

# Energy Choice Matters

July 15, 2009

## Mass. Utilities' Referral Proposal Would Allocate Incremental Costs to Participating Suppliers

Competitive electric suppliers would be required to pay all incremental costs associated with supplier referral programs to be developed by the Massachusetts distribution utilities, under a pro-forma model revised tariff governing Competitive Supplier Terms and Conditions filed jointly by Nstar, National Grid, Fitchburg Gas & Electric and Western Massachusetts Electric Company (09-46, Only in Matters, 6/24/09).

Under the utilities' proposed tariff, utility customer service reps would offer certain customers calling the utility the option to hear a list of licensed competitive suppliers providing supply offers in the customer's zip code. The referral program would apply to customers that (a) make an inquiry regarding their utility rates, (b) make an inquiry about energy efficiency; or (c) initiate service (which includes new construction, upgrades to service connection amperage, transfers or reassignment of service, or relocation within the service territory).

The utilities would refer the customer to a standardized, DPU-approved statement regarding the names, phone numbers, and websites of participating competitive suppliers, to be listed in alphabetical order.

The distribution companies could suspend the referral program during periods of high call volume resulting from storm restoration or other emergency situations, but must resume the program when call volume subsides.

The utilities would also maintain a link on their websites for all competitive suppliers that participate in the program. No more than twice per calendar year, the utilities would include a bill message on customer bills that provides access to information regarding the phone numbers and website addresses of participating competitive suppliers, to the extent that the supplier is in good

**Continued P. 6**

## REPs Suggest Estimates be Allowed for Listing Fixed Rate Product End Date on Bill

A coalition of REPs filed recommended language to incorporate provisions of HB 1822 into P.U.C. Subst. R. 25.475, suggesting that REPs be allowed to estimate the end date of fixed price contracts, which is to be listed on every bill (37214).

HB 1822 provides that, "A retail electric provider shall include on each billing statement the end date of the fixed rate product."

The REPs recommended that § 25.475 read, "The end date for a fixed rate product for a *residential* [emphasis supplied] customer shall be included on each billing statement. The start and end dates may be estimated if the REP cannot determine these dates by using the approximate date or the billing cycle and month."

HB 1822 also requires REPs to send residential customers a notice of their fixed price contract expiration at least 30, but not more than 60, days before expiration. Under the REPs' suggested language, residential notices would be required at least 30 days, "or one billing cycle," prior to expiration, but no more than 60 days, "or two billing cycles," before expiration.

Under HB 1822, the notice must, "be sent to the customer's billing address by mail." REPs

**Continued P. 6**

## Allegheny Supply Opposes FRR Waiver Request for Duquesne Zone LSEs

Allegheny Energy Supply Company protested PJM's application at FERC for waivers of various Fixed Resource Requirement (FRR) capacity market rules for Duquesne zone LSEs, arguing that such waivers would alter a settlement among parties and disrupt the capacity market (ER09-1346, Matters, 6/24/09).

Under a settlement which saw Duquesne remain a PJM member rather than joining the Midwest ISO, Duquesne is to submit a capacity plan for Duquesne zone loads for the 2011-12 Delivery Year under the Fixed Resource Requirement (FRR) alternative, which allows LSEs to meet their Reliability Pricing Model capacity obligations through capacity resources secured outside of the RPM auctions under certain conditions. By rule, an FRR Entity may not include in its capacity plan any capacity resource that has cleared an RPM auction for that year.

Citing concerns about the lack of capacity available to Duquesne zone LSEs given market timing (the FRR plan will be filed after the first incremental auction), PJM sought a waiver to allow capacity procured by Duquesne-zone LSEs in the incremental auctions for the 2011-12 Delivery Year to be included in the FRR capacity plan.

However, Allegheny Supply opposed such a waiver, since, "Duquesne voluntarily and knowingly undertook the obligation to comply with this very rule in entering into a Settlement Agreement," with PJM and other market participants.

Allegheny Supply called Duquesne's compliance with the PJM rules and procedures applicable to FRR plans, other than four exceptions specifically set forth in the settlement, an "integral" part of the settlement reached seven months ago.

An explicit condition of the settlement, Allegheny Supply said, is that Duquesne and the other settling parties specifically agreed that "PJM rules and procedures otherwise applicable to FRR plans will apply to the Out-of-Time FRR Plan," used by Duquesne. While four limited exceptions to the FRR rules were provided in the

settlement, none of them allow Duquesne zone LSEs to use incremental auction capacity in their FRR plans, Allegheny Supply said, arguing that settling parties agreed there would be no exceptions to the FRR rules aside from the four listed in the settlement.

"All PJM market participants have been aware that the Settlement prohibited Duquesne from using capacity purchased in an RPM auction to meet its FRR obligations, and a waiver will compromise market expectations regarding participation in the Incremental Auctions and could also limit, or drive up the price of, capacity available to other market participants," Allegheny Supply said. Additionally, the RPM market would be compromised if LSEs are permitted to move in and out of the forward procurement auction, Allegheny Supply contended.

Allegheny Supply dismissed arguments from PJM that the capacity plan timing prescribed by the settlement, coupled with the must-offer rule and the RPM auction schedule, may significantly limit Duquesne's options for finding and securing the capacity resources needed for the Duquesne zone for the 2011-2012 Delivery Year.

PJM's argument, "severely exaggerates any difficulties Duquesne may encounter in securing capacity," Allegheny Supply countered, noting that the must-offer rule does not prohibit Duquesne from entering into bilateral agreements to purchase capacity.

"Duquesne knew what it was getting into when it agreed to the Settlement, and had ample time to enter into bilateral agreements in the period between the Settlement and the First Incremental Auction for the 2011-2012 Delivery Year that took place just last month. PJM does not even attempt to show that Duquesne tried but failed to obtain capacity through bilateral agreement," Allegheny Supply said.

In addition, the settlement allows PJM to hold a "special incremental auction" on October 15, 2009, to allow Duquesne and other LSEs in the Duquesne zone to obtain capacity, which should remove any concern that LSEs will be unable to procure capacity, Allegheny Supply said.

## Direct Energy Enters Marketing, Distribution Agreement with e-Radio USA

Direct Energy yesterday announced an agreement with e-Radio USA, an operator of wireless communications networks and manufacturer of FM receiver modules for smart grid devices, to market and distribute e-Radio's solution.

e-Radio is a one-way communication system which transmits on FM radio waves between the LSE and a customer's appliance or electrical device. It permits energy providers to send alerts, messages and commands to smart grid-enabled devices and consumer appliances which instruct them to reduce their energy consumption and operate more efficiently.

Direct Energy and e-Radio have conducted pilots since 2007 in California, Texas and Ontario. CPL Retail Energy launched a pilot program earlier this year marrying demand-response through the cycling of air conditioning systems with whole-home energy efficiency measures, using thermostats with e-Radio's technology to achieve and measure peak period reductions.

The technology was first reported by *Matters* as one of the solutions Direct Energy Business intends to offer as a conservation service provider in Pennsylvania (Only in *Matters*, 7/1/09).

Direct said e-Radio's solution provides demand-side solutions at a cost far below other communication infrastructure solutions.

## Energy Michigan Opposes Draft on Consumers' Stranded Costs

Energy Michigan called a draft decision on stranded cost rates at Consumers Energy inconsistent with Michigan PSC precedent and statutory language, in exceptions on the proposal for decision (U-15744).

As only reported by *Matters*, an ALJ has recommended that the Michigan PSC maintain the current \$0.0012/kWh differential in the amount of stranded costs paid by retail access customers, and those paid by bundled service customers (*Matters*, 6/9/09). Accordingly, the new retail access stranded cost charge would

be \$0.002003/kWh, while bundled service customers would pay \$0.000803/kWh. Currently, only retail access customers pay for stranded costs, at a rate of \$0.0012/kWh.

Citing the PSC's original stranded cost orders, Energy Michigan said there is no support for the finding that the Commission intended to maintain a \$0.0012/kWh differential between retail access stranded cost rates and bundled service stranded cost rates.

"There is no evidence whatsoever of a desire on the part of the Commission to do anything in the Stranded Cost Orders other than set a charge which, in its view, would collect a fixed amount of money over quite a lengthy timeframe," Energy Michigan said.

"One may infer, however, that given the length of the collection period the Commission did not favor stranded cost charges higher than 1.2 mills. Had the Commission desired to emphasize rapid collection of stranded costs or collection in a time certain, it could have adopted significantly higher stranded cost charges or compressed the collection schedule. That it chose to stretch the collection over a minimum of six years creates the inference that the 1.2 mill charge was viewed by the Commission as the maximum that could be collected from [retail open access] customers without adverse consequences," Energy Michigan added.

Energy Michigan argued 2008 PA 286 § 10(2)(a) provides that the purpose of the act is to ensure all customers have a choice of electric suppliers. However, the imposition of stranded costs only on retail access customers resulted in an 87.9% drop in retail access service at Consumers, Energy Michigan noted, arguing that maintaining the \$0.0012/kWh differential would continue to deprive customers of real choices in the market.

Energy Michigan urged adoption of Staff's proposed charges of \$0.000873/kWh for bundled service customers and \$0.0012/kWh for retail access customers. Staff, however, did not take exception to the ALJ's proposed charges.

The stranded cost charges must be revised because stranded costs have actually grown due to interest charges and declining retail access sales. State law now mandates stranded costs are to be completely recovered over five years.

## FERC Denies Generator Protests of FCM Clarifications

FERC accepted without modification a filing from ISO New England that provides additional detail and clarification to a number of areas in the Forward Capacity Market (FCM) rules, rejecting arguments from generators concerning mitigation (ER09-1144).

NRG Energy has protested the filing because ISO-NE would apply the same conduct and market impact mitigation rules to energy offers from Non-Capacity Supply Obligation (CSO) Resources that do not receive capacity payments and have no obligation to participate in the energy markets, as are applied to energy offers from CSO Resources that do receive capacity payments and are obligated to offer their full energy capability in both the Day-Ahead and the Real-Time Energy Markets. NRG argued that since Non-CSO Resources must rely exclusively on energy market revenues to recover fixed costs, Non-CSO Resources should not have their energy offers mitigated based on their marginal costs because such mitigation will deny them a reasonable opportunity to recover their fixed costs.

Exelon also contended that ISO-NE's filing fails to adequately address the extent to which de-listed generators are subject to mitigation of energy offers. Exelon argued that applying the same energy market mitigation rules to de-listed units as are applied to cleared capacity resources is not just and reasonable, as such mitigation "assures" that Non-CSO Resources will "fail to recover their full fixed costs."

FERC rejected both arguments. Procedurally, FERC noted that the ISO-NE filing does not change any existing mitigation provisions which were previously found to be just and reasonable. Thus, protests are an impermissible attack on prior Commission decisions. The Commission also disagreed with arguments that non-CSO Resources must rely exclusively on energy market revenues to recover their fixed costs, since the decision to de-list from FCM is voluntary, and generators still have additional opportunity for cost recovery provided by the ancillary services markets.

The Commission also rejected NRG's claim that the proposed rule changes do not properly

compensate Non-CSO Resources for the local reliability service that they may provide absent the ability to offer at the Energy Offer Cap. FERC said that such a request is outside the scope of the ISO-NE filing, and reiterated that the Commission has rejected arguments that generators providing "local security" should receive excess compensation in addition to FCM payments.

FERC also found ISO-NE's proposed revisions to the calculation of Shortage Event Availability Scores to be just and reasonable, rejecting a protest from PSEG that ISO-NE's failure to use sub-hourly measurement in the calculation of Shortage Event Availability Scores is unfair.

The Commission also denied requests from the Connecticut DPUC for information relating to the delivery performance of FCM resources, stating such matters are to be addressed in various pending complaints brought by Connecticut parties regarding capacity import performance.

### ***Briefly:***

#### **Md. PSC Sets Comment Deadline for CPV Long-Term Contract Petition**

The Maryland PSC is accepting comments on CPV Maryland's request that the utilities be required to enter into a long-term PPA for the output of its St. Charles plant. Comments are due August 11 with replies due August 18 (9117, Matters, 7/7/09).

#### **PUCT Staff Says REPs Must Use New Forms for Amendments**

PUCT Staff moved to dismiss the application for a REP certificate amendment by TexRep4 due to the use of the old certification form. Staff said that since an interim new certification form was approved June 18, it should be used by REPs; though existing REPs seeking amendments and which have one year to comply with new certification requirements need not complete sections of the interim form that are not applicable, Staff said. As only reported by *Matters*, TexRep4 is seeking an amendment to its certificate to reflect its new owner, Texas Energy Transfer Power (Matters, 7/3/09).

### **PUCT Issues RFI Regarding Freedom Power's New Owner**

PUCT Staff issued formal requests for information to Freedom Group, LLC d/b/a Freedom Power regarding Freedom's application for a REP certificate amendment to reflect the transfer of ownership to CIB Irrevocable Trust (Only in Matters, 7/8/09). Among other things, Staff requested a full factual and legal description of CIB Irrevocable Trust, and asked that Freedom describe the trust's ability to obtain an irrevocable stand-by letter of credit by May 21, 2010.

### **Constellation Appeals Court Ruling Which Dismissed Suit on PSC Jurisdiction**

Constellation Energy has appealed to the Maryland Court of Special Appeals a lower court's ruling that dismissed Constellation's appeal of the PSC's finding that it has jurisdiction to review EDF's proposed 49.99% stake in Constellation's nuclear group. A lower court had found the challenge to the PSC's ruling premature as a second phase of the case is ongoing.

### **FERC Denies WPTF Protest on Market Usage-Forward Energy Charge**

FERC accepted the California ISO's tariff revisions related to the Grid Management Charge, which specify that both physical and financial Inter-Scheduling Coordinator Trades will be netted against energy sales in the Day-Ahead Market for purposes of calculating the Grid Management Charge Market Usage-Forward Energy Charge (ER08-585). The Western Power Trading Forum and financial marketers had protested assessing the Market Usage-Forward Energy Charge to financial Inter-Scheduling Coordinator Trades, arguing such an application would shift costs to financial Inter-Scheduling Coordinator Trades, thus increasing the costs of conducting such trades. FERC, however, dismissed such arguments, noting the CAISO's revisions comply with the Commission's earlier finding that physical and financial Inter-Scheduling Coordinator Trades are to be treated similarly.

### **NextEra, Mirant Granted FCM Deadline Waivers**

FERC granted NextEra Energy Power

Marketing and Mirant separate waivers from various ISO New England Forward Capacity Auction deadlines related to challenging the calculation of qualified capacity and re-listing resources, though FERC said such limited waivers do not constitute established precedent that would allow market participants to avoid the terms and conditions set forth in ISO-NE's tariff (Matters, 6/25/09).

### **Amerex forms New Consulting Unit**

Amerex Brokers has formed a fee-based energy risk management and execution consulting division that will operate under the name Amerex Energy Consulting Services to provide consulting services to institutional market participants, independent power producers, project developers and large industrial clients. Amerex Energy Consulting Services will offer customers help in constructing hedge and risk management products in natural gas, electricity, emissions, RECs, coal, crude oil and refined products, by utilizing the energy and environmental brokerage desks at Amerex, parent GFI Group and affiliate StarSupply. Amerex Energy Consulting Services is led by Kellie Metcalf, former director at Fortis Energy Marketing and Trading, Barclays Capital, and FPL.

### **Home Service Signs Agreement with Semco**

Repair and service contract provider Home Service said it has reached a 10-year agreement with Semco Energy Gas Company, giving Home Service access to market to 260,000 residential households throughout the state of Michigan. Under the agreement, Home Service will immediately gain 21,500 new contracts from the acquisition of the SharpService Protection Plan (previously offered by General Electric), which include furnace, water heater and central air plans. Home Service will also offer interior gas and heating coverage. Home Service, which said the agreement is its first with a Michigan utility, has over half a million service contracts in place. Home Service currently has an agreement with FirstEnergy Solutions to market various service protection plans in New Jersey.

**Mass. ... from 1**

standing regarding all relevant requirements of the utility's terms and conditions.

In addition, no more than one time per calendar year, the distribution companies would include a bill insert in the bill envelopes sent to basic service customers listing the names, phone numbers and websites of competitive suppliers that are participating in the program, to the extent that the supplier is in good standing under the utility terms and conditions.

**HB 1822 ... from 1**

recommended that § 25.475 be amended to hold that, "If a customer has agreed to receive notices electronically, a REP may send the required notice to a customer's e-mail address and is not required to also mail a written notice to the customer."

Though the fixed rated expiration notice period for small commercial customers is not addressed by HB 1822, the REPs recommended that REPs be permitted to send such customers an expiration notice between 14 and 60 days prior to expiration, rather than 14-45 days as in the recently adopted § 25.475.

REPs proposed that all electricity products offered after April 1, 2010 shall conform to the requirements of amended § 25.475.

The recommendations were jointly made by CPL Retail Energy, Direct Energy, First Choice Power, Gexa Energy, Green Mountain Energy, Integrys Energy Services, Reliant Energy, Stream Energy, the Texas Energy Association for Marketers, TXU Energy, and WTU Retail Energy.