Energy Choice Matters

July 16, 2009

Retail Suppliers Say POR Discount in Draft Illinois Order Would Maintain Barriers to Entry

A 1.63% discount rate contained in an Illinois Commerce Commission proposed order in Ameren's Purchase of Receivables plan would leave barriers to competition largely in place, "thereby failing to fulfill the legislature's goal of availing smaller consumers with the benefits of competition," the Illinois Competitive Energy Association, Retail Energy Supply Association and Dominion Retail said in exceptions to the draft order (08-0619 et. al.).

The proposed decision would accept the Citizens' Utility Board's "Fair Cost Allocation Adjustment" mechanism in setting a discount rate, which would recover implementation costs from retail suppliers as suppliers use the utility consolidated billing and POR program. Essentially, while costs would initially be collected from customers via a surcharge, when suppliers use POR and pay the discount rate, customers would be refunded their initial outlays, with interest.

Under CUB's proposal, the discount rate would be 1.63%, versus 1.09% without CUB's adjustment. Ameren's discount rate would reflect:

(1) Commission-approved uncollectible expenses (bad debt, net write-offs);
(2) 25% of utility consolidated billing implementation costs;
(3) 100% of POR start-up costs; and
(4) the incremental cost to administer the UCB/POR program.

The remaining 75% of utility consolidated billing implementation costs would be paid by all delivery customers via a supplemental customer charge. Such supplemental charges are the additional costs CUB would recover from suppliers under its proposal.

The proposed order would adopt CUB's higher discount rate because, "The level of the discount rate, while not insignificant, is unlikely to be the determining factor in a [supplier's] decision to enter

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MXenergy Recommends Hard Disconnect Policy in ERCOT

MXenergy recommended that the PUCT adopt a "hard disconnect" policy administered by the TDSPs using a TDSP-maintained database of current payment status, in response to Staff's request for comments on a payment history database and hard disconnection authority (36860).

As envisioned by MXenergy, once a customer has been legitimately flagged by a REP for disconnection for non-payment, and actually disconnected by the TDSP, the TDSP would not accept a request for reconnection from any REP until the flag was removed by the REP owed the arrearage.

Once the debt is satisfied, the owed-REP would be obligated to quickly contact the TDSP to remove the flag, just as the REP is now obligated to reconnect a customer quickly following payment per Substantive Rule 25.483(m).

REP bad debt would decrease appreciably under a hard disconnect system, MXenergy said, "since the REP would have leverage against a customer who is otherwise capable of paying their electric bill but refuses to do so, for reasons unrelated to dispute or ability to pay."

Under the status quo, such a customer can simply rotate through the REP community until a new supplier is located, driving up costs for REPs and ultimately all consumers, MXenergy noted.

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PUCT Staff Requests Comments on REP Billing Under Texas Prompt Payment Act

The PUCT Staff has asked for comments on whether governmental entities eligible for extended payment deadlines under the Texas Prompt Payment Act should be required to give notice of their status to REPs, or whether REPs should be required to inquire whether the customer qualifies under the Texas Prompt Payment Act (36260).

As applicable to REPs, P.U.C. SUBST. R. 25.480(c) holds that a bill issued to a state agency, as defined in Texas Government Code, Chapter 2251, shall be due as provided in Chapter 2251, which generally provides that bills are not late until the 31st day after invoicing. Normally, REPs may require payment as soon as 16 days after invoicing.

The Staff asked whether Substantive Rule 25.480(c) should be changed to require notice by the customer to its provider that it is eligible for Prompt Payment Act billing, and if so, what form should such notice take. Alternatively, should REPs be required to ask as to whether a customer is eligible for Prompt Payment Act billing, and what proof should be required?

Staff also asked whether the rule should include a requirement that the customer dispute an incorrect invoice from a utility as required by the Prompt Payment Act.

PUCO Approves Ormet Reasonable Arrangement

The Public Utilities Commission of Ohio approved a reasonable arrangement between Ormet Primary Aluminum and American Electric Power-Ohio that will cap the discount in generation rates available to Ormet at $60 million in 2010 and 2011.

Ratepayer subsidization of the discount, which is nonbypassable, will initially be capped at $54 million, but AEP will defer any unrecovered costs from the subsidy and, to the extent not paid off, collect such deferrals in the economic development rider in later years. PUCO said surcharges to fund the subsidy will be less than $2 per month per customer.

Under the reasonable arrangement, Ormet's generation rate starting in 2010 will be tied to the market price of aluminum. If the price of aluminum increases above of a certain threshold, Ormet will pay above-tariff rates, with such additional payments applied to reduce any unrecovered portion of the subsidy.

The discount will also decrease over time (the agreement runs through 2018), and is tied to Ormet maintaining certain staffing levels in Ohio.

For the rest of 2009, Ormet will pay an annual averaged rate of $38/MWh for the periods Ormet was in full production, $35/MWh when Ormet curtailed production to 4.6 potlines, and $34/MWh when Ormet curtailed production to 4 potlines.

Briefly:

PUCT Staff Sets Workshop on Distributed Renewable Generation Info

PUCT Staff scheduled a workshop for August 24 to address new legislative requirements relating to the posting of distributed renewable generation on the Power to Choose website (project 37189). The Commission will be expanding Power to Choose to include educational materials on distributed renewable generation, easily comparable information about whether and at what rates retail electric providers have offers for the purchase of distributed renewable generation outflows, and information about REC marketers and the contract terms they offer.

PECO Says First Procurement Priced at 10.1¢/kWh

PECO said that the results from its first default service supply solicitation for the period beginning January 1, 2011 yielded a price of 10.1¢/kWh, representing a 9% increase in energy prices for the average residential customer. PECO said 11 suppliers competed in the competitive bidding process for about 21% of residential supplies, with two winning suppliers. Exelon Generation previously announced it had been awarded 17 month and 29 month residential full requirements contracts at PECO (Matters, 6/18/09).

Energetix, NYSEG Solutions Join BidURenergy.com

BidURenergy.com, the web-based auction platform owned by Energy Curtailment Specialists, announced that Energetix and NYSEG Solutions have been selected as suppliers for its uPREVAIL auction platform. The site will only feature about half a dozen pre-screened suppliers per market. ECS and BidURenergy.com CEO Glen Smith said that the online broker remains on track for its previously announced full-scale deployment this fall. Smith said over $2 million has been invested over the past three months in development work (Matters, 5/27/09).

Exelon to Abandon NRG Bid if Directors Slate Not Elected

Exelon said that it would abandon its hostile acquisition attempt of NRG Energy if none of its nine nominees are elected to NRG's board next Tuesday. If only four of Exelon's nominees are elected, Exelon said it may or may not decide to press forward with the hostile acquisition attempt. Even if all nine of Exelon's nominees are elected, Exelon said it would be "very disciplined" as to what it is prepared to pay as it moves forward.

NYISO Board Approval for Netting Bilaterals Imminent

New York ISO Board approval for tariff changes to support the netting of bilaterals is expected by the end of July 2009, NYISO said in a status report at FERC. NYISO said that required software changes are expected to be deployed in September 2009.

Conn. Draft Would Grant DaCott Management Aggregator License

The Connecticut DPUC would grant DaCott Management an electric aggregator certificate under a drat decision issued yesterday.

Oncor Reports Introduction of 15-Minute Settlement

Oncor said its advanced metering system has achieved the first 15-minute interval, billing-quality electricity consumption data reporting to the Texas market. In addition to providing data capable of being settled by ERCOT every 15 minutes, Oncor said its integrated system supports communication with an in-home monitor (ZigBee Smart Energy Profile 1.0). In early 2010, Oncor said that the system will be expanded to connect to a common web portal and data repository that will allow consumers to monitor consumption data and allow retail electric providers to interact through the system with consumers and consumers' equipment. Oncor said 243,349 advanced meters had been installed as of the end of June, with close to 700,000 meters scheduled to be deployed by year-end.

FirstEnergy Ohio Utilities Issue REC RFP

Ohio Edison, Cleveland Electric Illuminating and Toledo Edison issued an RFP for RECs for 2009-2011; specifically RECs from Ohio and contiguous states, and solar RECs from Ohio and contiguous states. Consistent with its default service procurement, no energy or capacity will be purchased under the RFP (www.firstenergyrenewable.com/2009OhioRFP).

Wholesalers Oppose Carve-Out of Mobile Sierra Doctrine

Over a dozen competitive power and gas trade associations filed an amici curiae brief with the Supreme Court supporting the petition of NRG Power Marketing to, "reverse a lower court decision that threatens the integrity of privately negotiated energy contracts when challenged by any entity not a party to the contract." In Maine Public Utilities Commission v. FERC, the D.C. Circuit Court said that the Mobile-Sierra doctrine, which limits contract abrogation to only instances where the "public interest" is served (a higher standard versus just and reasonable), cannot be binding on non-contracting third parties. Various wholesale suppliers said that granting third parties such standing will destabilize investor confidence and lead to higher prices. The brief was filed jointly by EPSA, P3, WPTF, IPPNY, IEP, and others.

APPA Says Allocation of Carbon Allowances to Merchant Generators to Provide Windfall

A Synapse Energy report released yesterday says that allocating all carbon emission allowances to LDCs would result in the lowest

cost to consumers, versus allocating costs to merchant generators or sharing such allocations. The report was commissioned by the American Public Power Association, the National Association of Regulatory Utility Commissioners, the National Rural Electric Cooperative Association and the National Association of State Utility Consumer Advocates.

Synapse said that allocation of allowances to merchant generators would produce "windfall profits" without taking any steps to reduce carbon emissions.

The Electric Power Supply Association, however, said that allocation of allowances only to LDCs would harm customers in competitive markets. "The study's sponsors want consumers in organized markets to pay twice ... by purchasing more allowances from them while they and most other generators outside of organized markets receive them for free," EPSA said.

Although allocating all allowances to LDCs will likely result in higher electricity prices, "it will also allow regulatory entities to use benefits from the allowances for programs that can lower the burden on consumers," Synapse said.

Even when all allowances are allocated to LDCs, significant generator windfall profits would remain in competitive markets because all generators in these markets will receive the benefit of higher wholesale electricity prices, while some, such as nuclear generators, will have little to no compliance costs. "In cost-regulated markets, this benefit would be passed through to ratepayers," Synapse said.

EPSA countered that allocating all allowances to LDCs, "punishes both our customers and competitive suppliers for being the nation's leaders in deploying lower carbon power technologies."

"The issue of limiting greenhouse gas emissions is too important to wrap neatly in a narrow anti- electricity market focus," the Compete Coalition added.

Illinois ... from 1

the Illinois residential and small commercial market," finding CUB's proposal to be in customers' interest.

Suppliers, however, countered that, "the retail electric energy business in Illinois is a competitive and low margin business, and the discount rate, in absolute terms, is a significant (and potentially deciding) factor in whether a supplier enters a particular market."

"Ameren should only be able to charge [suppliers] for the actual incremental bad debt expenses and administration expenses above and beyond what Ameren would have incurred if the customer remained on default service," the suppliers said.

While the proposed order called the statutory requirement for POR a "boon" to suppliers, the suppliers cautioned that POR without just and reasonable tariff language that makes POR usable will likely lead to POR being a "bust," and failing to support residential competition.

ICC Staff opposed the draft order's "speculative" statement that the discount rate is not a factor in a supplier's entry decision, noting no record evidence addresses the question.

Staff reminded that simply raising the discount rate does not guarantee that customers will pay less for POR implementation, since costs are only recovered if suppliers use the program and pay the discount rate. Rather, the more that POR is used, the more costs that are not borne by customers through surcharges, Staff noted.

Staff continued to support its 1.5% proposed discount rate, which includes a "balance factor" which initially raises the discount rate above cost, but is meant to keep the rate stable and predictable for the future, since fewer adjustments would need to be made for increasing uncollectibles and other factors.

The retail suppliers also countered arguments in the draft order that Ameren's proposed discount rate would lead to subsidization of competitive suppliers. Rather, CUB's proposal would make customers on competitive supply pay twice for billing systems (Ameren's and the supplier's), imposing a penalty on shoppers, the suppliers said.

Suppliers also cautioned that discouraging suppliers from using POR due to unattractive features will mean suppliers will continue to bill customers themselves, which will compel them to be selective in enrolling customers, leaving customers with bad credit with Ameren.

Power and Energy Services

The proposed order would adopt the Attorney General's suggested language for the definition of power and energy services, which are the only charges included in the POR program. The proposed definition for power and energy services would include, "costs of compliance with any and all applicable renewable portfolio standards" along with charges for instantaneous electric power and energy requirements. However, "any other costs" would be excluded from the POR program.

Staff found the use of the term "any other costs" in the definition of charges not included in power and energy services to be problematic, because the definition of power and energy services is meant to include the actual costs incurred by a supplier when it is selling power and energy service to a retail customer. "Because those costs are not defined elsewhere in the tariff and in fact are not readily ascertainable, the idea of precluding any other costs from the accounts receivables purchased by the utility could be problematic," Staff said.

Retail suppliers likewise said that a blanket prohibition such as "any other costs" is unnecessary given the strict definition of power and energy services, and said that the use of the word "costs" erroneously implies that the suppliers are cost regulated and that the Commission should be concerned with the nature of all costs incurred by a supplier in providing power and energy service rather than whether the fees or charges in question are for power and energy services.

Consumer Protections

The proposed order would find that additional consumer protections do not need to be in place prior to implementation of POR at Ameren, as suggested by CUB. The draft would require the current working group to continue to address various consumer protection measures, and suggested that implementation may be possible prior to POR's effective date.

The Attorney General, however, asked that the Commission set a specific deadline for completion of such collaborative activities, so that plans can be implemented coincident to the anticipated start of POR on November 1, 2009. Retail suppliers asked that the ICC clarify in its final order that any such consumer protection plans are not a precondition of POR implementation, noting that Staff has raised questions as to the Commission's authority to implement additional consumer protections.

Indeed, Staff reiterated that the ICC's authority to implement a rulemaking to promulgate consumer protection safeguards on retail suppliers is not clear, which prompted the Office of Retail Market Development to suggest either lawmakers grant the ICC such additional authority, or establish protections themselves.

Staff also said any protections should be pursued in a rulemaking and placed in the administrative code, rather than in Ameren's tariff, because including protections in the tariff could put the utility in the position of policing tariff compliance issues between suppliers and their customers -- issues that may have nothing to do with the utility.

While the proposed order merely cited most currently debated protections as appropriate for the ongoing collaborative, the draft would require Ameren to include in its Supplier Handbook a requirement that suppliers must provide the telephone number for the ICC Consumer Services Division to customers unsatisfied with the supplier's response to their supply complaint.

Furthermore, the proposed order would decline to require Ameren to transfer customer complaint calls regarding a supplier to that supplier. In doing so, the draft concludes that such transfers could prompt customers to believe that the supplier and Ameren are affiliated. "The Commission will not now and is unlikely to in the future require [Ameren] to transfer calls from customers with supply complaints to the [supplier]," the draft says.

Retail suppliers took no position on the issue of transferring complaint calls, but said that the draft's broad statement as to transferring calls to suppliers could hinder consideration of supplier referral programs which must be studied by the Commission pursuant to Section 20-130 of the Public Utilities Act. Such referral programs may include customer call transfers to suppliers, the suppliers noted.

Disconnects ... from 1

MXenergy also argued that the initial deposits required by REPs would likely be reduced under a hard disconnect policy.

"Bad debt and collection issues are among the most significant challenges a REP faces in trying to operate efficiently and provide the lowest prices possible to the conscientious, timely paying consumer," MXenergy said.

MXenergy said a properly designed hard disconnect policy would not adversely affect customers who truly need assistance to pay electric bills or need payment plans or other special consideration, who should be afforded such assistance and opportunity to pay their electric bills on extended terms. Rather, a hard disconnect policy would motivate payment from customers who, out of neglect, or disregard for contracts, are simply trying to "beat the system," MXenergy said.