

# Energy Choice

## Matters

*June 4, 2009*

### **ConEd Expansion of PowerMove to New Service Customers Approved on Pilot Basis**

Consolidated Edison will begin offering its PowerMove ESCO Referral program to new service initiation customers on a pilot basis, under an order released by the New York PSC yesterday (Matters, 7/21/08).

The expanded program was only approved on a pilot basis as changes made by the Commission in its approval will alter the cost of the program, and the extent of any additional costs are unknown.

Among the changes required by the PSC is that ConEd must modify its ESCO assignment process so that single commodity service customers are provided access to the dual-fuel ESCO list, and that dual commodity customers are provided access to the electricity-only and natural gas-only ESCO lists as well as the dual-fuel list. The change had been requested by several marketers, and the PSC found that ConEd had not justified limiting dual-fuel customers to assignment to a single, dual-fuel ESCO, as opposed to a separate ESCO for electricity and gas.

ConEd was also directed to initiate a "warm transfer" of customers to ESCOs during the enrollment process, under which the ConEd customer service representative will transfer the customer call directly to an ESCO. The process will permit the ESCO to serve as an agent in the enrollment process. ESCOs also said the warm transfer would reduce the time spent on the call by the ConEd customer service rep, thereby reducing costs, though ConEd disputed that argument.

The "warm transfer" mechanism may be an effective component for the removal of some barriers to competition, the Commission concluded. Given that new service customers can reject the offer

*Continued P. 5*

### **Mass. DPU: No Immediate Changes to Basic Service Adjustment Mechanism Needed**

No adjustments to the Basic Service Adjustment Mechanism are needed at this time, the Massachusetts DPU said in a report to lawmakers, as the Department declined to implement supplier recommendations to remove or alter the reconciliation component of default service rates (09-26, Matters, 4/7/09).

The Basic Service Adjustment Mechanism is a nonbypassable reconciliation that allows distribution utilities to true-up and either charge or credit ratepayers for the difference between basic service costs and revenues during a prior period. The difference in basic service costs and revenues results from several generation components that are not included in the fixed bid price of wholesale suppliers, which are instead paid to wholesale suppliers on a pass-through basis. The most significant component of the pass-through costs is uplift charges, particularly in the SEMA region.

The DPU affirmed that the pass-through of wholesale costs for which there exists significant uncertainty is appropriate in providing reasonably priced service to non-shopping customers. Requiring basic service suppliers to bear the risks associated with these costs, "could result in the suppliers' including significant risk premiums in their bid prices, leading to unnecessarily high supply costs for basic service customers," the DPU said.

While the DPU anticipates that there may be no need to apply pass-through treatment to uplift

*Continued P. 6*

## **PG&E Opposes Change in Reference Year for Load Used in RPS Target**

Pacific Gas and Electric opposed a motion by several parties, including competitive suppliers, to alter the RPS compliance obligation so that it is based on current-year sales, as opposed to prior-year sales as is the practice now (R. 06-02-012).

Constellation NewEnergy, Direct Energy, The Utility Reform Network, the Community College League of California, and the California Large Energy Consumers Association had petitioned the PUC to switch the obligation to current-year sales to better match RPS obligations and LSEs' underlying customer usage. The change would alleviate the problematic result that the petitioners expect to occur under the current rule, in which a supplier's decreasing load from one year to the next will effectively necessitate over-procurement of RPS resources in the second year relative to the supplier's RPS obligation and load for that year.

PG&E, however, argued there is nothing wrong with the current methodology which merely requires LSEs to fulfill their RPS targets for a reference year of load one year after the reference year. PG&E said using a known amount of load from the prior year is preferable to using estimates and true-ups (with associated risk), as would be required in basing the RPS target on current-year load.

PG&E noted that the PUC rejected a similar argument regarding compliance timing in an earlier decision, and said there has been no change which warrants revising that decision.

However, Commerce Energy and 3 Phases Renewables noted that the 20% compliance target will take effect next year. While suppliers have been able to partially mitigate excess obligations due to decreasing load in prior years through flexible compliance mechanisms, mitigation has only been feasible because of the relatively small size of the companies' annual RPS obligations (compared to their total loads) in the years 2006-2009. With the 20% procurement target coming into effect next year, the cost-recovery risks and customer-relations problems created by the prior-year methodology

will be compounded greatly, Commerce and 3 Phases said.

"Indeed, those problems could as a practical matter force some ESPs, particularly those with small and/or shrinking customer bases, to sharply increase their energy rates or exit the California market altogether," the suppliers added.

The requested modification was also supported by the Alliance for Retail Energy Markets, the California Retailers Association, the Direct Access Customer Coalition, and the Western Power Trading Forum.

## **CMP Asks to Raise Retainage Factor for Mass Market Default Supplies**

Central Maine Power has proposed that the 0.012 retainage factor for the residential and small commercial class be increased to 0.020 in the PUC's next solicitation for Standard Offer supplies, which will procure 34% of load requirements for the class. The retainage factor discounts payments to Standard Offer suppliers to address uncollectibles.

In 2008, the Commission approved an increase in the uncollectible adder from 0.012 to 0.015 for the other 66% of the Standard Offer load. Implementing CMP's proposed change for the remaining load will increase the overall uncollectible rate from 0.014 to 0.017 (34% at 0.020 and 66% at 0.015).

As of April 2009, CMP said that there is a deficit of \$2.6 million in the retainage account for uncollectibles in the residential and small commercial Standard Offer class. CMP further said an overall retainage factor of 0.032 is supported by the projections of the potential retainage balance deficit, but only recommended an increase to 0.020 in the next solicitation.

CMP projected a retainage balance deficit of \$3.4 million at the end of the Standard Offer period (February 2011) under its proposal. However, CMP said its projection is based on its current partial payment allocation process, under which newer transmission and distribution arrearages displace older Standard Offer arrearages because CMP treats arrearages past 90 days as the same age. The Commission

has ordered CMP to change the allocation so that the older of transmission and distribution or Standard Offer charges is always paid first, which CMP said could mitigate the projected retainage balance growth.

## **Turriss, Constellation Reach Agreement to Reimburse Conn. Consortium Members**

Connecticut aggregator Turriss Associates and Constellation NewEnergy have reached an informal agreement between themselves to reimburse members of the Connecticut Consortium buying pool for disputed commission charges included in their supply contracts, Connecticut DPUC Staff said in an update on the matter.

At dispute is the charged brokerage fee of 1 mill/kWh, versus customers' claims that the contract only calls for a fee of 0.665 mills/kWh. The CNE contract was brokered by Turriss along with Ed Arum and Arum Associates, and the facts regarding the amount of the fee to each partner, as well as the responsibility of informing customers of the exact broker fees and break-out, is in dispute (Matters, 1/27/09).

Turriss and Constellation's accord is not a formal agreement with other parties in the case, nor does it address claims in a petition for investigation from the Attorney General having to do with Connecticut Unfair Trade Practices.

The CNE-Turriss pact holds that each of the towns and school districts in the Consortium that had aggregator service fees set at 1 mill/kWh will receive full reimbursement in the amount of 0.335 mills/kWh for all consumption from the contract inception date until May 1, 2009. Thus, they will be put into a position such that the price they paid for consumption will not have included the disputed commission charge. The going-forward commission is reset at 0.65 mills/kWh.

For Consortium members whose contracts expire in December 2009, Turriss has agreed to have Constellation withhold and escrow the commission fees, with the amounts returned to customers via refund check for customers on utility consolidated billing, or returned via bill credit for customers on dual billing.

For Consortium members whose contracts run through 2012, Turriss and Constellation have

agreed that the commission would be reduced to 0.3 mills/kWh, rather than a one-time refund or credit, since there is a longer period of time for the reduced commission fee to reimburse customers.

At the end of contracts for all customers, if there is an underpayment in the reimbursement, Turriss will write checks for any commission reimbursement amounts that may remain.

DPUC Staff said there were 112 Consortium members consuming approximately 135 MW that were affected by the fee dispute. As of this week, 101 of these customers have received new contracts with a price that reflects the removal or reduction of Turriss' fee as outlined above.

The Attorney General and Office of Consumer Counsel have not resolved their claims regarding alleged Connecticut Unfair Trade Practices violations; however, they still have their remedy at law, Staff said. While Conn. Gen. Stat. §16-245u prohibits unfair and discriminatory conduct and unfair trade practices in the electric market, section (b)(5) of that statute provides that at the conclusion of any Department investigation, if the Department makes implicative findings, it must transmit such findings to other appropriate enforcement officials.

## **Michigan IPPs Caution PSC on Edison Affiliate Protections**

The Michigan Wholesale Power Association (MWPA) sought clarification of the Michigan PSC's June 2 order conditionally accepting Detroit Edison's renewable energy plan, cautioning that a provision meant to prevent affiliate favoritism is inadequate to prevent Edison from using confidential information on merchant projects to give it a competitive advantage for utility-owned generation (U-15806).

Among other things, the Commission ordered Edison to file an updated RFP process for its renewable plan, detailing the measures Edison will employ, "to assure that any bidders who are company affiliates are not afforded a competitive advantage over independent developers." Edison's plan also calls for the RFP process to conform to its Code of Conduct.

However, MWPA noted that the Code of Conduct prevents preferential treatment only with respect to, "any affiliate or other entity within its corporate structure." In other words, it is applicable only in dealings between Detroit Edison and any affiliate companies; it does not apply to internal actions at Detroit Edison that do not involve other companies.

Thus, MWPA reasoned, the Code of Conduct does not prohibit Detroit Edison itself from both collecting other developers' confidential information submitted in the RFPs, and using that information for Edison's own competitive purposes. As Edison appears to be pursuing utility-owned generation, MWPA argued that the order fails to protect merchant generators' proprietary data.

MWPA urged the PSC to either require Edison to develop renewable projects under a separate, at-risk affiliate, or, if Edison builds utility-owned generation, to establish a process preventing Edison employees from accessing underlying cost data or any other proprietary information contained in proposals submitted by competing developers in response to Edison's future RFPs.

## **Reliant Energy Offers Summer Disconnect Moratorium to Eligible Customers**

Reliant Energy will again offer a summer disconnect moratorium for low-income seniors, critical-care, and other low-income residential customers who contact Reliant Energy and agree to a payment plan.

The moratorium will apply from July 1 through Sept. 30, and defines customers as low-income if their household income is not more than 125% of the federal poverty guidelines, or if they receive food stamps or government medical assistance.

For low-income seniors and critical care customers, Reliant will not order a disconnection if customers pay 25% of deferred bills on the first electric bill after Sept. 30, with the remaining balance paid in equal installments over the next five billing cycles. Other low-income customers must pay at least 33% of the deferred bills on the first bill after Sept. 30.

Low-income customers who are not seniors

or critical care will not qualify for extended payments if they have unpaid amounts from the 2006, 2007 or 2008 disconnect moratorium, or unpaid balances from prior service with Reliant.

Reliant will also waive deposits for qualified senior citizens, and offer deposit installments for qualified low-income residential customers.

Free home energy audits for qualified low-income and elderly residential customers in Houston will also be available through Reliant.

## ***Briefly:***

### **World Energy Solutions Seeks Pa. Electric Broker License**

World Energy Solutions submitted an electric broker application at the Pennsylvania PUC, to serve commercial customers over 25 kW, industrial customers, and governmental customers. World Energy Solutions intends to broker statewide.

### **ERCOT Disclosed 2008 REP Load Data to Market Participant**

ERCOT reported yesterday that it inadvertently disclosed the 2008 aggregated Adjusted Metered Load (AML) data for each Retail Electric Provider to a Market Participant inquiring about the size of the market. Under the Protocols, the data was still deemed Protected Information when disclosed.

### **O'Malley Says Re-Regulation Still a Priority**

Maryland Governor Martin O'Malley again pledged to make re-regulation an administration priority in next year's legislative session during a ceremony in which several state consulting contracts were signed, including a contract with OCI Resources, Inc. to aid the Maryland PSC in its review of EDF's acquisition of nearly half of Constellation Energy's nuclear unit.

### **PUCT Sets Workshop on Common Billing Terms**

PUCT Staff will hold a workshop regarding the creation of common terms for electric and telecommunications utilities as well as REPs, per House Bill 1822, on June 22.

### **ICC Dismisses Complaint Against APPI, American Energy Solutions**

The Illinois Commerce Commission granted a joint motion to dismiss BlueStar Energy Services' complaint against American Energy Solutions, Inc. and Affiliated Power Purchasers International, LLC, as the parties have reached a settlement to resolve the issues (Matters, 4/20/09). BlueStar's complaint against Lower Electric remains pending.

### **CMP to Sell Entitlement to 2 MW PPA**

Central Maine Power has requested approval from the Maine PUC to sell its rights to capacity and energy from one of its undivested generation assets, its PPA with Mid-Maine Waste Action Corporation. The right to the PPA (along with other thermal PPAs) had previously been auctioned for a three-year period beginning March 1, 2007, with FPL Energy Power Marketing winning the entitlement. CMP is seeking authority to sell the rights from the PPA for another three years, starting March 1, 2010. CMP asked that the Request for Bids for the PPA be issued concurrently with the Commission's upcoming Standard Offer solicitation for the residential and small commercial customer class. The PPA has an estimated installed capacity of 2 MW with estimated annual production of 15,000 MWh.

### **ERCOT Withdraws Request for SAPS-Shrew-Menard CRE**

After re-evaluating the impact of the Pre-contingency Action Plan and the updated re-configuration of the San Angelo Power Station (SAPS)-Menard area, ERCOT has withdrawn its request to designate SAPS-Shrew-Menard as a West to North Closely Related Element (Matters, 5/29/09).

### **Comverge Wins 680 MW in RPM Auction**

Comverge won more than 680 MW of demand response capacity in PJM's 2012/2013 Reliability Pricing Model Base Residual Auction, Comverge said yesterday. Comverge also said a 15-year, 125 MW contract with Arizona Public Service has received regulatory approval. Combined, the RPM capacity and APS contract are expected to generate \$145 million in future revenues.

### **Eagle Energy Partners Would Pay \$100,000 under LaaRs Settlement**

PUCT Staff and Eagle Energy Partners, LP have entered into a settlement under which Eagle Energy would pay an administrative penalty of \$100,000 for failure to deploy 95% of its 126 MW of □scheduled Load acting as Resource (LaaR) within 10 minutes of ERCOT instruction in August 2008. The stipulation is subject to Commission approval.

### **PUCT Approves Luminant LaaRs Settlement**

The PUCT approved a settlement between Staff and Luminant under which Luminant shall pay an administrative penalty \$17,500 for the alleged failure to deploy 95% of Load acting as Resource obligations within 10 minutes of ERCOT instruction in July 2007.

## ***PowerMove ... from 1***

to participate in PowerMove, ConEd shall implement the "warm transfer" approach on a pilot basis to determine the costs associated with the approach and its effectiveness in facilitating customer migration, the PSC said. The pilot will enable the parties to assess and report the effectiveness of the approach and to ascertain the costs to be borne by ESCOs.

The Commission's order did not address cost recovery for the expansion, as ConEd has indicated it is willing to consider alternative methods of cost recovery. The utility shall report back within 60 days with any modification to its original proposal to assign both the implementation and Operations & Maintenance costs associated with the expansion to ESCOs. ESCOs have argued that only incremental O&M costs should be assigned to participating ESCOs.

ConEd is to hire five additional customer service reps to handle the additional call time associated with the expanded program, but was directed to defer the costs of hiring and training the new employees, and report after the program has been in effect for six months with actual cost information. The proposed customer service positions will not be dedicated to retail access or the PowerMove program, and the PSC said further study is required to determine the amount of time actually spent by a customer service rep to explain and process a new service

customer through PowerMove.

The Commission dismissed Consumer Power Advocates' argument that ConEd should require an actual written or verifiable electronic signature prior to enrolling a customer in PowerMove, which CPA said was needed to prevent slamming.

## **BSAM ... from 1**

costs in the future (as the magnitude and frequency of associated SEMA uplift costs will be significantly reduced), the DPU said that the availability of a pass-through mechanism is an important regulatory tool to ensure that generation service is available at affordable prices.

Absent the elimination of the basic service adjustment mechanism in favor of all-in wholesale pricing, retail suppliers recommended that the adjustment only be applied to basic service customers, instead of all distribution customers, including those on competitive supply.

However, the Department was unconvinced that a change in cost allocation is appropriate. Although the DPU conceded shopping levels among mass market customers have not grown as anticipated (lessening the risk that an increasingly smaller group on bundled service customers would end up paying the adjustment mechanism if it were bypassable), that fact alone is not sufficient reason to revise the way that the adjustment costs are reconciled, the DPU held.

"The Department concludes that, because basic service continues to act as a safety net for all customers, these costs should be reconciled to all distribution customers."

The DPU left open the possibility of allocating some basic service adjustment costs to only basic service customers in the future. While the administrative costs recovered from the mechanism (e.g. costs caused by the difference between estimates of load and actual load) should be paid by all customers, the DPU said that it may be appropriate to reconcile pass-through wholesale costs (such as uplift costs) in a different manner, under certain circumstances. As the Department does not expect such costs to be significant going forward, it found no

change is currently warranted, but it will continue to monitor wholesale markets to track costs that may merit the pass-through of wholesale costs, and consider changes should future pass-through costs reach a magnitude that requires action.