

Energy Choice Matters

July 1, 2009

DPUC Draft Would Decline to Issue Declaratory Ruling on Billing Error Statute

The Connecticut DPUC, under a draft decision issued yesterday, would decline to issue a declaratory ruling regarding the interpretation of Conn. Gen. Stat. §16-259a (billing errors), stating that the Department has already fully articulated its analysis, interpretation and application of §16-259a in recent cases involving billing errors at Connecticut Light and Power and Connecticut Natural Gas (Matters, 5/19/09).

At issue is whether §16-259a limits the collection of billing errors to one year from their occurrence, or only limits the time in which utilities and competitive suppliers may discover and correct inaccurate bills to one year, with no limit on the time such corrected amounts may be collected once discovered.

In two recent decisions, including its decision regarding Connecticut Light and Power's billing problems (Matters, 8/7/08), the DPUC held that the statute limits the time in which a utility or supplier may discover a billing error to 12 months. However, if the error is discovered in that timeframe and the customer is notified, there is no limit on how long the utility or supplier may continue to re-bill the customers for the corrected charges.

The Connecticut Office of Consumer Counsel has argued that the statute limits to 12 months both the time under which a utility or supplier may discover an error, and the time under which any corrected charges must be collected. As other statutory rules require that any corrected charges must be billed in installments, a 12-month limit on collections as proposed by OCC could leave suppliers unable to collect all of their corrected charges in that limited timeframe.

OCC sought a declaratory ruling from the DPUC after previously petitioning a superior court for a declaratory judgment on the statute, which the DPUC opposed by noting that the OCC must first avail itself of all remedies at the Department before such action, including the right to petition for a

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O&R Gas JP Would Move Competitive Credit and Collections Charge to POR Discount

Orange & Rockland has submitted a joint proposal in its pending New York gas rate case that would, among other things, recover credit and collections-related charges for competitive service through the Purchase of Receivables discount, rather than a separate Merchant Function Charge (MFC). Signatories included O&R, PSC Staff, and the Small Customer Marketer Coalition, among others.

Under the joint proposal, the separate MFC applicable to SC6 customers whose marketers participate in O&R's POR program shall be eliminated effective November 1, 2009. Credit and collections-related costs, previously recovered from SC6 customers through an MFC, will be recovered from marketers through the POR discount, similar to O&R's electric rate design. The MFCs for SC1 and SC2 sales customers will retain the credit and collections component.

The transition adjustment for competitive services (TACS) will continue as an equal cents per Ccf charge applicable to SC1, SC2 and SC6 customers. However, the TACS component to recover the cost of enabling technologies will be eliminated, though a new component will be added to the TACS to recover credit and collections lost revenue associated with retail access.

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Horizon, Edison Mission Ask PUCT to Rule on Wind Reactive Power Requirement

Horizon Wind Energy and Edison Mission Energy opposed ERCOT's motion to dismiss a complaint filed by several competitive wind generators regarding a Protocol Clarification/Interpretation of reactive power capability requirements, arguing that an ongoing dispute remains which requires Commission adjudication (Matters, 6/2/09). The complaint had actually been dismissed at ERCOT's request in early June before wind generators noted that they retained a right to respond to ERCOT's motion to dismiss, with the dismissal order accordingly withdrawn (36482).

Originally, in November 2008, ERCOT issued a Protocol interpretation relating to subsection (2) in Protocol Section 6.5.7.1 (Generation Resources Required to Provide Voltage Support Services Installed Reactive Capability), and subsection (5) in Protocol Section 6.7.6 (Deployment of Voltage Support Service). In its November clarification, ERCOT said that the Protocols require a generator to have and maintain a Unit Reactive Limit (URL) with a power factor capability of +/- 0.95 at all levels of generation.

Several wind generators filed a complaint regarding that interpretation at the PUCT (Matters, 12/15/08), arguing that the Protocols hold that the minimum reactive capability is determined in proportion to the real power output of a generator.

ERCOT subsequently withdrew its Protocol interpretation on procedural grounds, as it did not consult with PUCT Staff as required before issuing the interpretation. However, ERCOT said that its opinion of the ERCOT Protocol Reactive Power capability requirements is unchanged despite withdrawing its formal interpretation.

For that reason, Horizon and Edison Mission believe that the original complaint should proceed at the PUCT, stating that ERCOT's withdrawal of its Protocol interpretation did not eliminate the controversy regarding reactive power requirements.

Horizon and Edison Mission reported that the controversy between the parties, "has actually

become more concrete," because on June 5, 2009, ERCOT sent letters to wind generators questioning whether specific facilities are in compliance with the Reactive Power Protocols as ERCOT reads them. Responses to ERCOT's letters must be submitted by July 8, 2009.

While the mootness doctrine dictates that courts only decide cases that present a "live" controversy at the time of the decision, the wind generators argued that the issue of the correct interpretation of the Reactive Power Protocols is still very much a live issue and is not moot, because ERCOT continues to assert that the "withdrawn" interpretation remains the reactive power standard.

Horizon and Edison Mission further contended that the case meets the "capable of repetition, yet evading review" exception regarding mootness. This exception applies when two elements combine: 1) the challenged action was in its duration too short to be fully litigated prior to its cessation or expiration, and 2) there is a reasonable expectation that the same complaining party would be subjected to the same action again. In this case, ERCOT withdrew its official Protocol interpretation before litigation was completed, but will likely impose the same interpretation in reviewing wind generators' compliance in the future.

TURN Opposes Extension of PG&E Retail Carbon Offset Product

The Utility Reform Network protested Pacific Gas Electric's request to extend its voluntary ClimateSmart program, noting that PG&E is spending more money to win customer enrollments than customers are spending in the program to offset carbon emissions.

The California PUC allowed PG&E to offer the value-added ClimateSmart product beginning in 2006. The program was established with a goal of reducing 1.5 million tons of carbon emissions, with PG&E originally projecting customer participation at 4-5%.

But instead of reaching the 4-5% participation rate forecasted by PG&E, actual enrollments are approximately 0.6% of customers, TURN noted.

"[E]fforts to enroll retail customers have failed

to generate anything close to the level of participation promised by PG&E in its original application and are presumptively not cost-effective," TURN said.

TURN recommended terminating additional expenditures on retail customer enrollments, and instead focusing on procuring sufficient carbon emission reductions to meet the minimum goal of 1.5 million tons.

"This recommendation is based, in part, on the fact that the [administrative and marketing] funds spent to attract retail customer enrollments far exceeds the money being collected from these customers in the form of premiums," TURN said.

In 2008, PG&E spent \$6.3 million on program costs, \$4.7 million of which was for marketing, outreach, and education. During that same period, PG&E collected \$1.854 million in premiums of which \$0.476 million came from its own corporate facilities and \$1.378 million came from ratepayers. "This means that PG&E spent \$3.41 to promote the program for every \$1 collected from non-PG&E customers," TURN observed.

"[I]t is unlikely that another two years will allow PG&E to significantly boost enrollments. The request to extend the program is more likely to be driven by reluctance to honor the shareholder guarantee adopted in D.06-12-032," TURN added.

TURN noted that efforts to obtain carbon emission reductions through competitive wholesale procurement mechanisms appear to be showing moderate success. As there may be between \$2-3 million in unspent administrative and marketing funds at the end of 2009, TURN suggested using such funds to directly purchase carbon emission reductions through the competitive solicitation process developed as part of the ClimateSmart program, rather than trying to enroll new customers.

Draft Would Deny PG&E's 2010 RFP for Third-Party Load Response, Citing Evolving Market

The California PUC issued a proposed decision regarding the utilities' demand response activities and budgets that would, among other things, approve two aggregation contracts

between Southern California Edison and curtailment service providers, while deferring action on Pacific Gas & Electric's request to issue an RFP for third-party curtailment aggregation contracts for the period beginning in 2012.

The wide ranging draft covers budgets, goals, programs, pilots, measurement and verification, and a new baseline methodology for load response programs at Pacific Gas and Electric, Southern California Edison, and San Diego Gas & Electric for the remainder of 2009 through December 31, 2011.

Among other things, the proposed decision would deny without prejudice PG&E's request for authority to issue an RFP in late 2010 to replace existing third-party load response aggregation contracts scheduled to expire at the end of 2011.

"There are reasons to believe that changes in the energy market over the next two years may affect the desirability of entering into new contracts for 2012 and beyond," the draft says, stating it is reasonable to wait for additional information on wholesale market development.

In particular, the draft notes that it is not yet certain how demand response should be structured to participate most efficiently in California's future electricity market under the Market Redesign and Technology Upgrade. "One uncertainty is whether it will be necessary for aggregators to enter into contracts with utilities in order to provide demand response services to California customers," the proposed order explains, as the ability for curtailment service providers to bid their clients' demand reductions directly into the wholesale markets, rather than providing such load reduction to the utilities, is required by FERC Order 719. Such "direct bid-in" capability could be available as early as 2010, the draft observes.

"If direct bid-in becomes available, it is unclear whether it would still be necessary or desirable for utilities to enter into contracts with third-party aggregators. In any case, it is possible that contracts of the type PG&E requests approval to solicit in 2011 will no longer be appropriate at that time," the proposed decision concludes.

The draft decision would also approve a settlement that would authorize SCE to enter into renegotiated contracts with EnerNOC and

Alternative Energy Resources for aggregated load response. In a prior proceeding, the two providers had filed for approval of contracts with SCE, but the PUC denied the contracts at that time due to their terms.

Under the proposed decision, the PUC would also direct utilities to allow customers to participate concurrently in two demand response programs, by developing rules and procedures allowing customers to participate in one program providing capacity payments and one providing energy payments. Customers would be prohibited from participation in two programs that are both either day-ahead or day-of; a participant may participate in one day-ahead and one day-of program. Such measures are meant to limit duplicative payments for a single instance of load drop under concurrent participation in two programs.

In the case of simultaneous or overlapping events called in two programs, a single customer enrolled in two programs would receive payment only under the capacity program, not for the simultaneous event in the energy program. The draft notes such a requirement may conflict with existing load response aggregation contracts, and said that the requirement would not apply to existing contracts or contracts approved in the instant order. The draft does encourage utilities and aggregators to consider the concurrent program rules when negotiating new contracts or modifying contracts that have been previously approved.

FERC Accepts Four Settlements on Gas Market Violations

FERC approved four stipulation agreements imposing penalties on natural gas market participants for various violations, including posting and bidding requirements for capacity release, shipper-must-have-title requirements, and the prohibition on buy/sell transactions.

Sequent Energy Management and Sequent Energy Marketing will pay a civil penalty of \$5 million and disgorge over \$53,000 plus interest in profits for not adhering to the posting and bidding requirements (30.49 Bcf), shipper-must-have-title violations (14.37 Bcf), and improper buy/sell transactions (1.06 Bcf).

ProLiance Energy will pay a civil penalty of \$3 million and disgorge nearly \$196,000, plus interest, for obtaining 21.5 Bcf of discounted rate Texas Gas Transmission LLC pipeline capacity through flipping transactions, shipper-must-have-title violations (6.7 Bcf), and improper buy/sell transactions (325,977 Dth).

Piedmont Natural Gas Company will pay a civil penalty of \$1.25 million for failure to adhere to the posting and bidding requirements for 20.33 Bcf of gas released through flipping transactions.

Wasatch Oil & Gas and Wasatch Energy will pay a civil penalty of \$320,000 for not adhering to the posting and bidding requirements (6.06 Bcf).

Briefly:

Md. PSC Sets Hearing for RM 17 Compliance Plans

The Maryland PSC will hold a hearing on July 10 to consider the electric utilities' compliance plans with respect to Purchase of Receivables and other requirements of RM 17 (Only in Matters, 5/22/09). The PSC is accepting comments through noon on July 7.

Direct Energy Business Seeks Pa. CSP Registration

Direct Energy Business applied for a conservation service provider registration in Pennsylvania. Among the services Direct said it could provide in electric distribution company efficiency plans are energy audits, energy retrofits, energy performance contracting, lighting and lighting control, building automation systems, HVAC systems, boilers and chillers, renewable installations, and an FM-RDS Utility Message Channel smart grid communications technology solution.

Reliant Further Lowers Monthly Rates

Reliant Energy said it is lowering prices for current residential customers on month-to-month flex plans. Combined with an earlier 10% discount instituted on its sale to NRG Energy, Reliant said the combined discounts since May 1 are as high as 20% for some plans.

Reliant REP Seeks to Add New Trade Names

Reliant Energy Texas Retail (REP #10178) applied at the PUCT to add the following trade names to its certificate: Reliant Energy Commercial/Industrial Services; and Reliant Energy C&I Services.

Exelon Cites Economy in Opting Not to File Revised COL for Victoria Nuclear Unit

Exelon said it will seek an Early Site Permit for its proposed Victoria, Texas, nuclear plant site rather than a revised combined construction and operating license, citing, "uncertainties in the domestic economy, the limited availability of federal loan guarantees and related economic considerations," for the decision. The early site permit route allows Exelon to continue with some aspects of site evaluation and approvals while deferring a decision on construction and technology choices for up to 20 years. "[T]oday's economic realities compel us to defer any decision on construction for a while," said Exelon's Senior Vice President for New Business Development Thomas O'Neill.

Entergy Formally Withdraws Transition to Competition Plan

Entergy Texas formally withdrew its transition to competition plan at the PUCT under docket 33687, consistent with the requirements of newly enacted SB 1492.

Md. PSC Sets Session on Customer Rights Pamphlet

The Maryland PSC will conduct a rulemaking session on August 11 concerning RM 33 which, as originally drafted, would allow the required customer rights pamphlet to be delivered to customers via e-mail, upon consent of the customer.

National Grid Opposes Statewide Pool Recommendation in WMECO Solar Settlement

National Grid opposed part of a stipulation between Western Massachusetts Electric Company and the Massachusetts Attorney General that would permit WMECO to build 6 MW of utility-owned solar generation. While not addressing any aspects of WMECO's underlying solar installation, National Grid objected to the

settlement's recommendation that the DPU institute a proceeding to investigate a policy proposal for further implementation of solar deployment under the Green Communities Act through a Commonwealth-wide "pool" approach (Matters, 6/26/09). Grid said such a stipulation is beyond the scope of the WMECO proceeding, as parties were not on notice that WMECO's original petition for its own service territory would be used as a vehicle to consider general statewide policy regarding the Green Communities Act's solar provisions. Grid, which has its own solar application pending, said it would have intervened and addressed a "pool" approach had the issue been properly noticed.

Detroit Edison Files PSCR Settlement

Detroit Edison, Michigan PSC Staff and other parties have filed a settlement which would set the maximum Power Supply Cost Recovery (PSCR) factor at 1.67 mills/kWh for residential customers and 1.35 mills/kWh for commercial and industrial customers. The one-time use of two separate PSCR factors is driven by an over-collection from non-residential customers.

FirstEnergy Ohio Utilities File Agreement to Purchase RECs from Customers

Ohio Edison, Cleveland Electric Illuminating and Toledo Edison submitted at PUCO an agreement to govern their program to purchase RECs from residential customer-sited generation resources in Ohio, for use in meeting the state's alternative portfolio standards. The purchase price for the RECs shall be determined by the companies' most recent renewable energy RFP, and shall remain fixed for the term of the agreement. The costs of RECs purchased from customers are to be recovered through bypassable Rider AER.

Calif. Solar Initiative Costs Remain High

The cost of capacity under the California Solar Initiative (CSI) in 2008 for residential and small commercial installations was \$9.41/Watt, down only slightly from the 2007 average cost of \$9.84/Watt, the California PUC said in a report. Average costs for large commercial systems were \$8.14/Watt in 2008, versus \$8.41/Watt a year ago. Total CSI installations to date are 226 MW, with 156 MW installed in 2008, versus 81

MW in 2007. Some 78 MW have been installed through May 2009. The PUC estimated that approximately 40% of CSI project capacity and 3% of total projects appear to have third-party ownership. The PUC suggested raising the current cap on net metering participation (2.5% of aggregate demand in a utility service area) to enable additional customers to qualify for net metering as part of the CSI program. The CSI program is funded by ratepayers at \$2.2 billion, with a goal of installing 1,940 MW.

FERC Sets Conference on Grid Planning

FERC Staff will convene regional technical conferences to examine the planning processes that are being conducted pursuant to Order No. 890. The conferences are being held to (1) determine the progress and benefits realized by each transmission provider's transmission planning process, obtain customer and other stakeholder input, and discuss any areas that may need improvement; (2) examine whether existing transmission planning processes adequately consider needs and solutions on a regional or interconnection-wide basis to ensure adequate and reliable supplies at just and reasonable rates; and (3) explore whether existing processes are sufficient to meet emerging challenges to the transmission system, such as the development of interregional transmission facilities, the integration of large amounts of location-constrained generation, and the interconnection of distributed energy resources. Dates are below:

- Sept. 3 :CAISO, ColumbiaGrid, Northern Tier Transmission Group, and WestConnect footprints, and other entities in the WECC region
- Sept. 10: The Southwest Power Pool footprint and entities located in the states represented in the Southeastern Association of Regulatory Utility Commissioners
- Sept. 21: Midwest ISO, PJM, New York ISO, and ISO New England footprints, MAPP/ MAPP Participants, and adjacent areas.

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declaratory order. OCC's complaint at the superior court was subsequently withdrawn. If the DPUC ultimately adopts its draft finding, the matter will likely return to court.

During the proceeding, Dominion Retail filed comments in support of the DPUC's current interpretation.

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The billing and payment processing charge will remain at its current level -- \$1.02 per bill.

The balancing charge currently applicable to certain SC6 customers and the balancing component of the Gas Supply Charge applicable to SC1 and SC2 customers shall be eliminated. The recovery of balancing assets also shall be eliminated from the Winter Bundled Sales fees applicable to marketers under SC 11. Commencing November 1, 2009, costs associated with balancing assets shall be recovered from all SC1, SC2 and SC6 customers through a common cents per Ccf component in the Monthly Gas Adjustment.

O&R will spend \$75,000 on retail access related outreach and education. ESCOs shall be able to provide additional funding for retail access related outreach and education, and such ESCO funding shall be considered incremental and shall not be used to reduce the \$75,000 allowance in base rates. Consistent with Commission order, O&R will not spend ratepayer funds on programs designed to promote ESCO service.