financial mechanism such as a congestion revenue right (CRR) provided to the priority CREZ generators will accomplish the goal of protecting the investment of developers while deterring overbuilding. Direct Energy believes a Point-to-Point Option is the only CRR mechanism that would provide protection commensurate with the financial commitment

of CREZ generators, and said that the amount of CRR allocation should be based on nameplate capacity. The length of the CRR allocation should be at least 10 years, "in order to be consistent with the length of commitment required to financially support renewable energy development," Direct added.

PSEG Texas, however, argued that priority dispatch rights, whether physical or financial, would provide discriminatory access to certain generators while disadvantaging others in violation of PURA.

"Creating priority dispatch rights will unduly prefer one category of generators over another, disadvantaging and creating disincentives for other categories of existing, and future, generators," PSEG Texas said in calling for a, "level playing field for all competitors, without carving out special rules for certain categories of participants."

SCE Reports Expected Dynamic Pricing Schedule

Southern California Edison expects to propose to make Time-of-Use rates with Critical Peak Pricing (CPP/TOU) the default tariff for small and medium commercial customers (dependent on installation of advanced meters and 12 months experience) as part of Phase 2 of its 2012 General Rate Case, it told the California PUC (A. 08-03-002).

SCE was responding to a ruling asking whether settlement agreements in SCE's current rate application should be altered to include expanded dynamic pricing (Matters, 3/5/09). Under the settlements, residential customers default to a peak time rebate (PTR) product, with default CPP/TOU pricing for large commercial customers (> 200 kW), and optional CPP or real-time pricing (RTP) for other rate classes.

SCE believes that by filing for more default dynamic pricing in its 2012 rate case, its dynamic pricing schedule will be similar to precedent adopted at Pacific Gas & Electric, and that no adjustment to the settlement agreements is needed.

In its application for Phase 2 of its 2012

rate case, SCE expects to propose to make CPP/TOU dynamic pricing the default tariff for residential customers (if AB1X restrictions are lifted); CPP/TOU pricing the default tariff for small and medium commercial customers; mandatory TOU with optional CPP/TOU for small agricultural customers; and default CPP/TOU for large agricultural customers.

IPPs Say Consumers' Renewable RFP Would Discourage Bidders

Consumers Energy's proposed RFP to be used to procure competitive supplies composing half of its renewable energy plan should be rejected because it includes elements that tend to discourage bidder participation while increasing bid costs, the Michigan Wholesale Power Association said in testimony (U-15805 et. al., Matters, 2/19/09).

The proposed RFP was not developed in a collaborative process with IPPs, and does not utilize an independent monitor, which diminishes the RFP's credibility in the eyes of bidders, the generator association said. If the bidding process in Michigan isn't viewed as credible, or if the selection criteria are seen as uncertain or arbitrary, bidders will spend their project development and bid preparation capital in states where they feel assured that their proposals will be considered fairly, the IPPs added.

The Michigan Wholesale Power Association testified that, "[t]here is a substantial amount of subjective discretion left to Consumers in the evaluation process." For example, the IPPs said that Consumers may reject a bid for any reason and at any point in the process. Furthermore, the RFPs require competitive bids to include extensive details on project descriptions and financing, while utility-owned proposals do not need to include such details. In discovery requests, the merchant generators said that Consumers acknowledged that it has no existing wind data upon which it could rely to develop its own wind projects, but the RFP would require full project descriptions, descriptions of turbines to be utilized on a project and their reliability record, the layout of turbines for a

project, and even the “warranty terms [the bidder] expects to secure from the proposed turbine ... supplier.”

Michigan PSC Staff proposed that Consumers use a renewable energy pricing program for projects 150 kW to 5 MW in size, as RFP participation can be burdensome for small, distributed projects. Staff said recent experience in multiple jurisdictions shows that RFP mechanisms generally obtained smaller quantities at higher prices, compared to renewable energy pricing programs. Staff recommended that distributed renewable energy generators be invited to sign long-term standard offer contracts or participate in a tariffed pricing program for the delivery of renewable energy.

The Association of Businesses Advocating Tariff Equity (ABATE) recommended that Consumers use PPAs to obtain all of its renewable energy needs, rather than only half. ABATE also reiterated its belief that an energy optimization surcharge, to fund efficiency programs, cannot be levied on transportation-only gas customers, per statute (Matters, 2/4/09).

Briefly:

Maryland Senate Committee Passes Re-regulation Bill

A Maryland Senate committee voted out by 6-4 SB 844, which would end customer choice for residential and small commercial customers and would require all new generation to be ratebased. Generation receiving a CPCN before the act's effective date would be grandfathered. New generation would be paid for via a nonbypassable surcharge. The full Senate could take up the measure Thursday. Several renewable energy amendments were added to the bill, but a marked-up version was not available yesterday.

Maryland PSC Withdraws LDC Hedging Order

The Maryland PSC yesterday withdrew its order that had directed five LDCs to hedge 40% of their summer storage injections now at a Henry Hub price of no more than \$4.32/

MMBtu. LDCs have reported that prices have increased since the PSC's order, making compliance at the price cap difficult (Matters, 3/24/09), which prompted the PSC to withdraw the order. The PSC said it will issue a follow-up order soon, which may include a different cap or a longer period for LDCs to buy the hedged supplies.

Glacial Seeks Michigan AES License

Glacial Energy has applied for an alternative electric supplier license at the Michigan PSC. Glacial listed in its application that it would use EnerCom Inc. as a broker.

Insight Energy Advisors Receives Texas Aggregation Certificate

The PUCT awarded an aggregator certificate to Insight Energy Advisors (Matters, 3/5/09).

ICC Staff Intends to Develop Retail Shopping Website

Illinois Commerce Commission Staff intends to implement a shopping website for consumers to compare electric supply offerings similar to New York's Power to Choose website, Staff reported in testimony regarding Ameren's POR plan (see related story).

EnerNOC Wins 250 MW in Md. RFPs

EnerNOC said it has entered into contracts totaling 250 MW with Allegheny Power, Baltimore Gas and Electric, Delmarva Power, and Pepco pursuant to the IOUs' gap RFPs (Matters, 3/13/09). EnerNOC's contracts are for more than 60% of the total capacity awarded by the Maryland PSC, and cover the 2011/12 through 2014/15 PJM delivery years.

Credit Suisse, Sempra Trading Seek Stay of RSG Resettlement

Credit Suisse Energy and Sempra Energy Trading submitted a request at FERC for an emergency stay of resettlement of Revenue Sufficiency Guarantee charges in the Midwest ISO, citing the, "significant defaults of market participants and a severe reduction in the availability of virtual supply," due to FERC's November RSG order. Several financial marketers had requested a stay previously,

and the two power marketers reminded FERC that MISO itself has said a brief delay while rehearing requests are decided is reasonable, though MISO said it could only suspend resettlement under a FERC order (Matters, 2/10/09)

NRG Names Former Reliant Board Member to Board

NRG Energy named Kirbyjon Caldwell to its board of directors. Caldwell had been on Reliant Energy's board until resigning to take the NRG seat.

Ameren POR ... from 1:

is necessary to avoid a potential increase in Ameren's average uncollectible cost. "Otherwise, a [supplier] that already performed its own billing would clearly have an incentive to place its poor paying customers into the POR program while still billing its good-paying customers itself," Dominion Retail said.

Such cherry-picking would negatively affect suppliers using the POR program by increasing the discount rate. Dominion Retail argued that POR programs in Ohio, Pennsylvania and Connecticut are working well with all-in/all-out provisions.

Still, Dominion Retail suggested that a grandfathering procedure similar to the process at Niagara Mohawk may be appropriate, which would ease the all-in requirement relating to the existing customers of marketers before the POR program took effect.

Turning to the charges which may be purchased by Ameren, Staff opposed Ameren's petition to exclude the costs of RECs from being included in the power and energy service charges eligible for POR. Staff noted that statute permits suppliers to meet renewable energy requirements through RECs, and said it would seem "illogical" to exclude REC costs from POR given such circumstances.

NICE ... from 1:

known until Integrys Energy Services' costs are finalized, which occurs approximately two months after the close of each calendar month. Therefore, the true-up component, which could be negative or positive, will be included in the program rate two months in arrears.

Thus, NICE members choosing the arrangement are electing to buy electricity not at a specific dollar amount or unit price specified in the contract, but are choosing to purchase electricity at prices tied to Integrys Energy Services' wholesale market purchasing decisions and supply costs for the program, as disclosed to the customers in their sale agreement.

Section 16-115A(e)(1) of the Public Utilities Act, and Section 2EE of the Consumer Fraud Act both prohibit enrolling subscribers and distributing marketing materials without an adequate disclosure of the "price" of the service. Integrys Energy Services requested a determination of whether its "managed price service" offered by NICE is prohibited by the acts.

Furthermore, Integrys Energy Services sought determination on whether Section 16-115C of the Public Utilities Act, requiring the licensing of agents, brokers, and consultants, applies to its arrangement with NICE. NICE, which is a not-for-profit subsidiary of Southwestern Electric Cooperative, is neither a public utility; a certified alternative retail electric supplier, or a licensed agent, broker or consultant.

The NICE product would be variable, and would include additional monthly fees independent of usage. A billing and management fee will be charged not to exceed \$6.15 per month, and NICE membership dues will also be charged (\$4.00 monthly residential, \$8.00 commercial).

Integrys Energy Services said its supply agreement with NICE does not prohibit NICE from also working with other competitive suppliers.