

Energy Choice

Matters

June 26, 2009

Pa. PUC Rejects Transportation Service Tariff Changes Requested in National Fuel PGC Filing

The Pennsylvania PUC approved a settlement in National Fuel Gas Distribution's 1307(f) Purchased Gas Costs (PGC) proceeding, but refused to enact requested tariff revisions sought by settling parties, stating that the changes should be served on retail suppliers and other affected parties.

Settling parties, which included Distribution, PUC Trial Staff, the Office of Consumer Advocate, and Office of Small Business Advocate, sought approval of various transportation related tariff changes that do not directly relate to the PGC filing. These changes included:

- A definition for "Market Price of Natural Gas" and "Daily Market Price of Natural Gas" (Tariff Pages 35E, Section 29, 140)
- Application of Market Price of Natural Gas, wherein all transportation costs were added to the tariff charges (Tariff Pages 96, 117, 146G)
- Application of Market Price of Natural Gas (Pages 106, 118I, 129, 140)
- Application Daily Market Price of Natural Gas (Tariff Pages 118D, 118E, 118F, 127, 134, 135, 136)
- Application of Daily Market Price of Natural Gas, wherein all transportation costs, as opposed to variable transportation costs, were added to the tariff charges (Tariff Page 129)
- Modification of the capacity release pricing methodology (Tariff Page 131)

Because of the lack of substantive evidentiary support for these changes, the Commission denied the tariff modifications at this time. PUC Chairman James Cawley also noted that the tariff changes are beyond the normal scope of a section 1307(f) proceeding.

"In general, where changes in tariff language are proposed, or new tariff requirements are imposed, it is more appropriate for such tariff changes to be served on affected parties ... In this instance, transportation customers and the affected Natural Gas Suppliers should be served and

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PUCT Staff Proposal Would Remove Collateral Requirement on CREZ Wind Developers

PUCT Staff have submitted a proposal for publication to modify the financial commitment test under PUC Subst. R. 25.174 that will need to be met prior to any Commission approval of the Competitive Renewable Energy Zone (CREZ) CCNs, with Staff proposing to remove the collateral requirement on CREZ wind developers (34577).

The proposal would state that the Commission finds that installed generating capacity and continuing construction of new generation are the best measures of wind-generator financial commitment. As the proposal would remove the collateral requirement, it would also eliminate the related obligation to take service within one year of a CREZ transmission line being completed.

For the three southern CREZs (McCamey, Central, and Central West), the draft would determine that the amount of renewable generation already developed in those CREZs, and the amount of additional renewable generation currently under development, demonstrate sufficient financial commitment in those zones. The proposal holds that the Commission believes that generators in those zones have already proven that new generation development has or will occur to use the new

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PUCT Staff Files Proposal to Govern Decertification of Independent Organization

PUCT Staff filed a proposal for publication to establish procedures for the decertification of an independent organization and the transfer of assets to a successor organization pursuant to PURA §39.151(d), as adopted in the 2005 legislative session (33812). Among other things, the independent organization (currently ERCOT) ensures nondiscriminatory access to the transmission and distribution system, ensures the reliability and adequacy of the regional electrical network, and ensures that information relating to a customer's choice of retail electric provider is conveyed in a timely manner to the persons who need that information.

Staff's proposed new PUC SUBST. R. 25.364 would hold that the Commission may initiate a proceeding to revoke an independent organization's certification. Under Staff's draft, prior to initiating a proceeding to revoke a certification, the Commission may conduct an audit or study of the performance of an independent organization with respect to its efficiency and effectiveness in carrying out its duties under PURA and Commission rules.

Staff's proposal would hold that any Commission order revoking certification shall ensure continuity of operations of the independent organization and shall designate the successor organization that will assume the functions of the independent organization. The Commission order revoking certification would provide for the independent organization to transfer its assets and liabilities to the successor independent organization designated by the Commission.

Under Staff's draft, the Commission would be required to designate, and certify pursuant to PURA §39.151(c), a successor independent organization from among persons that have submitted proposals in response to the Commission's request prior to the decertification of an independent organization. To the extent that there are duties performed by the current independent organization that are not required by statute, Staff's proposal would allow organizations other than a successor independent organization to assume those

functions.

Staff's proposal would also amend PUC SUBST. R. 25.361, which establishes ERCOT as the current independent organization, to make ERCOT subject to the decertification process in new §25.364.

Three Generation Developers Renew Push for Non-wind RPS at PUCT

AES Energy, Nacogdoches Power, and Geo Texas petitioned the PUCT to institute a 500 MW renewable portfolio standard for non-wind resources (35792, Matters, 9/9/08). The three developers are represented in the docket by Good Company Associates.

Good Company argued that HB 1090, passed in 2007, implicitly grants the Commission the authority to establish a non-wind RPS since it explicitly granted the Commission authority to establish a separate alternative compliance payment for non-wind renewable energy resources to achieve the state's "goal" for 500 MW of such energy.

Establishment of a separate alternative compliance payment for renewable energy technologies other than wind energy would require separating RECs for wind from RECs for non-wind renewable energy, Good Company reasoned, because if a wind REC could satisfy the requirement for non-wind renewable energy, establishing a separate compliance payment for non-wind renewable energy would be a meaningless act. Accordingly, the authority to establish a separate non-wind alternative compliance payment carries with it the authority to set a non-wind RPS, Good Company said.

The Commission's strategy of promoting non-wind renewables by granting such resources a compliance premium has not been successful, Good Company added. Each REC generated by a non-wind resource is essentially counted twice under the compliance premium.

"However, the market has ascribed little value to compliance premiums, and in some cases no value," Good Company said. Although RECs can be retired to satisfy a Texas RPS requirement or retired as part of a Green-e certified offering, compliance premiums can only be retired to satisfy the Texas RPS requirement.

A REC can not be sold as a Green-e certified product if the compliance premium is retired to satisfy the Texas RPS, and a compliance premium can never be sold as a Green-e certified product, Good Company said. RECs are therefore valued by the market "far above" a compliance premium, Good Company added.

SB 541, which passed the Senate but failed to pass the House in the 2009 session, would have established a 1,500 MW non-wind mandate by 2020 (Matters, 5/12/09)

Our Energy Clarifies REP Amendment is to Reflect Sale, Not Transfer

Our Energy clarified that it is being sold to a new owner and is not transferring its REP certificate to another entity, the REP reported to the PUCT (37012).

An ALJ had requested a clarification to Our Energy's application for an amendment to its REP certificate to reflect a transfer to Yam Energy (Matters, 6/17/09). The ALJ noted that, while Our Energy as an existing REP currently has until May 21, 2010 to meet new certification requirements, any new entity receiving its certificate via a transfer would have to meet the new certification requirements immediately.

Our Energy clarified that it is seeking the requested amendment to reflect the purchase of Our Energy by new ownership. Our Energy said that it styled its amendment request as a transfer of certificate based on previous use of the term, but said after discussions with Staff it now understands that the term "transfer of certificate" is now used to mean transfer of only the certificate, not a buyout of the organization.

As Our Energy is not seeking a transfer of the certificate under its new ownership, it submitted a restyled amendment request. To avoid confusion, Our Energy also withdrew its request for a name change in the instant amendment request.

As previously reported, under new ownership, Our Energy is led by Tanweer Ahmed, who is currently President of North Coast Couriers (Matters, 5/20/09).

Generators Seek Lower Unsecured Credit Limit in CAISO as Part of Accelerated Payments

Generators and wholesale suppliers expressed support for the California ISO's accelerated payment proposal, though some sought additional measures to further decrease market risk (ER09-1247).

Under the CAISO's proposal filed at FERC, invoicing would occur semi-monthly, which would decrease the average cash clearing schedule from approximately 80 to 25 calendar days.

Though supportive of the filing, Calpine urged FERC to direct CAISO to follow-through expeditiously on its commitment to further shorten the payment calendar by moving from semi-monthly invoicing to weekly invoicing, with accelerated payment dates.

NRG Energy, Dynegy, RRI Energy, and J.P. Morgan Ventures Energy Corporation jointly noted that CAISO had previously said that, coincident with accelerated payment, it would lower the unsecured credit limit from \$150 million to \$50 million. However, such a lower unsecured credit limit was not part of the CAISO's filing, and it's not clear whether CAISO will separately seek to lower the limit as previously indicated. Powerex expressed a similar concern. The wholesalers asked that CAISO be directed to clarify its intention, and, if CAISO does not intend to lower the limit, the wholesalers asked FERC to direct CAISO to do so.

Western Power Trading Forum also supported the accelerated payment proposal as a means to ensure the going-forward liquidity and stability of the market.

PG&E, SCE Directed to Address State Fuel Cell RFI

Pacific Gas & Electric and Southern California Edison were directed to supplement their applications to install utility-owned fuel cells at California State universities to address a new state Request for Information for such installations, under a PUC scoping ruling issued yesterday.

Both utilities are seeking authority to install

about 3 MW of fuel cell capacity at California State universities, and the cases have been consolidated due to their similarity.

The state's Department of General Services is now conducting a Request for Information regarding fuel cell installations at state facilities. The Western Power Trading Forum and Alliance for Retail Energy Markets, which oppose the petitions, noted that it appears the RFI is exploring installation of fuel cell energy systems at state facilities which would be operated under third party ownership business models that include power purchase agreements. WPTF and AReM thus suggested that the utilities should file supplemental testimony on the relationship between the RFI and the universities' independent plans with regard to fuel cell projects.

PUC President Michael Peevey, the case's assigned Commissioner, agreed, and directed the utilities to file supplemental testimony on that topic and how the RFI impacts their applications.

PUCT Staff Issues Customer Deposit NOV Against eTricity, Seeks \$1.4+ Million

PUCT Staff submitted a notice of violation against Hwy 3 MHP, LLC, d/b/a eTricity, which defaulted last summer, for allegedly not refunding customer deposits and/or prepayments within 30 days of ceasing operations, not certifying to the Commission that deposits have been refunded, and not informing the Commission of its intent to cease operations. Because Hwy 3 MHP has failed to respond to Staff's requests for confirmation that customer deposits or prepayments have been returned to customers, the allegations are based on information and belief.

Failure to refund deposits is a Class A violation, while failure to notify the Commission of cessation of operations and completion of refunds is a Class C violation.

Staff recommended a penalty of at least \$1.44 million, with the final penalty to be increased to reflect the ongoing nature of the alleged violations. Staff recommended a penalty of \$5,000 per day (versus the maximum of \$25,000/day for Class A violations) for failure to return customer deposits, and a penalty of

\$1,000 per day (the maximum for a Class C violation) for failure to notify the Commission of cessation of operations and completion of refunds.

Briefly:

CenterPoint Extends Disconnect Moratorium

CenterPoint Energy extended its extreme weather moratorium on disconnects because the National Weather Service has extended the heat advisory issued on June 24 until 7:00 PM CDT on Friday June 26, 2009. Under market rules, the earliest that disconnects can be performed again, provided the heat advisory is not extended, is Wednesday July 1.

PUCT Dismisses Three REP Applications for Not Complying with New Standards

The PUCT dismissed without prejudice the REP certificate applications of Nova Power, Endless Power, and Texas Solaro Energy for failure to meet the new financial requirements under new PUC SUBST. R. 25.107 (and for other deficiencies in the case of Texas Solaro Energy). The Commission also suspended the application of TPS Power Holdings as requested by the retailer to allow TPS more time to document compliance with the new standards (Matters, 5/21/09).

Energy Trust Seeks Md. Broker License After Years of Operations Without License

Energy Trust, which has been brokering Maryland customers without the required license since 2007, applied for electric and natural gas brokering licenses at the PSC. Energy Trust said it became aware of the licensing requirement via a letter dated April 17, 2009 from the PSC. Energy Trust is seeking authority to broker non-residential electric customers at all four investor-owned utilities, and non-residential natural gas customers at Baltimore Gas & Electric, Columbia Gas, and Washington Gas Light.

WMECO, AG File Settlement to Fund Solar Installations Via Nonbypassable Charge

The Western Massachusetts Electric Company and Massachusetts Attorney General have filed a partial settlement that would permit WMECO

to build 6 MW of utility-owned solar generation, funded through a nonbypassable surcharge (09-05). WMECO was originally seeking up to 50 MW of utility-owned solar as permitted under the Green Communities Act, but under the stipulation will pursue such additional megawatts in the future, possibly under a Commonwealth-wide "pool" approach. WMECO would only deploy photovoltaic facilities larger than 200 kW under the settlement, with installations occurring through 2012.

Maine PUC Denies Broker License for Energy Rebate

The Maine PUC dismissed Energy Rebate's application for a broker license due to an incomplete and insufficient filing (Matters, 12/31/08).

Pa. PUC Rules Exelon Application to Acquire NRG is Ripe for Review

The Pennsylvania PUC ruled that Exelon's application to acquire NRG Energy through its exchange offer is ripe for adjudication, allowing the case to proceed. Vice Chairman Tyrone Christy dissented, stating that as there is no definitive transaction, the Commission will not have a complete record, and will be unable to determine whether the transaction promotes the public interest. The Commission also held that Exelon's request for approval of an acquisition effectuated through a negotiated settlement (rather than its exchange offer) is not ripe for review, since no such agreement exists at this time.

PUCT Staff to Post Draft Protocols on Nodal Performance Metrics by July 2

The Staffs of the PUCT, Texas Regional Entity, Independent Market Monitor, and ERCOT will post draft protocols and/or protocol revisions to implement critical performance measures and criteria for the nodal market by noon on July 2 in Project No. 37052. A workshop on the draft protocols will be held July 13.

PUCT Staff Files Schedule for Chapter 25 Review

PUCT Staff have filed a draft schedule to govern the Commission's four-year review of Chapter 25, Substantive Rules Applicable to Electric

Service Providers, in Project No. 37115. Staff intends to divide the subchapters into four staggered groups for the purpose of the review, which is to assess whether the reason for adopting or readopting the rules continues to exist. Initiating the staggered reviews is to be considered at four open meetings in July and August.

Glacial Energy RECs Certified by Green-e

Glacial Energy's REC product has been certified by Green-e.

MISO Withdraws Default Notices of Four Additional Marketers

The Midwest ISO withdrew its notice of default and suspension against Olde Towne Energy Associates LLC, Palms Asset Management LLC, Midwest Virtual Power Specialists, and Excelsior Ltd., consistent with FERC's May order holding that the MISO shall not impose Revenue Sufficiency Guarantee charges on virtual suppliers for the period before November 10, 2008. MISO withdrew notices of default against several other financial marketers earlier in June (Matters, 6/8/09), but said the four traders in the instant filing still had other outstanding obligations at that time. Those obligations have now been met.

Riverstone Acquires Babcock & Brown Wind Portfolio

Riverstone Holdings LLC and the management team of Babcock & Brown's North American Energy Group jointly announced the purchase of the wind development portfolio from Babcock & Brown LP to form Pattern Energy Group LP. Riverstone, an energy and power-focused private equity firm, is committing \$400 million to expand and support Pattern Energy's renewable energy business. Pattern Energy retains its entire staff, which has developed 2,000 MW of wind power across 11 states. Pattern Energy also maintains a current development pipeline that exceeds 4,000 MW of wind power spanning 11 states and 4 countries in addition to several power transmission projects.

PG&E, NRG Enter Solar PPA

Pacific Gas and Electric has entered into an agreement with Alpine SunTower, a subsidiary

of NRG Energy, for 92 MW of solar thermal power. The Alpine SunTower project features eSolar's modular, scalable solar thermal technology and is scheduled for completion in 2012. The project is part of eSolar and NRG's recently announced plans to develop up to 500 MW of solar thermal power.

FERC Revokes MBR Authority of Two Marketers

FERC revoked the market-based rate authorizations of Knerdery, LLC and Westbank Energy Capital, LLC for failure to file Electric Quarterly Reports.

NFG ... from 1

receive reasonable notice and a description of the proposed changes so that they can be given an opportunity to comment on these substantive tariff changes in a less complex and costly non-PGC proceeding," Cawley said.

Cawley further stated that Distribution should have offered evidence about the impact of: (1) the calculation of market prices based on a historical application of the old and new indices, (2) the imposition of additional transportation to city-gate costs, when transportation customers already pay many of these transportation costs in their imbalance charges paid to Distribution (regardless of whether or not they actually incur imbalances), (3) the definition of "all transportation charges" vs. "variable transportation charges", and (4) the proposed changes to release capacity charges on transportation customers.

Additionally, Cawley noted that the PUC is embarking on an effort to review existing natural gas supplier and transportation tariffs, suggesting that it may be more administratively efficient to address Distribution's requested changes in future compliance filings as directed by the Commission in Docket No. L-2009-2069117.

Cawley, however, also praised the approved part of the settlement for instituting a more equitable, competitively neutral Lost and Unaccounted For Gas and Company Use retainage factor of 0.54 percent, which is roughly equivalent to the five-year historical average system loss and company usage rate.

CREZ ... from 1

transmission lines built to those CREZs.

For other CREZs, including Panhandle A and Panhandle B, Staff proposes a tiered approach to evaluate whether renewable generators have made sufficient financial commitments in those CREZs to warrant the processing of CCNs for the transmission facilities identified in Docket No. 33672.

The proposed financial commitment test for those other zones would offer three different ways for renewable generators to meet the financial commitment requirement. The renewable generators would only need to satisfy one of the three tiers for the financial commitment requirement to be met, Staff recommended.

Tier One would require a showing that renewable capacity representing 50% or more of the size of a particular CREZ be already installed or under construction. If the financial commitment requirement for a CREZ cannot be met under Tier One, Tier Two would allow the generators to rely on Tier One capacity plus the capacity represented by signed interconnection agreements, site control instrument (land leases), and contracts to build delivery transmission plant. Such capacity would have to add to 75% or more of the CREZ size.

Under Tier Three, generators would also be able to use capacity represented by pending applications for transmission service, in addition to Tier One and Tier Two capacities, to meet the test. Because it would rely on even less firm commitments, Tier Three would require a capacity showing of 100% or more of the CREZ size, Staff said.

The proposal would also modify subsection (e) of §25.174, which addresses excess development in a CREZ. Staff's proposed language would clarify that the Commission may initiate a proceeding to consider a dispatch priority mechanism for a subset of renewable generators only after the Commission determines that the security-constrained economic dispatch tool used by the power region to dispatch the CREZ generating resources is insufficient to resolve the congestion caused by excess wind development. Staff further proposed deleting language which links financial commitment and dispatch priority.