

Energy Choice Matters

July 3, 2009

PUCT Denies Request for Emergency Disconnect Moratorium, Will Revive Rulemaking

The PUCT declined to implement an emergency summer disconnect moratorium as requested by several consumer groups, finding that current conditions do not give rise to an emergency as conditions did in 2006 when a moratorium was enacted (First in Matters, 6/24/09). Instead, the Commission will undertake a review of disconnect provisions under a normal rulemaking timeline in Project No. 36131, originally opened last summer when a similar disconnect petition was denied (Matters, 9/10/08).

"The fact that the temperature, and with it, electric bills, increase in the summer months should come as no surprise to anyone," PUCT Chairman Barry Smitherman said. The combination of the current customer protection rules regarding disconnection (which Commissioners noted in some cases exceed the requested emergency provisions), retail prices that are 30%-50% lower than last summer, and expanded aid through the System Benefit Fund as well as other government assistance programs means that current conditions do not support emergency action, the Commission concluded.

Rep. Sylvester Turner, who had led the petition for the emergency rule, denounced the decision, saying that every day he regrets more and more his decision to support the deregulation of the market. If the denial of the emergency petition is the result of a competitive market, people need to stand up and be heard, Turner said.

The Commission, however, found that denying the petition would help keep rates low for all Texas customers. Commissioners noted that after the 2006 moratorium, REPs accumulated some \$9 million in bad debt, which either is passed on to customers in higher retail rates, or causes REPs to exit the market, resulting in less competition and less downward pressure on prices.

Continued P. 7

Energy Transfer Subsidiary to Enter ERCOT Retail Market

Midstream natural gas company Energy Transfer is entering the Texas retail power market, as one of its subsidiaries is the new owner of current retailer TexRep4, LLC. Texas Energy Transfer Power filed at the PUCT for an amendment to TexRep4's certificate to reflect the transfer of ownership from Energy Services Group.

Energy Transfer Partners has pipeline operations in Arizona, Colorado, Louisiana, New Mexico, and Utah, and owns the largest intrastate pipeline system in Texas, including the Oasis Pipeline and the Houston Pipeline Company. Energy Transfer also has various gathering and processing systems in the Gulf Coast area of Texas. Energy Transfer has retail sales experience through its Heritage Propane subsidiary, which is one of the three largest retail marketers of propane in the U.S.

David Coker will serve as Director of Power Optimization for Texas Energy Transfer Power. Coker was vice president of Choice Energy's ERCOT power desk for three years, and previously was senior ERCOT power trader at Reliant Energy for seven years.

Texas Energy Transfer Power has contracted with Energy Services Group for EDI transaction

Continued P. 7

Constellation Asks for FPO Customer Lists at NYSEG/RG&E

NYSEG and Rochester Gas & Electric should supply ESCOs with lists of customers currently on the fixed price option (FPO) to ease the transition away from the utilities' fixed product, Constellation NewEnergy said in comments at the New York PSC (09-E-0228 et. al.).

Constellation was commenting on the utilities' plan, prompted by the end of the fixed price option at the end of 2009, to revise the methods used to calculate their variable supply and nonbypassable charges (Only in Matters, 3/9/09).

Providing ESCOs with a list of customers on the fixed price option, "will allow ESCOs to target their marketing efforts, thus ensuring that customers on the FPO rate are made fully aware of the competitive market's alternative product options," Constellation said.

Constellation said it generally supported the revisions to the supply and nonbypassable charges previously delineated by NYSEG and RG&E, but sought several clarifications or additional information.

During the transition period to the new rate structures in January 2010, Constellation recommended that NYSEG and RG&E unbundle the nonbypassable charges, and provide a breakout of the individual supply charges in the nonbypassable charge on customers' bills. "By breaking out the charges, customers will gain a better understanding of the impact of the rate structure changes helping to minimize confusion once the new tariff provisions take effect," Constellation said.

Under NYSEG's plan, the utility will allocate to ESCOs their load-proportional share of unaccounted for energy (UFE) costs. Constellation said that in order for ESCOs to be able to properly price future UFE costs, NYSEG should provide ESCOs with that ESCO's historical UFE costs. Historical usage over a two to three year period would be necessary in order to analyze monthly and annual cost, Constellation told the PSC.

NYSEG is to collect capacity charges through the on-peak kWh charges. Constellation sought clarification on whether capacity tags for customers will be established based on an individual customer's contribution

to peak demand or through the use of a class load profile.

NYSEG and RG&E also state that supply-related costs will be, "reconciled and recovered." Constellation said that that customers and ESCOs would benefit from having the utilities provide greater detail on the mechanism and specific timing of reconciliations. "These details are necessary in order for customers to properly evaluate how their supply charges relate to actual market prices as well as how they compare to offers from ESCOs," Constellation added.

PUCT May Use Discretion on Compliance Issue Raised by Conflict Between New Law, Disclosure Rule

The PUCT will address at its next open meeting conflicts in REP disclosure requirements between recently revised PUC Subst. R. 25.475 and recently adopted HB 1822.

In particular, §25.475 requires fixed price contract expiration notices to be sent at least 14 days prior to the date of contract expiration but no more than 45 days in advance of expiration. HB 1822 requires such notices to be sent at least 30 days before the expiration date, but no more than 60 days before expiration.

The method of such notices also varies under the rule and law, most notably in that the Substantive Rules allow REPs to list the approximate end date for contracts in renewal notices, while HB 1822 requires the REP to list the end date with no explicit allowance for using an estimate to take into account the fluid nature of meter reading schedules (see full discussion, Matters, 5/29/09). The delivery of the notice differs in each as well (with §25.475 giving REPs more options with respect to sending a separate notice or including it on bills).

Several REPs specifically expressed concern about compliance with the conflicting rules, as §25.475 requires compliance by August 16, while parts of HB 1822 will take effect September 1, and are self-implementing. Other provisions in the law may require a PUCT rulemaking (to be completed no later than December 1) to become effective.

Though no action was taken at yesterday's

open meeting, Commissioners are leaning towards exercising their prosecutorial discretion by not enforcing the fixed price expiration notice provisions in §25.475 upon their effective date in August, so that REPs must only comply with the different notice provisions starting two weeks later under HB 1822. Commissioners agreed that having two sets of notice provisions and related rules go into effect would likely confuse customers and would impose administrative costs on REPs that would be reflected in rates.

Commissioner Kenneth Anderson stressed that any action that the PUCT takes with regard to §25.475 should be limited to the portions in conflict with HB 1822, and said that the Commission should not extend the rule's effective date, as the rule contains numerous other provisions beneficial to customers unaffected by HB 1822.

NEM Says Market Pricing, Unbundling Must Accompany PPL Market Design Reforms

The National Energy Marketers Association expressed support for the Pennsylvania PUC's tentative order that would implement eight reforms to reduce barriers to retail competition at PPL, including a Purchase of Receivables program, but said that the PUC must undertake additional market designs to make competition viable on a long-term basis.

In the tentative order, the PUC would direct PPL to, among other things, implement POR, rate ready billing, distribution of customer lists, improved EDI transactions, and a customer education campaign (Matters, 5/25/09).

NEM supported all of the measures, but stressed that the reforms, "cannot be set up in a vacuum and expected to work." To be effective, the measures should be implemented in tandem with market-based pricing for consumers, NEM said. PPL's 2010 bridge plan procured residential supplies over three years, while its 2011-2013 residential supplies will be bought on a mix of two-year full requirements laddered contracts, and multi-year block purchases. Generation rates will be reconciled quarterly under the 2011-13 plan, however.

"In order to justify substantive resource investments in the Commonwealth, marketers

must perceive a continuous opportunity to participate in a true market and provide consumers with value and options," NEM said.

NEM also argued that proper utility rate unbundling is a prerequisite for sending proper price signals, assisting consumers in making educated consumption decisions, and to permitting suppliers to invest risk capital to make competitive product and service offerings available to consumers. "Thus, utilities should unbundle their rates on an embedded cost basis by removing all costs related to commodity sales from delivery service charges and including all such commodity sales costs in the commodity price," NEM said.

NEM said the following costs should be unbundled to the extent they are not currently: transmission charges, scheduling and control area services, risk management premiums, load shape costs, commodity acquisition and portfolio management, working capital, and taxes, as well as costs for administrative and general expenses, information exchange, compliance with consumer protection regulations, customer care, an appropriate return on equity and debt, and potentially billing and collection costs, depending on the billing option chosen.

"Failing to unbundle these costs has a devastating effect on the competitive market, since competitive suppliers are unable to compete effectively on the basis of price with the subsidized default service option," NEM said.

Under the tentative order, purchased receivables would only cover basic supply service, while excluding complex pricing options or environmental/renewable products. While not opposing the limitation, NEM urged the Commission to encourage utilities develop service options that would allow non-basic supply service charges to be placed on the utility consolidated bills at the supplier's discretion, even though such charges would not be purchased by the utility. NEM recognized that utility billing systems may need to be modified to distinguish commodity charges that are subject to POR from non-commodity charges that are not subject to POR. NEM suggested that utilities could receive reasonable, cost-based fees for billing non-commodity services. Regardless, the addition of such non-commodity billing options

should not delay POR for basic supply service, NEM stressed.

NEM also questioned whether the PUC's tentative direction that PPL be able to accommodate a minimum of fifty rates per customer across rate classes is immediately needed. NEM is concerned that the timing and cost associated with accommodating fifty rates under rate ready billing could unreasonably delay implementation. NEM suggested that the Commission require the utilities and suppliers to engage in a dialogue about how many rates are realistically needed, with a firm deadline on talks so that the stakeholder process does not become a means to slow the opening of the market.

A supplier referral program should also be introduced under the auspices of PPL's customer education plan, NEM added.

Pennsylvania's, "relatively strict telemarketing rules and door-to-door town permitting requirements represent a significant hurdle to enrolling mass market customers," NEM reported. A referral program could ameliorate such challenges and, "help level the playing field between competitive energy marketers and incumbent utilities that are the presumed commodity supplier."

Md. PSC Approves Licenses for Four ABCs Operating Without Licenses, Levies Assessments

In similar orders, the Maryland PSC granted four broker licenses to sales channels that had been operating without the required license, at its administrative meeting this week.

Noteworthy is that in each case, Staff had recommended a specific civil penalty amount, though the Commission only took the recommendation under advisement and did not impose a penalty in the instant orders. In most previous applications for brokers operating without a license, Staff has only recommended that the broker repay unpaid PSC assessment fees, while in some cases stating that the companies would remain subject to a future civil penalty at the Commission's discretion. The only exception was in the case of NCG Energy Solutions, whose "significant misrepresentations" on its application made it a "completely different"

case from other brokers who have sought to comply in good faith with the licensing regulations upon being informed of them, prompting the PSC to impose a penalty of \$150,000 on NCG.

Among the brokers receiving an electric license this week was Consumer Energy Solutions, which was granted authority to serve non-residential customers at the four investor-owned utilities. Consumer Energy Solutions was ordered to pay past PSC assessment fees not paid while it was operating without a license, though the information was redacted from the public record. Staff had recommended imposing a civil penalty of \$4,173.48 on Consumer Energy Solutions, which includes a fine for each year of operating without a license in addition to the unpaid PSC assessments. In a letter order, the PSC said it took Staff's recommendation for the additional civil penalty under advisement. Staff had recommended the additional fine above the amount of the uncollected assessment (which has not been applied to other brokers operating without a license) because Consumer Energy Solutions was previously licensed as a supplier in several states, "and therefore, the Company should have acted prudently and applied for a supplier license in Maryland at an earlier date."

National Utility Service was granted an electric broker license for non-residential customers at the four investor-owned utilities as well as Choptank Electric Cooperative and Southern Maryland Electric Cooperative. NUS was ordered to pay past PSC assessment fees not paid while it was operating without a license, though the information was redacted from the public record. Staff had recommended imposing a civil penalty of \$1,039.61 on NUS, which includes a fine for its time of operating without a license in addition to the unpaid PSC assessments. The PSC said it took Staff's recommendation for the additional civil penalty under advisement. Staff had recommended the additional fine above the amount of the uncollected assessment because NUS was previously licensed as a supplier in several states, "and therefore, the Company should have acted prudently and applied for a supplier license in Maryland at an earlier date."

Energy Advisory Service was granted a license to broker non-residential electric

customers at Baltimore Gas and Electric, Delmarva, and Pepco. Energy Advisory Service was ordered to pay PSC assessment fees not paid while it was operating without a license, though the information was redacted from the public record. Staff had recommended imposing a civil penalty of \$954.57 on Energy Advisory Service, which includes a fine for operating without a license and the unpaid PSC assessments. The PSC said it took Staff's recommendation for the additional civil penalty under advisement. Staff had recommended the additional fine above the amount of the uncollected assessment because Energy Advisory Service was previously licensed in Texas and therefore, "should have acted prudently and applied for a supplier license in Maryland at an earlier date."

I.C. Thomasson Associates received an electric broker license to serve non-residential customers at the four investor-owned utilities. I.C. Thomasson Associates was ordered to pay past PSC assessment fees not paid while it was operating without a license, though the information was redacted from the public record. Staff had recommended imposing a civil penalty of \$167.93 on I.C. Thomasson Associates, which includes a fine for operating without a license and the unpaid PSC assessments. The PSC said it took Staff's recommendation for the additional civil penalty under advisement. Staff had recommended the additional fine above the amount of the uncollected assessment because I.C. Thomasson was previously licensed as a supplier in several states, "and therefore, the Company should have acted prudently and applied for a supplier license in Maryland at an earlier date."

PUCT Publishes Wind Collateral Rule for Comment

The PUCT approved a slightly modified proposal for publication which would remove the collateral requirement for Competitive Renewable Energy Zone (CREZ) wind developers (34577, First in Matters, 6/26/09).

Staff's proposal for publication also stated that the Commission, "may initiate a proceeding and limit interconnection to and/or establish dispatch priorities regarding the transmission

system in the CREZ," if security constrained economic dispatch is insufficient to resolve the congestion caused by excess development.

Commissioner Donna Nelson said that she can't think of a scenario in which she would ever favor a physical limitation on interconnection or dispatch, due to the competitive nature of the market which requires free entry. Nelson said she was willing to consider financial limitations.

At Nelson's request, the proposal's language was tweaked to state that Commission may initiate a proceeding which "may consider limiting" interconnection and dispatch.

FERC Approves Pro Rata Load Shedding in MISO

FERC approved the Midwest ISO's proposed tariff amendments to incorporate its existing policy of implementing load shedding on a pro rata basis during an energy and/or capacity emergency after declaring an Energy Emergency Alert Level 3 (EEA-Level 3). The Missouri PSC and Ameren had opposed the filing (ER09-660).

FERC held that the tariff amendments provide clarity by making explicit that load shedding, if necessary, will be implemented on a pro rata basis, as required to restore energy balance. The tariff amendments also provide sufficient flexibility for the Midwest ISO to take appropriate actions during EEA-Level 3 emergencies pursuant to its emergency operating procedures, the Commission said.

"The protestors supporting a more targeted load shedding methodology, such as a Real Time Sufficiency Tool, have not shown that the pro rata load shedding methodology is not just and reasonable," FERC added.

While protestors had asserted that without a Real Time Sufficiency Tool the Midwest ISO will not be able to monitor or ensure compliance with the Midwest ISO resource adequacy requirements, FERC held that a Real Time Sufficiency Tool is not necessary to ensure compliance with the Midwest ISO's resource adequacy requirements since the Commission has previously found that Module E provides sufficient incentives to guarantee compliance with resource adequacy requirements.

Briefly:

IDT Energy Signs Agreement Making BP Energy its Preferred Supplier

IDT Energy said that it has reached an agreement with BP Energy making BP its preferred supplier of electricity and natural gas in New York State. "If this arrangement develops as we expect, it will enhance IDT's liquidity by materially reducing the capital required to support our ESCO business," said Bill Pereira, CFO of parent IDT Corporation. "That will give us greater flexibility to support some of our other business initiatives," Pereira added.

Court Dismisses Constellation Appeal of PSC EDF Order as Premature

A Baltimore Circuit Court judge dismissed without prejudice Constellation Energy's appeal of a Maryland PSC decision which held that the PSC has jurisdiction to review EDF's 49.99% investment in Constellation's nuclear unit. The judge found that the appeal was premature and that Constellation must wait for a final ruling from the PSC before it may appeal.

Md. PSC Denies Pepco/Delmarva Uncollectible Surcharge

The Maryland PSC denied Pepco and Delmarva's application to implement an uncollectible recovery surcharge rider, which the utilities had sought due to rising bad debt levels (Only in Matters, 5/2/09). The application had been opposed by the Office of People's Counsel and Apartment & Office Building Association as single-issue ratemaking.

Md. PSC Approves Pepco Panda-Brandywine Credit

The Maryland PSC approved a settlement that will see Pepco distribute a one-time credit totaling \$39 million to Maryland customers relating to the end of its obligation to purchase above-market power from the Panda-Brandywine PPA (Case 8796, Matters, 2/19/09).

Constellation NewEnergy Signs Supply Contract with Pennsylvania

Constellation NewEnergy has signed an agreement with the Commonwealth of

Pennsylvania to supply electricity to 29 Pennsylvania state government facilities. Under the competitively bid agreement, Constellation NewEnergy will supply 27,000 megawatt-hours of electricity to state office buildings and certain transportation, correctional and Army National Guard facilities.

Just Energy Completes Universal Acquisition

Just Energy Income Fund announced that its acquisition of Universal Energy Group was completed on July 1.

Anderson Recommends that PUCT Review Non-wind RPS Carve-out

Commissioner Kenneth Anderson recommended that the PUCT prioritize its review of creating a non-wind RPS carve-out among its rulemaking endeavors. Anderson believes that the Commission has authority under the current statute to address the issue (Matters, 6/26/09).

PUCT Approves for Comment Independent Organization Decertification Proposal

The PUCT approved Staff's 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, Only in Matters, 6/26/09).

Constellation Projects & Services Signs Crantson, R.I.

Constellation Energy's Projects & Services Group said it was selected by the city of Cranston, Rhode Island to develop the city's proposal to the Department of Energy's (DOE) municipal energy efficiency and conservation block grant program. Constellation Energy's Projects & Services Group said it is currently working on a number of stimulus initiatives, including energy efficiency and conservation projects for the U.S. Naval Academy and U.S. Army.

PUCT Approves International Power America Governor Response Settlement

The PUCT approved a settlement under which Hays Energy Limited Partnership, Midlothian

Energy Limited Partnership and ANP Funding I, LLC will pay an administrative penalty of \$2.5 million to resolve PUCT Staff's notice of violation regarding various ERCOT Protocols and Operating Guides, relating to governor response (34738, Matters, 5/18/09). International Power America, a holding company that directly owns all three entities, is a party to the settlement but does not admit liability for any violation alleged by Staff, and is not required to pay any part of the penalty.

ERCOT Completes Nodal Contract Renegotiation

ERCOT has successfully renegotiated all five of its nodal vendor contracts, Chief Technology Officer Mike Cleary reported at the PUCT open meeting.

PUCT Approves Eagle Energy Partners LaaRs Settlement

The PUCT approved a settlement under which Eagle Energy Partners LP will pay \$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.

Disconnects ... from 1

One of the points stressed by Commissioners is that some customers under the emergency rule would avoid disconnection without paying any current balance on their bill. Commissioner Donna Nelson said that the provision allowing some customers to avoid disconnection without any payment, combined with the lack of a "hard disconnect" rule in ERCOT, puts the Commission in a difficult position.

The lack of a hard disconnect was cited by Commissioners as one of the expanded benefits that customers receive under the current competitive model versus policies at non-jurisdictional municipals and cooperatives. As the competitive market does not have a hard disconnect, customers do not have to repay their existing past due balance first to get reconnected after termination. Rather, customers can switch to a new REP and have service restored, without ever fulfilling their obligations to their original REP. Commissioners noted that Austin Energy and

Pedernales Electric Cooperative have hard disconnects which prohibit the reconnection of service until the customer pays the outstanding balance of their bill.

Commissioner Kenneth Anderson worried that if the Commission continually granted emergency disconnect moratoriums, it would eventually lead to a hard disconnect policy in ERCOT, to the detriment of customers, because of accumulated bad debt. Anderson also questioned how the emergency rule would benefit those customers who would be able to avoid disconnection without paying any of their current balance, because if they cannot pay their current bill, they will be unlikely to pay the accumulated deferred bill in September.

Nelson further said that the best way to keep rates low for all customers is to prevent the abuse seen after prior moratoriums, where some customers switched REPs without fulfilling their deferral plan obligations.

Anderson noted that the emergency rule would have lowered protection for ill or disabled customers because it would have imposed a "critical care" test on certain disconnection prohibitions. Under current PUC Subst. R. §25.483, REPs may not disconnect a customer for whom disconnection of service will cause some person residing at that residence to become seriously ill or more seriously ill. The emergency rule would have limited a similar requirement to "critical care" customers, which is a defined term in the rules with a narrower scope.

Smitherman said the Commission will move forward with its rulemaking regarding a permanent solution to the disconnection issue in Project No. 36131, which was opened last summer but left dormant for a variety of factors, including a meltdown in the financial markets, a precipitous decline in natural gas prices, a decline in retail electric prices, and the fact that the Legislature was to convene four months later and was expected to address the issue.

Energy Transfer ... from 1

processing, billing/cost allocation services and wholesale energy management and will also contract with ESG for QSE certification services and ongoing QSE operations.