

Energy Choice

Matters

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Power Marketers to Seek Writ of Mandamus on RSG Charges Unless FERC Acts Within 10 Days

Several financial marketers told FERC that unless the Commission acts within 10 days on requests for rehearing of its November 10 order which required the resettlement of Revenue Sufficiency Guarantee charges to apply such charges to virtual supply offers, or grants requests for an emergency stay, the marketers will seek a writ of mandamus from a U.S. Court of Appeals (EL07-86 et. al.). The filing was made jointly by Epic Merchant Energy, The AI Funds, Argo Navis Power Development Fund, Jump Power, JPTC, and Palms Asset Management.

FERC's November order has caused, "irreparable damages to market participants engaged in virtual transactions," the marketers said, stating, "Immediate action is required to restore law and order to the MISO market and to prevent further harm."

The marketers noted that 15 virtual traders have defaulted in the MISO market due to RSG resettlement, and said a another, Excelsior Ltd., has estimated it has about 10 days remaining before it is forced to default.

While a February 2009 FERC order found MISO's resettlement filing to be deficient and requested more information, resettlement of RSG charges continues.

Citing data from the Independent Market Monitor, the financial marketers said virtual supply in MISO dropped 60% in January 2009 versus fall 2008 levels. Such a decline in virtual trading and

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Texas House Committee Votes Out REP Renewal Notice Bill

The Texas House of Representatives State Affairs Committee voted out two bills which would set requirements for renewal notices of REP fixed rate contracts, and would require each retail bill to include information about the Power to Choose website. Though the bills were voted out last week, the committee reports with the marked-up language for each bill were not printed until late yesterday evening.

HB 995 governs renewal notices required for fixed rate residential products, which are defined as products with a term of at least three months, for which the price for each billing period, including recurring charges, does not change throughout the term of the contract, except that the price may vary to reflect actual changes in transmission and distribution utility charges, changes to ERCOT or Texas Regional Entity administrative fees charged to loads, or changes to federal, state, or local laws that result in new or modified fees or costs that are not within the retail electric provider's control.

Under the bill, a REP shall provide a residential customer who has a fixed rate product with at least two written notices of the date the fixed rate product will expire. The notices must:

(1) Be sent to the customer's billing address by mail at least once during each of the two consecutive billing cycles preceding the date the contract will expire;

(2) Be sent to the customer's e-mail address, if available to the provider, at least once during each of the two consecutive billing cycles preceding the date the contract will expire;

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Maine Draft Would Require Changes in CMP, MPS Partial Payment Order

Central Maine Power and Maine Public Service would be directed to alter their partial payment allocation methodology to ensure that partial payments are allocated equally between distribution service and Standard Offer Service, as required under the Maine PUC's partial payment allocation rules, under a hearing examiner's report in the case (2008-351, Matters, 10/6/08).

The current payment processing rules require that, for payments insufficient to cover a customer's obligation, payment shall first be allocated to past due transmission and distribution and Standard Offer charges with the oldest charge paid first. When transmission and distribution charges and Standard Offer charges are of the same age, the transmission and distribution charges shall be paid first.

Past due competitive electricity provider charges receive next priority, followed by current transmission and distribution charges, current Standard Offer charges, and current competitive electricity provider charges.

Under Maine's Standard Offer, wholesale suppliers do not bear an uncollectibles risk. A fixed "uncollectible adder" is set prior to the solicitation of Standard Offer bids, and acts as a discount on Standard Offer revenues received by suppliers. Bidders presumably incorporate the adder into their pricing, and uncollectibles above the adder are assumed by the distribution utilities. However, levels of uncollectibles which exceed the adder may justify an adjustment to the adder in the next solicitation, affecting the pricing suppliers may be able to receive in future bids.

Such a request was the genesis of the present PUC investigation. During a recent Standard Offer solicitation, CMP requested an increase in the Standard Offer uncollectible adder for the residential and small commercial class from 1.2% to 6.0%. CMP said the increase was necessary to maintain a positive balance in the tracking account for that rate class.

However, while the PUC found a

significant increase in Standard Offer arrearages, particularly for amounts past due by 90 days or more, distribution arrearages had not increased by nearly the same amount. Between 2005 and 2007, write-offs attributed to small class Standard Offer Service doubled, increasing from \$3.5 million to \$7.0 million. During 2008, small class Standard Offer write-offs increased to almost \$8.8 million, while distribution write-offs actually decreased.

Further inquiry revealed that the Standard Offer-related increases (and the lack of a similar pattern for delivery write-offs) were caused by CMP's billing system and its vintaging of past due amounts. CMP's system is limited to four "vintage buckets" for its receivables: current; 30-day; 60-day; and 90 or more days. This limitation treats all amounts past due by 90 or more days as if they were the same vintage for purposes of partial payment allocation, regardless of whether the amount was past due by 90 days, 120 days, 150 days, and so on. MPS uses a similar system.

Since PUC rules require delivery arrearages to receive priority over Standard Offer arrearages of the same vintage, CMP's limited vintage system effectively allows newer delivery arrearages to leapfrog older Standard Offer arrearages. For example, even though Commission rules require a partial payment to be used to pay off 150-day old Standard Offer arrearages before 120-day old delivery arrearages, since CMP's vintaging system treats both arrearages as the same age, the delivery arrearages are paid off first.

"It is thus clear that the use of the vintage buckets by CMP and MPS is contrary to the plain language of the rule because partial payments are not allocated based on the age of the charge," the hearing examiner concluded. "[T]he operation of the vintage buckets leads to results that are inconsistent with the basic intent of the partial payment allocation rules in that the proportion of arrearages in the standard offer and T&D service categories do not mirror relative revenues from the two services," the draft added.

Accordingly, the hearing examiner report would direct CMP and MPS to alter their partial payment allocations on a going forward basis. Because of the history of the partial payment rule and the traditional use of the vintage buckets, the draft would direct utilities to reallocate their current arrearage balances or take any other retroactive action.

Under the draft, CMP and MPS would either:

- Allocate partial payments to the oldest balance first with no limit on the number of vintage buckets;
- Allocate partial payments to the oldest balance first with a sufficiently large, but not unlimited, number of buckets, or
- Retain the existing buckets, and for amounts in a given vintage bucket, allocate on a pro rata basis between standard offer and utility service.

It may be possible to simulate the same result through accounting or other “after-the-fact” adjustments either as a permanent or interim solution, the draft noted.

Bangor Hydro-Electric's billing system already allocates partial payments to the oldest delivery or Standard Offer balance first, regardless of the age of the receivable. Therefore, no system upgrades are necessary at BHE.

The draft would not alter the current uncollectible adder mechanism used for paying Standard Offer suppliers. During the case, Bangor Hydro-Electric had cautioned against eliminating the adder, arguing that it would give Standard Offer providers a competitive advantage over competitive suppliers. Without the adder and the associated discount, Standard Offer providers would no longer need to price bad debt into their bids used to set retail rates, while competitive suppliers would still need to include bad debt risk in their pricing.

Md. PSC Issues Show Cause Order to SMECO Over Demand Response Authority

The Maryland PSC issued a show cause order to Southern Maryland Electric Cooperative directing SMECO to

demonstrate why it has authority to assert itself as the “relevant electric retail regulatory authority” governing the participation of retail customers in PJM demand response markets (Case 9183).

As noted previously, EnerNOC had filed a request for the PSC to review SMECO's assumption of the role of the relevant electric retail regulatory authority for its customers, which, under FERC Order 719, has the power to prevent end users from participating in RTO demand response markets (Matters, 4/10/09). FERC's order defines “relevant electric retail regulatory authority” as the entity that establishes the retail electric prices and any retail competition policies for customers, such as the city council for a municipal utility, the governing board of a cooperative utility, or the state public utility commission.

Under that definition, the PSC questioned SMECO's interpretation that SMECO is the relevant electric retail regulatory authority in its service territory.

“Unlike Maryland, there are other states in which cooperative utilities are not regulated by the state public utility commission. Consequently, the definition in FERC Order 719 may apply to the board of an electric cooperative in locations where cooperatives are not regulated by a state regulatory commission,” the PSC noted.

“In Maryland, this Commission retains authority over retail electric rates and retail competition policies for customers in SMECO's service territories, and, therefore, the example contained in the pertinent provision of Order 719 that the board of a cooperative utility may be a ‘relevant electric retail regulatory authority’ does not appear to be applicable to SMECO,” the Maryland Commission added.

The PSC will provide SMECO an opportunity to defend its assertion that it is the relevant electric retail regulatory authority in its service territory, and told SMECO to appear before the Commission on April 22.

As a relevant electric retail regulatory authority, SMECO's board passed a resolution barring individual customers from enrolling in PJM demand response programs, unless such customers receive SMECO board

approval for participation.

According to EnerNOC, SMECO denied the registration of several customers aggregated by EnerNOC, and indicated that in order to register for board approval, EnerNOC would have to disclose proprietary information about potential customers. SMECO currently acts as a curtailment service provider for customers in its service territory.

Maine PUC Approves Green Power Promotion Through Utility Bills

The Maine PUC adopted a final decision which establishes parameters to promote green electric supply options through utility bills, including the use bill inserts and referring customers to a green energy website (2008-178). The final order largely tracks an earlier draft (Matters, 3/20/09).

Under the order, the following green products are eligible for promotion through utility bill inserts:

- (1) Electricity supply from renewable resources as defined by Maine statute;
- (2) Green-e certified RECs; and
- (3) NEPOOL GIS certificates that correspond to renewable resources as defined by Maine statute.

Additionally, the Standard Offer portion of utility bills will refer customers to a website (www.maine.gov/greenpower) which links to the U.S. Dept. of Energy's page which lists green power products available for Maine customers.

The PUC directed utilities to file consensus terms and conditions to govern the bill insert program for Commission review and approval.

N.Y. PSC Staff Says ESCOs Should Have Option on Hourly Settlement

The New York PSC released Staff's draft Advanced Metering Infrastructure cost-benefit framework, including a recommendation to give ESCOs the option of hourly settlement

for their customers with hourly meters (09-M-0074).

In addition to cataloguing the cost and benefits that will be evaluated in AMI cases, Staff endorsed a working group report that encouraged utilities, as part of smart meter pilots, to test three dynamic pricing options: 1) a Time of Use program that has a peak period that is narrowly focused to address the system peak; 2) a voluntary residential Real-Time Pricing program with prices based on real-time wholesale energy market prices; and 3) a peak time rebate program that would give customers rebates for reducing their consumption during system peak.

The working group also recommended that if an ESCO customer's electric usage is measured by hourly meters, then the ESCO should be billed on their customer's actual load shape instead of a class average load shape. Using a class average load shape takes away any incentive for the ESCO to perform energy efficiency and demand response initiatives, by not giving the customer or the ESCO credit for altering their load shape, the working group said.

Staff, however, recommended that ESCOs should be allowed to choose for each customer whether the ESCO is billed on class load shape or the customer's hourly load.

Comments on Staff's cost-benefit framework are due June 15.

MISO Files to Implement Day-Ahead Emergency Demand Response Offers

The Midwest ISO filed tariff changes at FERC to allow for Day-Ahead Emergency Demand Response (EDR) offers. Under the current tariff, such EDR offers must be made at least 30 days in advance.

MISO said it was initially unable to accommodate Day-Ahead EDR Offers because of work on implementing Demand Response Resource Type I and Type II offers on a Day-Ahead basis as part of the Ancillary Services Market. However, with ASM work complete, it has been able to identify necessary software and system changes needed to accommodate Day-Ahead EDR

offers.

Under MISO's proposal, EDR Offers would be required to be submitted no later than 1100 EST on the day prior to the next Operating Day, instead of 30 days in advance of the next Operating Month as previously required. Similarly, the Midwest ISO filed to change its tariff such that EDR Offers are no longer required to be made for a minimum period of 30 days, but rather just one Operating Day. An EDR Offer would remain valid until it is modified or revoked by the EDR Participant.

Finally, the Midwest ISO sought to modify the tariff to include information previously relegated to the Business Practices Manual regarding registration and qualification. EDR participants would be required to be capable of both receiving and acknowledging EDR Dispatch Instructions from the Midwest ISO via an Extensible Markup Language (XML) interface, which is an open source technology for definition and implementation of internet applications.

While MISO understands that some potential EDR Participants would prefer having multiple options through which they can receive EDR Dispatch Instructions, MISO believes that requiring multiple data interfaces would impose an unreasonable burden on its Real-Time Operations staff because it would require that they communicate via telephone with some EDR Participants, email others, and provide XML notifications to others. Such a burden is undesirable given the time sensitive nature of dispatch decisions during an Energy Emergency Alert 2 or Alert 3 Event, and the need to determine and dispatch the most economic EDR resources, MISO said.

Vista Energy Marketing Answers FERC Concerns on Traders' Background

Two individuals involved with Vista Energy Marketing did not violate terms of their probation regarding pleas to natural gas price manipulation, Vista Energy Marketing said in a reply to a series of questions from FERC. Vista Energy Marketing is seeking market

based authority from the Commission (ER09-55, Matters, 3/2/09).

Vista Energy Marketing, which had previously said it intends to act as a retail natural gas supplier, revealed that it plans to provide natural gas to retail customers in California, Arizona, and Nevada. Vista Energy Marketing told FERC that none of those states require authorization to provide natural gas to retail customers unless the provider maintains a physical presence in the state, which Vista Energy Marketing does not have.

FERC's questions regarding Vista Energy Marketing's MBR application mainly centered on the relationship and duties of Michael Whalen (a Member of Irish Marketing which is a general partner of Vista Energy Marketing) and Paul Atha (Director of Trading for Vista Energy Marketing). Both Whalen and Atha pleaded guilty to conspiracy to manipulate the price of natural gas and also signed consent agreements with the CFTC agreeing to pay civil penalties to resolve similar charges of submitting false prices to indices. FERC asked whether the terms of either's probation prohibited their interaction, or their duties at Irish Marketing or Vista Energy Marketing, respectively.

Vista Energy Marketing said no terms of either's probation were violated. Neither was prohibited from having contact with the other under the probation orders, the marketer said.

Atha's probation had ended before he became employed by Vista Energy Marketing, while Whalen's probation officers were aware of contact between the two and approved Atha's employment at a company in which Whalen was an investor.

Furthermore, while the consent orders permanently bar both Atha and Whalen from applying for CFTC registration, engaging in any activity requiring such registration, or acting as a principal of any entity requiring such registration, Vista Energy Marketing was organized in recognition of such prohibitions. To comply with the consent orders, Vista Energy Marketing created a Texas limited partnership designed to provide the marketer with the ability to operate as a pooled investment vehicle, and as such, Vista Energy

Marketing (and its upstream General Partner, Irish Marketing) would be exempt from registration as "commodity pool operators" or as "commodity trading advisors" pursuant to CFTC regulation. In any event, Vista Energy Marketing says its business plan has changed and it no longer intends to act as a pooled investment vehicle, instead choosing to focus on the retail natural gas market.

Additionally, though Whalen is a Member of Irish Marketing, in light of concerns about his ability to manage the day-to-day operations of Vista Energy Marketing, the parties have undertaken several measures to prevent such influence. An Irish Marketing corporate agreement holds that Members (in this case, Whalen) shall not take part in the management of Irish Marketing's business, and will also have no power to sign for or to bind the company, which are powers exclusively retained by the company's Managers. Thus, Whalen is prohibited from engaging in the management of Irish Marketing which, in turn, eliminates his ability to exert any control through the General Partner into the management or day-to-day operations of Vista Energy Marketing, the firm said.

Vista Energy Marketing further explained Whalen is a Member of Irish Marketing, which in turn is an investor in Vista Energy Marketing. Atha is an employee of Vista Energy Marketing. Currently, the two interact occasionally as their offices are located in shared space, Vista Energy Marketing said.

Separately, affiliate Vista Energy Trading withdrew its application for market based rate authority, stating it will no longer pursue its anticipated growth strategy of diversifying into the sale of wholesale electric energy, capacity, and ancillary services.

Briefly:

PUCO Names Dominion East Ohio SCO Suppliers

Direct Energy Services, Dominion Retail, Hess Corporation, and Interstate Gas Supply were the four winning bidders in Dominion East Ohio's Standard Choice Offer auction conducted in February (Matters, 2/12/09).

Bidder identities had been withheld until now to allow the winning bidders to make supply arrangements. Under the SCO auction, bidders competed for the right to serve tranches of specific Dominion East Ohio customers at retail, rather than supplying the LDC with wholesale gas. PUCO also reported that the three winning bidders in the Standard Service Offer auction for customers ineligible for choice were Delta Energy, DTE Energy Trading and Hess Corporation.

Young Energy Files for New Trade Name

Young Energy filed for an amendment to its REP certificate at the PUCT to add the trade name Payless Energy to the certificate, which already contains the trade names Green Fields Electricity, UNO Energy and Connect! Energy. Young Energy recently relinquished the trade names ABC Energy and New Electricity.

Suez Renews Doctor's Hospital

Suez Energy Resources NA said that Doctor's Hospital at Renaissance in Edinburg, Texas has renewed its contract with SERNA through 2010. Suez serves all of Doctor's Hospital's facilities in the Edinburg-McAllen area.

RSG Charges ... from 1:

attendant price convergence leaves the market more vulnerable to market power abuses and manipulation, the marketers said.

To prevent further harm, the marketers said they would seek a writ of mandamus if FERC does not issue an order on rehearing or stay of resettlement by April 24.

Texas Renewals ... from 1:

(3) Include on the outside of the envelope in which the notice is sent a statement that reads: "Important Notice: Your Contract Will Expire Soon. See Enclosed."; and

(4) If included with a customer's bill, be printed on a separate page that is immediately visible on opening the envelope.

REPs would also be required to include on each billing statement the beginning and end date of the fixed price contract.

The bill differs from the introduced version by limiting the requirements to residential customers, rather than applying to all customer classes.

The requirements also differ from recently adopted PUCT requirements revising the renewal notice procedure. Most prominent is the proposed legislative requirement for a "date" of contract expiration, while the Commission only requires an approximate date in notices, as REPs noted meter read schedules can vary. While the legislation is not explicit in defining the term "date," and makes no mention of the permissibility of estimates, to a layperson the term unquestionably means a specific calendar date, e.g. April 14, 2009. However, it would not be unrealistic to expect some market participants to attempt to define the term date as the non-specific time of a future event, e.g. "Your contract expires on the date of the meter read in the April billing cycle." Such a notice could seemingly fit an interpretation of the present bill, since it would inform the customer of the date the contract expires; it just would not provide a specific calendar date for the event.

The PUCT rules currently only require a single contract expiration notice if the notice is mailed separately, while requiring notice on the three preceding bills if the REP opts to list the notice on the bill rather than mailing a separate notice. HB 995 would require two notices regardless of method. The additional email requirement is also unique to the legislation.

HB 995 would also require a notice regarding the state's Power to Choose website on all residential bills, which is also being sought in a separate bill with nearly identical language (HB 1799) which was also voted out of committee.

Both bills would require all residential bills to include, in 12-point type on the front of the first page, a notice that reads, "For more information about residential electric service please visit www.powertochoose.com."

The requirement under both bills would expire September 1, 2011. HB 1799 was changed in committee to limit the requirement to residential bills, rather than bills for all

customer classes, and to include the sunset date.