

# Energy Choice

# Matters

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## FirstEnergy Utilities Say Waiver of Switching Fee Would Improperly Subsidize Competitive Service

Granting a waiver of the retail switching fee as requested by the Northeast Ohio Public Energy Council would shift costs from competitive retail generation service to regulated utility service, Ohio Edison and Cleveland Electric Illuminating said in a motion to dismiss a complaint from NOPEC.

"Such an outcome flies directly in the face of R.C. 4928.02(H) which expressly prohibits 'subsidies flowing from a noncompetitive retail electric service to a competitive retail electric service,'" the FirstEnergy utilities argued.

NOPEC has petitioned PUCO to declare the \$5 per-customer switching fee at the FirstEnergy utilities invalid, due to approved, but not yet effective, rule changes which would prohibit imposition of the fee on governmental aggregators (Matters, 5/20/09). The fee will be imposed on NOPEC's supplier, Gexa Energy, and NOPEC intimated that the fee would be passed onto its approximately 535,000 customers at a cost of \$2.5 million, though NOPEC did not explicitly site any contract provision regarding the fee.

Enrollment of NOPEC customers with Gexa will occur in late June or July, while the rule prohibiting a switching fee for government aggregation customers will not become final until late June at the earliest.

Because the \$5 switching fee is in the FirstEnergy companies' currently applicable tariff, the utilities said that is neither unreasonable nor unlawful.

"The Companies are charging the fee as required by their authorized tariff - the Companies must

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## PUCT Staff Outlines Compliance Timeline Under New REP Certification Rule

PUCT Staff memorialized in a memo the compliance timeline associated with the new REP certification rule first reported by *Matters* last week (Matters, 5/22/09).

New P.U.C. Subst. R. 25.107 became effective May 21, starting the clock on a 12-month phase-in. All REPs must file for amendments to their certificates to show compliance with the new requirements, and receive approval for the amendments, by May 21, 2010. New REP application forms should be available for use on an interim basis within a few weeks.

REPs will still be required to file an annual report covering the year 2008 under the repealed §25.107 by June 1, 2009.

New §25.107 also requires a report of REP audited financial statements by August 15, 2009. The Commission encourages REPs to file a complete report by that deadline if possible, but will entertain submissions of incomplete reports, accompanied by an explanation of why the report is not complete and when the REP will submit a complete copy. Not submitting the report for another entire year until August 15, 2010 will not be acceptable, Commissioners said. The Commission is granting flexibility because of concerns REPs may be unable to complete the auditing process before August 15.

As noted yesterday (Matters, 5/27/09), Staff opened Project 37035 to develop the standard form guaranty agreement and the standard form letter of credit required by the new certification rule. Staff

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## **FERC Denies PJM Motion for Public Release of Tower Emails**

FERC denied PJM's request for the Commission to publicly release confidential e-mail communications among employees at various Tower Companies, in connection with PJM's complaint against the firms, finding that PJM did not meet its burden for public release (EL08-49, Matters, 4/16/09).

PJM has made various allegations of market manipulation against the Tower Companies in relation to the default of Power Edge. FERC dismissed the complaint in part, finding that the Tower Companies did not form trader Power Edge with the intent to defraud (Matters, 4/3/09). PJM cited FERC's decision, which PJM said selectively released some of the emails in question, in its motion to release all of the emails so PJM members could consider their litigation strategy.

FERC previously allowed intervenors executing a protective order to view the confidential emails. Such a confidential release ensured that all parties' due process rights have been protected, FERC said, finding PJM has not shown a broader public release is necessary.

PJM, the Commission said, has made only a "sweeping assertion" that the documents are internal non-privileged communications, noting that PJM has not sought to identify specific documents that are particularly relevant, nor addressed why any specific document is not, for example, a trade secret, an invasion of personal privacy, or confidential personal information.

In its order, FERC also rebuked PJM's market monitor, which had sought late intervention in the proceeding, for conducting its own investigation despite no direction from FERC Staff to do so:

"Monitoring Analytics' stated reason for its request is that it has been actively investigating the 'core matters of concern in this proceeding.' Under the Commission's recent Order No. 719, the Commission has directed that following a referral to the Commission of suspected violations, 'the Market Monitoring Unit is not to undertake any investigative steps regarding the referral except at the express direction of the Commission or Commission staff.' Staff's investigation is concluded with respect to the

matters covered in the [Office of Enforcement] report filed in Docket No. EL08-44-000, and therefore there is no reason for Monitoring Analytics to continue to investigate those issues (nor may it, absent a directive from the Commission or Commission staff)," FERC said.

## **PUCO Approves DP&L Transmission Rider**

PUCO approved Dayton Power and Light's amended application to institute a Transmission Cost Recovery Rider, dismissing arguments from Industrial Energy Users-Ohio that the rider included generation charges (Matters, 5/7/09).

The rider includes various Reliability Pricing Model charges, including locational reliability charges, capacity resource deficiency charges and credits, RPM auction revenues, generation resource rating test charges and credits, and peak hour availability charges and credits.

PUCO held that Section 4928.05(A)(2), Revised Code, authorizes electric utilities to recover a "broad range" of transmission and transmission-related costs imposed by regional transmission organizations, "including costs related to ancillary services."

IEU-Ohio argued that such costs were already recovered in base generation rates since those rates recover all competitive retail electric services necessary to maintain essential electric service to consumers, "including a firm supply of electric generation service."

PUCO, however, found that the RPM-related costs are not included in any other schedule or rider in DP&L's tariff.

The Commission further said DP&L's mechanism, under which DP&L will net the credits it receives from PJM as a generator against the charges it incurs as an LSE, will ensure that the costs recovered through the transmission rider do not subsidize DP&L's generation costs or create a cross-subsidy.

## **Monitoring Analytics Protests PJM Market Monitoring Plan Under Order 719**

Monitoring Analytics, PJM's independent market monitor, protested PJM's "extreme" market monitoring proposal, made in its Order 719

compliance filing, that would make the market monitor subordinate to PJM in performing key functions (ER09-1063).

Among other things, Monitoring Analytics said PJM's filing would hold that the monitor can play no role in the administration of the parts of the tariff related to its responsibilities. PJM's compliance filing further concludes that the tariff cannot assign responsibility to any party other than PJM management to carry out any action, perform any duty, or implement any program or plan.

However, Monitoring Analytics argued PJM misconstrued and misapplied provisions of Order 719 in reaching its conclusion. Monitoring Analytics claimed the Order explicitly endorses the substance of the 2007 settlement between PJM and the market monitor, and specifically accommodates the existing arrangements that PJM seeks to overturn.

Monitoring Analytics argued that despite some limitations on the role external market monitors in prospective mitigation, Order 719 still allows market monitors to, "provide the inputs required for [RTOs] to conduct prospective mitigation" and may "conduct retrospective mitigation." Monitoring Analytics noted the RPM settlement assigned a role to the market monitor in developing the inputs to prospective mitigation.

"PJM's proposed role in market monitoring decisions creates substantial potential RTO conflicts of interest," Monitoring Analytics claimed.

### **Lack of Viable Business Model Cited for Dearth of Integrated Demand-Side Products**

The lack of a viable business model for providers is one of the top reasons residential customers are not receiving integrated demand-side products, which combine energy efficiency, demand response, and distributed energy, a survey of 400 energy industry professionals by consultant DEFG LLC found.

Some 35% of respondents said that the lack of a viable business model is likely hindering such bundled demand-side offerings. About the same number of respondents said incorrect incentives or regulated cost recovery issues are

preventing such products.

The lack of advanced meters (30%) and insufficient consumer benefits (30%) were also cited as top reasons for the lack of integrated offerings.

Unsurprisingly, respondents said peak pricing signals are very important if the purpose of the integrated offering is to reduce energy usage. Alerts provided without a financial incentive will produce smaller savings, most respondents agreed.

Respondents also said consumers are open to procuring integrated services from energy service companies and specialized service providers, utilities, competitive commodity retailers, or public-private entities/not-for-profit agencies.

### ***Briefly:***

#### **ConEd to Supply Hourly Zonal Loss Data by End of June**

Consolidated Edison will begin supplying ESCOs with aggregated hourly Unaccounted-for-Energy (UFE) Factors by NYISO subzone by the end of June 2009, ConEd said in a filing with the New York PSC. The initial data provided will cover the period January 2009 through March 2009. Assuming the availability of the necessary underlying data from the NYISO each month, ConEd expects to be able to provide the data on a lag of no more than about three months. ConEd will initially provide the loss data as an attachment to the ESCO newsletter or as an attachment to the email that distributes the ESCO newsletter, but plans to develop an application to make the loss information available to ESCOs through its Retail Access Information System. ConEd was ordered to provide the hourly loss data in the PSC's recent decision in ConEd's rate case (Matters, 4/27/09).

#### **Expanded Direct Energy Business Operations at PPL Include Marketing to All Sizes of C&I Customers**

Direct Energy Business has begun marketing to all sizes of non-residential electric customers in the PPL territory, Frank Lacey, Director of Product Marketing, said yesterday in providing more detail on Direct Energy Business' expanded PPL operations (Matters, 5/27/09).

While Direct Energy Business has been in the territory before, its presence was limited, and the retailer has now begun full-scale operations. Direct Energy Business is also planning to expand its offerings in PPL from pure commodity supply to facility energy services and related products, as it offers in other territories. Direct Energy Business is currently in Penn Power and Duquesne Light, but is not yet marketing in some of the smaller utilities without rate caps, such as UGI Utilities, Citizens' Electric, and Wellsboro Electric. Speaking at a press conference to announce Direct Energy Business' Committed to Pennsylvania initiative, outgoing Direct Energy CEO Deryk King gave more specifics on Direct's oft-mentioned strategy to continue its upstream investments, stating that it is looking to build generation capabilities in the Northeast.

**CL&P Names Standard Service Suppliers**

Connecticut Light and Power reported to the DPUC that the wholesale suppliers for its Standard Service load for the second half of 2009 are Conectiv Energy Supply, Consolidated Edison Energy, Hess Corporation, PPL EnergyPlus, Sempra Energy Trading, and Shell Energy North America.

**D.C. PSC Grants Extension of WGL Hedging Pilot**

The District of Columbia Public Service Commission granted Washington Gas Light's petition for a one-year extension of its pilot winter heating season physical natural gas hedging program, to avoid any lapse in hedging authority as the Commission adjudicates WGL's petition for an expanded, permanent hedging program (GT01-1, Matters, 5/25/09).

**Texas Senate Passes Power to Choose Billing Notice Requirement**

The Texas Senate passed HB 1799 which would require all REP residential bills to contain a notice stating, in at least 12-point type on the front of the first page, "For more information about residential electric service please visit [www.powertochoose.com](http://www.powertochoose.com)." The requirement would expire September 1, 2011 (Matters, 4/30/09). The bill heads to the governor.

The Senate also passed amended versions

of HB 1822 (uniform terminology for REP bills and contracts) and HB 1243 (pricing for net metered generation), while the House passed an amended version of SB 1492 (delay of Entergy transition to competition). Language of the amended text for each bill was not available at press time.

**PUCT Staff Posts Updated Expedited Switching Proposal**

PUCT Staff posted an updated proposal for adoption to expedite the retail switching timeline in ERCOT, including language for the preamble (36536). There are no major substantive changes from the language proposed by Chairman Barry Smitherman (Matters, 5/21/09), and the updated draft retains the limitation that during the transition period to the new faster timeline (through December 1, 2009), TDUs may only estimate residential customer meter reads for the purposes of a switch.

**Exelon Energy Joins RESA**

Exelon Energy has joined the Retail Energy Supply Association, increasing RESA's total membership to 13 companies. Exelon Energy markets competitive electricity in Illinois and recently re-entered the Pennsylvania market (primarily PPL and PECO) after previously exiting the market in 2002 (Matters, 2/6/09). It also markets competitive natural gas in Illinois, Ohio, Pennsylvania, and Michigan.

**RRI Energy Announces Management Changes**

RRI Energy announced several management changes yesterday, including the resignations of Brian Landrum, executive vice president and chief operating officer, and Charles Griffey, senior vice president of regulatory affairs. CEO Mark Jacobs, CFO Rick Dobson, Michael Jines, senior vice president, general counsel and corporate secretary, and Rogers Herndon, senior vice president, Strategic Planning and Business Development, will comprise a new Office of the CEO led by Jacobs, which will be responsible for the company's strategic direction and priorities. RRI does not intend to seek replacements for Landrum or Griffey.

## **ERCOT Warns QSEs Failing to Submit Financials**

ERCOT reported that the following QSEs have failed to provide annual audited financial statements for the fiscal year ending December 31, 2008, as required by Protocols Section 16.2.8: Alliance Power Company LLC, Andeler Corporation, APN Starfirst LP, Chain Lakes Power LP DBA Simple Power, Clearview Electric Inc, Commerce Energy, Coral Energy Management LLC, Electric Now LP, Freedom Group LLC DBA Freedom Power, Glacial Energy of Texas Inc, Louis Dreyfus Energy Services LP, Scurry County Wind LP, Shell Energy North America (US) LP, Spark Energy LP, Stream Gas and Electric LTD, Texas Utility Solutions LLC, Topaz Power Management LP, and Urban Energy Source LLC. While ERCOT's filing at the PUCT was informational, as it is not currently seeking any relief, ERCOT added stronger language reminding QSEs that violations of the ERCOT Protocols amount to violations of PURA than it has used in two previous informational filings regarding untimely financial submissions. Specifically, ERCOT stated, "ERCOT is currently evaluating its remedies against non-complaint QSEs, which may include suspension of the QSE or notice of breach under the Standard Form Market Participant Agreement," a statement not included in previous informational filings.

## **Proposed Order in Luminant LaaRs Settlement Revised**

An ALJ issued a revised proposed order regarding a settlement between PUCT Staff and Luminant regarding the failure to deploy 95% of scheduled Load acting as a Resource obligations within 10 minutes of ERCOT instruction in July 2007, to remove a finding of fact and conclusion of law not contemplated by the stipulation (Matters, 4/14/09). Specifically, Finding of Fact 12 stated that Luminant acknowledged the violations detailed in the proposed order, but such an expressed acknowledgement was not agreed to in context of the settlement agreement. Additionally, Conclusion of Law 4 stated that Luminant's actions constitute a violation of PURA or the ERCOT Protocols, but the stipulation included no such conclusion. Luminant has maintained that its actions did not

constitute a violation. Luminant was responsible for 40 MW of LaaRs, and said it promptly notified all LaaRs to respond but third-party LaaRs did not dispatch as instructed. The revised proposed order removes the contested finding of fact and conclusion of law.

## **Tradition Energy Selected as Qualified Vendor by Choice Hotels**

Broker Tradition Energy said it has been selected as a Choice Hotels International Qualified Vendor.

## ***NOPEC ... from 1***

charge this fee or otherwise be in violation of their tariff ... Because a tariff provision may be changed at some point in time in the future doesn't make the provision unlawful or unreasonable today," the FirstEnergy utilities argued.

The FirstEnergy companies said Gexa agreed to pay the charges when it executed the Supplier Tariff Coordination Agreement with the companies in October 2008.

"NOPEC's request is that the Commission indefinitely stay the Companies from applying an otherwise legitimate and approved charge because [it] made a bad assumption about the effective date and meaning of the new rule," the FirstEnergy utilities added, noting the Joint Committee on Agency Rule still retains jurisdiction over the new rules, and therefore the rules may be changed or rendered invalid as a part of the ongoing process.

Furthermore, the FirstEnergy companies contended that allowing NOPEC to avoid paying the switching fee would shift costs of competitive service to regulated customers, in contravention of Ohio Revised Code 4928.02(H).

The switching fee, the utilities said, recover the costs of preparing letters that are required to be sent to switching customers; fielding phone calls from customers when they receive communications from governmental aggregators or competitive suppliers; fielding questions and requests from governmental aggregators, their consultants, and competitive suppliers related to switching customers; managing the customer switching process from an IT perspective; educating governmental

aggregators and suppliers about the entire switching process; and similar tasks.

"NOPEC now seeks to deny the Companies the opportunity to recover these costs from the entities that caused the costs - namely NOPEC and Gexa," the FirstEnergy utilities said.

### ***REP Certification ... from 1***

is targeting completion of the forms by September 24, 2009.

Staff will conduct a "halftime" analysis of implementation of the new rule in January 2010, to gauge compliance and discuss further implementation strategy, if needed.

The first semi-annual report required for REPs reporting on a calendar year basis will be due March 5, 2010.