

Energy Choice

Matters

June 3, 2009

MichCon Moves to Dismiss PSC Review of Choice Tariff Provisions

Michigan Consolidated Gas Company moved to dismiss the Michigan PSC's contested case proceeding to examine various customer protections and supplier requirements under the choice tariffs at the major LDCs offering choice programs, arguing that the Commission lacks statutory authority to order any choice tariff changes (Matters, 4/17/09).

The contested case (U-15929) grew from a settlement between PSC Staff and Universal Energy, as the two parties had different interpretations of an existing tariff provision regarding a customer's ability to return to bundled service even if the customer had not paid their contractual termination fee, or whether the tariff even allows a customer to request a return to the utility before the initial contract period ends.

The PSC ordered the contested case for the limited purpose of determining whether any clarifications, revisions, or additions should be made tariff Sections F2 (Residential Customer Protections), F3 (Solicitation Requirements), F4 (Supplier Registration and Code of Conduct), and the Minimum Term paragraph of Gas Customer Choice Rate CC of Section F (Customer Choice Program). Consumers Energy Company, Michigan Consolidated Gas Company, Michigan Gas Utilities Corporation, and SEMCO Energy Gas Company (MPSC and Battle Creek Divisions) were made parties to the case.

"In essence, the Commission in its Order approving a settlement agreement solely between Staff and an alternative gas choice supplier, seeks to compel specific utilities to participate in a new

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Iberdrola Renewables Pushing to Place New York RPS Compliance Obligation on LSEs

Iberdrola Renewables is urging New York regulators to adopt an LSE-based Renewable Portfolio Standard, recommending that the current central procurement by NYSERDA be jettisoned, in comments on a report reviewing the RPS (Matters, 4/21/09).

Currently, utilities and ESCOs in New York are not required to meet any RPS. Instead, a nonbypassable charge placed on distribution service funds a centrally run procurement of renewable energy.

"Ultimately, we believe a market-based LSE RPS model would be the most effective RPS design for New York," Iberdrola Renewables said in comments on a NYSERDA report.

Placing the compliance obligation on LSEs would increase the number of REC buyers in the market exponentially, Iberdrola Renewables said. Presumably, such higher demand for RECs would also increase revenues for renewable generation owners.

Indeed, Iberdrola Renewables faulted the NYSERDA process for "artificially suppressing" REC prices by procuring less than the full RPS targets in procurements. "In other RPS markets, in which load-serving entities ('LSEs') are required to fully comply with RPS targets, REC prices would form at a level that supports the cost of new development," Iberdrola Renewables contrasted.

Iberdrola Renewables noted that main tier REC prices have fallen through the first three

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ICC Staff Estimates Unofficial Alternative Compliance Payment Rates for Informational Purposes

Illinois Commerce Commission Staff have provided informal, non-binding estimates of the RPS alternative compliance payments to alternative retail electric suppliers under pending SB 2150, estimating the alternative compliance payment for load in the Commonwealth Edison zone to be 0.0764¢/kWh, and the alternative compliance payment for load in the Ameren zone to be 0.0645¢/kWh.

The figures were provided for informational purposes only. Should SB 2150 be signed by the governor, actual alternative compliance rates would be established by the Commission (Matters, 5/26/09).

Staff's estimates are based on the language in SB 2150 which links the alternative compliance payment to the cost of RECs purchased by each utility in the Illinois Power Agency procurements. Also of note is that Staff, in discussing potential future timelines for posting the estimated, maximum and actual alternative compliance payments each year, stated that Staff expects that there will continue to be only one set of spring procurement events by the Illinois Power Agency.

Among other things, SB 2150 would require competitive suppliers (and utilities operating outside of their franchise area) to meet at least 50% of a renewable portfolio standard quota through alternative compliance payments.

PUCT Adopts Faster Switching Timeline

The PUCT adopted new rules to complete retail switches within seven days, incorporating proposed language from REPs concerning when estimated meter reads used in the expedited switching process may be changed (36536, Matters, 5/29/09).

For standard switches, the rules will require a meter reading no later than four business days after the first available switch date. Customers may still use an out-of-cycle meter read to self-select a switch date for an additional fee to the REP.

The rule calls for a transition period through

December 1, 2009, during which time TDUs will be permitted to estimate an unrestricted number of residential meter reads for the purposes of a switch (for customers without remotely read meters). Starting December 1, a TDU shall perform actual, as opposed to estimated, meter reads for at least 80% of standard meter reads for the purpose of a switch in any given month, and at least 95% of standard meter reads for the purpose of a switch in any calendar year, exclusive of remote meter reads using advanced meters.

Estimated meter reads may be adjusted, first, if the losing REP's billed usage is greater than the total kilowatt-hours used by the customer in the TDU monthly meter read cycle during which the estimate was made.

Estimated reads may also be adjusted if the usage per day for the estimated period prior to the switch is at least 25% greater than, or 25% less than, the average actual kWh usage per day, but only if the customer disputes the estimate to the gaining or losing REP. REPs may not request an adjustment to the estimate under this scenario without a customer dispute.

The PUCT declined to include in the rule the AEP companies' proposed methodology for adjusting estimates (Matters, 6/1/09), stating that the issue is better left to the TDUs individually. TDUs will not be permitted to charge REPs for adjusting the estimates.

The rule also revises the ERCOT postcard, striking language about the customer's right to cancel, and merely listing the phone numbers of the gaining and losing REP.

PUCT to Likely Re-Open REP Disclosure Rule to Harmonize with HB 1822

The PUCT will likely open the recently adopted new REP disclosure rule (35768), to accommodate recent legislation which sets parameters for fixed-price contract expiration notices that differ in some respects from what is in the rule, Staff said at yesterday's open meeting (Matters, 5/29/09).

Upon becoming law, HB 1822 would require renewal notices for residential customers to be sent out at least 30 days, but no more than 60 days, before expiration. The PUCT rule requires

notices between 14 and 45 days.

Additionally, HB 1822 would require bills for all fixed price products (for all customer classes) to include the date of expiration, as opposed to an estimate or billing cycle of expiration.

The Commission also opened project 37070 for a rulemaking to adopt common terms used in billing of telecommunications and electric service, as required under HB 1822.

PJM Asks FERC to Defer Ruling on Tariff Regarding Munis' Demand Response Control

PJM has asked FERC to defer consideration of its tariff filing to give municipal utilities and similar authorities the ability to restrict retail customer participation in PJM demand response programs under certain conditions, with the current tariff continuing to govern (ER09-701).

In its proposal, made to comply with FERC Order 719, PJM would allow relevant electric retail regulatory authorities to prohibit all customers, or all customers in a certain class, from participating in PJM demand response programs (Matters, 3/4/09).

However, PJM would not allow retail regulatory authorities to only allow some customers to participate, while denying participation to other customers, as PJM believes such a scenario is inconsistent with Order 719. Various municipals and cooperatives have opposed that stance, arguing that Order 719 allows retail authorities to deny participation on a customer-by-customer basis if desired.

Due to such protests, PJM believes the rehearing process on Order 719 should be completed prior to FERC ruling on its retail customer demand response filing, as many of the protests overlap. "[L]ittle value would be gained were the Commission to rule on the specific PJM Tariff revisions only to have these PJM Tariff revisions potentially change again were the Commission to modify its original 719 Order in the context of the pending rehearing requests to that Order," PJM said.

PJM says that its current tariff would govern absent FERC action. The current tariff does not allow retail regulatory authorities or electric distribution companies to object to the

registration of retail customers in PJM load response programs. Although PJM has received certain municipal ordinances and at least one state order which appear to trigger the provisions of Order 719, PJM said that it will continue to follow its existing tariff unless directed otherwise by the Commission.

Oncor Rate Case PFD Includes \$25 Fee for Inaccurate Premise Locations from REPs

Oncor would be permitted to charge a fee of \$25 to REPs that select an incorrect premise location from the ERCOT portal for a switch or move-in (thus requiring Oncor to correct the error), under a proposal for decision in Oncor's rate case issued by two ALJs yesterday (35717).

Oncor says that the Inadvertent Gain charge is needed to ensure recovery of costs incurred to correct situations in which the TDU erroneously switches the customer's current REP due to an incorrect request by another REP.

The discretionary charge was opposed by PUCT Staff, who argued that it is not always certain who is at fault in such a situation, and that the charge could introduce an element of inequity. Staff said that the issue should be addressed through market processes at ERCOT.

Staff also noted that Section 4.3.5 of the Retail Tariff prohibits charging a REP for a change in the designation of a customer's REP, and that P.U.C. SUBST. R. 25.495 establishes the process for resolving unauthorized charges. That section does not provide for additional charges regardless of whether the changes are authorized or unauthorized.

However, Oncor noted that while P.U.C. SUBST. R. 25.495 sets out the process for correcting an unauthorized switch, it does not preclude the adoption of an Inadvertent Gain charge.

The ALJs found that the proposed charge would at least endeavor to place the costs of an erroneous switch on the REP if it were at fault, which is a more equitable allocation of those costs. As P.U.C. SUBST. R. 25.495 does not prohibit such a charge, the ALJs held that the Inadvertent Gain charge should be approved.

The ALJs also found that Oncor's request to waive demand ratchet provisions for loads with

a maximum annual demand of 20 kW or less should be approved.

PUCT Extends Schedule for Review of Exelon Hostile Acquisition of NRG

The PUCT has extended the schedule for its review of Exelon's proposed hostile acquisition of NRG Energy, but the Commission did hold that Exelon's application is sufficient and the case may proceed.

Parties will develop a new schedule with the ALJ at a prehearing conference, but the Commission said that the hearing date for the case should occur sometime in late September or October, about two months after the original August 7 hearing date. The Commission's hope is that the likelihood of the transaction being consummated is clearer at that time.

Chairman Barry Smitherman, who initially opposed continuing the case schedule until a compromise schedule was reached, said that the merger application does not appear to be ripe for Commission decision, and does not want to waste resources reviewing a transaction that may not be pursued under several various conditions.

Commissioners Donna Nelson and Kenneth Anderson, however, noted that the nature of the tender offer makes it difficult for any acquiring company to set a specific closing date, and were worried about setting precedent that would forestall future tender transactions if Exelon's application is deemed incomplete because its estimated closing date is not more specific than the fourth quarter of this year.

Nelson was also concerned because the statute compels companies to come before the Commission for approval before closing, worrying that finding Exelon's filing to be deficient may discourage future applicants from seeking timely Commission approval.

The closing date is critical in the case because, unlike other recent merger applications, Exelon's proposed acquisition of NRG would near the ERCOT 20% market share cap, with Exelon proposing several mitigation measures in the docket. As the size of the ERCOT market fluctuates with entrants, exits, uprates, mothballs, and various other factors,

the closing date is required to evaluate the precise effect on competition.

An ALJ also reinstated discovery in the proceeding.

Mich. PSC Approves Changes to WPS Transportation Service

The Michigan PSC accepted a settlement between Staff and Wisconsin Public Service Corporation which implements several changes in WPS Corp.'s tariffs for transportation service (U-15926). Under the order, WPS will:

- Change from Monthly Balancing services to Daily Cash Out;
- Change the blocks of the Daily Balancing Charge to (0.0% to 8.0%) and (> 8.0%);
- Eliminate utility direct billing of balancing charges to individual customers of third party balancing pools;
- Change the Daily Balancing Floor and Ceiling rate calculation to account for multiple pipelines now serving WPS Corp's service territory;
- Add a new section to address ANR Operational Flow Orders; and
- Combine High Flow Constraint Day, Low Flow Constraint Day, and Constraint Day Balancing into a single new tariff section.

Detroit Edison Ordered to Develop More Specific RFP Process for Renewable Plan

The Michigan PSC conditionally approved Detroit Edison's renewable energy plan, pending the filing of more specific RFP bid evaluation criteria by Edison (U-15806).

Edison's renewable plan will include 609 MW of utility-owned generation, and 686 MW of merchant generation purchased through PPAs.

However, the Commission found Detroit Edison's plan to be incomplete because Edison's, "description of its RFP and bid evaluation process is so deficient that it cannot be found to comply with Act 295," agreeing with several merchant generators who protested the filing.

Merchant generators had noted that the only detail on the bidding process that Edison provided was an affirmation that proposals

received in response to an RFP will comport with the Commission's guidelines for RFPs and will be handled in accordance with the company's Code of Conduct. "Beyond that, there is a complete lack of information regarding how Detroit Edison proposes to conduct its RFPs or how it intends to evaluate proposals. Indeed, the company admitted that its RFP and bid evaluation processes are still under development," the PSC noted in its order.

Edison was ordered to consult with Staff and file, within 14 days, a complete description of its RFP and bidding process that complies with Section 21(2)(d) of Act 295 and the PSC's Temporary Order. The filing shall contain, at a minimum, a description of how Detroit Edison will implement a transparent bidding process that evaluates projects using criteria based on capacity and availability of transmission, a potential developer's required capital structure, developer experience, access to capital, and creditworthiness.

In addition, the process shall provide sufficient notice (e.g. 90-120 days) to potential bidders. The filing shall also describe a clear and reasonable ranking method that Detroit Edison proposes to use in evaluating bids and the means that Detroit Edison will employ to assure that any bidders who are company affiliates are not afforded a competitive advantage over independent developers.

The Commission also ruled that imputed debt related to PPAs shall not be considered a cost under the renewable plan, and will be addressed in reviewing individual PPAs. The PSC further said Edison's \$310 million estimate of imputed debt is, "at best highly speculative," supported by "unconvincing" evidence.

Edison's proposed pilot distributed generation purchase program was approved without modifications suggested by Staff, though Edison was directed to work with the Staff to assure that RECs produced by small distributed generators are effectively tracked, certified, and used to meet the overall renewable goals of the company's renewable plan. The Commission directed the parties to consider the workability of a simple system for the aggregation of all small generators on Edison's system with a calculation of appropriate RECs for the aggregate.

As it did in Consumers Energy's renewable plan, the Commission also refused to adjust Edison's proposed cost allocation of renewable costs, which recovers 65% of costs from residential customers.

Michigan Board Reports on Favorable Wind Zones

Four regions identified by a Michigan panel as the zones with the highest wind energy potential could account for between 3,400 MW and 6,100 MW in total, the Michigan Wind Energy Resource Zone Board found in a proposed report released yesterday. The study was mandated by last year's Public Act 295.

Three of the regions are in western Michigan bordering Lake Michigan, while the region with the highest potential is on the state's thumb, the peninsula extending into Lake Huron. The study was limited to onshore wind, as a separate state initiative is studying offshore wind.

Region 4, including Huron, Bay, Saginaw, Sanilac and Tuscola counties, could produce between 2,400 MW and 4,200 MW. The next region with the most wind potential, Region 3, could produce 650 MW to 1,200 MW and includes Benzie, Leelanau and Manistee counties. Region 1 (Allegan County) could yield 250 MW to 450 MW, while Region 2 (Antrim and Charlevoix counties) could yield 160 MW to 290 MW of installed capacity.

The regions were selected based on the board's findings related to wind resources, land availability, and energy production potential relative to other areas of the state.

The board noted that wind development will ultimately depend on state and federal policies and incentives, community acceptance, and the ability of the transmission system to integrate wind resources.

Local governments will have two months to comment on the draft report, which will be followed by public hearings.

Briefly:

Constellation NewEnergy Seeks Ohio Retail Gas License

Constellation NewEnergy-Gas Division has applied at the Public Utilities Commission of

Ohio for a competitive retail natural gas supplier license as a retail marketer, broker and aggregator. Constellation applied to serve at retail all sizes of non-residential customers at all four major LDCs.

Glacial Receives Michigan Electric License

The Michigan PSC granted Glacial Energy's application for an alternative electric supplier license (Matters, 3/25/09). As first reported by Matters, Glacial has said it intends to use EnerCom Inc. as a broker in Michigan. The PSC also noted Glacial Energy recorded over \$170 million in revenue in 2008.

PUCT Denies Kelson Transmission CCN

The PUCT generally approved a proposal for decision which denies Kelson Transmission's application for a CCN to link the affiliated Cottonwood generating plant with ERCOT (34611). Commissioner Kenneth Anderson stressed that his vote to support the proposal for decision was based on his opinion that Kelson failed to meet its burden of proof for a CCN, as opposed to denying its business model or type of project. Anderson also said greater clarity is needed regarding whether such third-party transmission projects may or may not participate in the ERCOT Regional Planning Group process, even if they do not yet have a CCN. The Commission granted a clarification to a finding of fact requested by Entergy Texas in discussing the current Regional Planning Group process, but otherwise no substantive changes to the proposal for decision were made.

ERCOT Moves to Dismiss Wind Generators' Reactive Power Appeal as Moot

ERCOT filed to dismiss an appeal at the PUCT from several wind generators regarding a Protocols interpretation relating to reactive power requirements, as ERCOT's withdrawal of the Protocol interpretation on a procedural issue on Monday makes the appeal moot (Matters, 6/2/09).

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contested case docket designed to modify the utilities' non-rate making customer choice tariffs even though none of the named utilities has

proposed to make any modifications to these tariff provisions nor were any of these utilities parties to Case Nos. U-15509 and U-15577," MichCon said.

The Michigan Supreme Court has held that MCL 460.6 does not grant the Commission authority to order utilities to implement retail gas choice programs, MichCon noted. Legislation only mandates that any alternative gas supplier under a choice program must be licensed by the Commission.

Gas choice programs since their inception have been voluntary programs that the utilities filed with the Commission, MichCon said. The filing of the tariffs with the Commission does not grant the Commission authority to direct changes to the tariffs, MichCon added, and the tariff filings were done in the interest of accommodating statewide consistency, and allowing the PSC the opportunity to suggest changes that the LDCs are free to reject or accept.

Even if the Commission had authority over the choice tariffs, a contested case is an improper vehicle for ordering changes, as the tariffs do not involve rate-making, MichCon argued.

MichCon said that an interactive, but voluntary, informal discussion process among stakeholders should replace the Commission's contested case proceeding, and said it is prepared to propose changes to the choice tariffs in such a context.

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solicitations (first solicitation: \$22.50; second solicitation: \$15.52; third solicitation: \$14.75).

Iberdrola Renewables offered a skeletal outline for an LSE-based model that would allow LSEs to procure long-term contracts (defined as 10+ years) in order to meet their RPS obligations with full cost recovery, subject to a PSC prudency review (ostensibly this would thus be limited to regulated utilities).

Tradable RECs would be used for compliance purposes, with LSEs permitted to procure bundled contracts for RECs and energy. The use of long-term contracts would help to reduce price volatility, Iberdrola Renewables said.

An alternative compliance payment of \$50 per MWh, adjusted annually for inflation, should be imposed, Iberdrola Renewables suggested.

Iberdrola Renewables also said that NYSERDA's "periodic and random" procurements make long-term planning difficult. The Independent Power Producers of New York expressed similar criticisms of the current NYSERDA procurements, but suggested changes to the procurement process rather than abandoning the centrally procured RPS model in favor of an LSE model.

IPPNY recommended that NYSERDA should be allowed to pursue multiple solicitations without the need for PSC orders, and that NYSERDA should be directed to offer multiple solicitations each calendar year to better reflect the decision-making cycle of the industry.

IPPNY also sought to expand the RPS to include more renewable resources (such as low impact hydro and energy from waste), and to allow generators in service prior to 2003 to be eligible under the RPS.

Iberdrola Renewables and IPPNY both said that a REC tracking system would encourage renewable development, as it would allow developers to more easily sell RECs if the developer were not selected in a NYSERDA procurement.