Energy Choice Matters

July 30, 2009

Rep. Turner Alleges Most Residential REPs Not Complying with Levelized Billing Rules

"Many market participants are flagrantly breaking" PUCT Substantive Rules governing the availability of levelized payment plans, Rep. Sylvester Turner alleged in comments at the PUCT.

PUC Subst. R. § 25.480(h) holds that, "A REP shall offer a level or average payment plan to its customers who are not currently delinquent in payment to the REP." The rule, applicable to residential and small commercial customers as part of Subchapter R, does not contain any other eligibility criteria for levelized billing. Additionally, "All details concerning a levelized or average payment program shall be disclosed in the customer's terms of service document," the rule says.

Turner's staff reviewed the terms of service for 27 REPs offering service in the Houston area, and raised compliance questions about 17 of them, or over 60%. The most common problems cited by Turner were additional requirements or conditions placed on levelized payment plan eligibility (such as a minimum billing history, no prior delinquencies in 12 months, or a minimum product term), and the lack of "all details" regarding average billing in the terms of service.

Several of the additional requirements (such as three months minimum term of service and no more than two delinquencies in the past 12 months) included in some of the REPs' terms of service are requirements for eligibility for deferred payment plans under § 25.480(j), but are not found in the subsection related to average payment plans.

"While some customer protections do exist, numerous REPs skirt PUC rules. When we inform consumers of such payments options and REPs do not comply with PUC rules or have their own when it is not allowed, it makes it difficult to have faith in the market, the rules, or the regulating entity," Turner said.

Turner requested that the Commission conduct a timely and meaningful inquiry into levelized

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Generation Results Mitigate Retail Growth at UGI Energy Services

Net income from UGI's competitive Energy Services unit was down in the third quarter ending June 30 from weaker generation results, at $5.1 million compared to $9.4 million in the prior-year period.

Total margin for Energy Services decreased $5.0 million to $23.0 million reflecting lower total margin from electric generation and the impact of reduced volatility in natural gas prices on asset management activities. Lower generation margin reflects lower spot-market prices for electricity and lower volumes sold.

Energy Services operating income fell to $8.6 from $16.0 million a year-ago, reflecting lower total margin, higher electric generation operating and maintenance costs, higher asset management fees, and higher short term borrowing costs.

The weaker generation results mitigated growth in the retail supply side of the business. Gas marketing results were similar to the year-ago period, though UGI said it was seeing growing margins as players exited the business due to the financial climate. Electric marketing results have grown versus the year-ago period.

UGI's small commercial marketing program is "progressing well," executives said, who expect

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PUCT Staff Tweaks Renewal Notice Proposal, Recommends that REPs Send Default EFL

PUCT Staff filed revisions to Staff's proposal for publication regarding changes to make PUC Subst. R. § 25.475 consistent with HB 1822 (37214, Matters, 7/25/09).

Among the proposed revisions is to require REPs to send customers an Electricity Facts Label for the default renewal product, at least 14 days before contract expiration. The EFL must be sent in the same manner as the prior contract expiration notice (which, because it must be sent out 30-60 days before expiration, does not have to contain an EFL for the default renewal product). Under Staff's original draft, REPs would have been permitted to merely directly customers to a website and their call center to obtain the EFL for the default renewal product, and had the discretion not to send an EFL.

Staff also clarified that a fixed rate expiration notice must include a "description and amount" of any termination fees applicable when terminating the expiring fixed product prior to 14 days before expiration.

PUCO Sets Process for Do Not Aggregate List

The Public Utilities Commission of Ohio established additional rules to implement an electric "do not aggregate" list of customers that have indicated they do not wish to be included in an opt-out governmental aggregation program established pursuant to Section 4928.20, Revised Code.

Under PUCO's order, customers may opt onto the "do not aggregate" list online, by mail, by fax, or by phone.

The Commission will maintain publicly accessible information on its website, containing only the customer name and service address, of the accounts registered on the "do not aggregate" list. The Commission will also maintain a protected "do not aggregate" list on its website containing additional information, such as customer account numbers, which will be available to only governmental aggregators and their suppliers to prepare a list of customers who will automatically be excluded from governmental aggregation programs.

Customers that register their electric account(s) to appear on the "do not aggregate" list are responsible for advising the Commission if they move, receive a new account number, or wish to be removed from the "do not aggregate" list.

PJM Withdraws Part of Duquesne FRR Waiver Request

PJM moved to withdraw one of its requested waivers regarding provisions of the Fixed Resource Requirement agreement (which it had sought due to the Duquesne Light settlement), stating that the waiver no longer appears necessary (ER09-1346).

In June, PJM had asked for a series of waivers to facilitate implementation of a plan to secure capacity for loads in the Duquesne Light zone from June 1, 2011 through May 31, 2012, under a settlement previously approved by FERC (Only in Matters, 6/24/09).

Among the waivers was a request to allow an entity meeting its obligations under the Fixed Resource Requirement to include in its capacity plan a capacity resource that has cleared a Reliability Pricing Model (RPM) auction for that year. By rule, Fixed Resource Requirement entities are prohibited from using capacity which clears RPM in meeting their obligations.

Allegheny Energy Supply had opposed the requested waiver, citing its disruption to the capacity market (Matters, 7/15/09).

PJM says it now appears that the affected market participants are not seeking to include RPM auction capacity in their Fixed Resource Requirement capacity plan, making the requested waiver moot.

PJM is still seeking a waiver to allow Duquesne and other zonal LSEs to procure Locational UCAP in Duquesne's one-time Fixed Resource Requirement capacity plan, a request which has not drawn any opposition to date.

Briefly:

TXU Lowering Term, Variable Pricing

Aside from targeted summer-related relief (see related story), TXU Energy said it is lowering both term and variable rates due to lower wholesale prices. The fixed price cuts, effective August 1, result in the lowest term prices offered by the REP since 2005. TXU is also cutting prices as much as 15% for over a quarter of a million existing customers on month-to-month plans by August 10.

Taylor Consulting and Contracting Seeks. Conn. License

Taylor Consulting and Contracting, which principally brokers load through an online reverse auction platform, applied at the Connecticut DPUC for an electric aggregation license to serve non-residential customers. Taylor Consulting and Contracting is active in Pennsylvania, Massachusetts, New Hampshire and Rhode Island (Matters, 2/27/09).

NJR Energy Services Narrows Quarterly Loss

NJR Energy Services, which engages in various wholesale activities as well as industrial customer supply, reported a narrowed adjusted quarterly loss of $4.5 million compared with $5.6 million in the same period last year. The adjusted metric excludes certain realized and unrealized hedging impacts. On a GAAP basis, NJR Energy Services' quarterly loss was $20.4 million, versus $15.5 million a year ago. The loss reflects the seasonal nature of the business, and Laurence Downes, CEO of parent New Jersey Resources, said Energy Services is on track for its third best year of profitability in its almost 14 year history.

DPUC Approves UI Procurements

The Connecticut DPUC approved results of United Illuminating's latest Standard Service procurement for a portion of the load for 2010, 2011 and 2012, and its Last Resort Service procurement for 100% of supplies for the three-month period beginning October 1, 2009. Retail rates for Last Resort Service are to be filed no later than August 17, 2009.

PUCO Opens Docket to Review Separating GSS/ECTS Classes into Residential/Non-residential Segments

The Public Utilities Commission of Ohio has opened a new docket to consider Dominion East Ohio's Cost-of-Service Study for the General Sales Service and Energy Choice Transportation Service rate schedules (09-0654-GA-UNC). In January, Dominion East Ohio submitted a report and cost of service study on separating the GSS/ECTS classes of customers into residential and non-residential segments, due to concerns that non-residential customers may be subsidizing residential customers.

Edison Mission to Pay for Certain NIPSCO Upgrades Under Agreement

Northern Indiana Public Service Company, Edison Mission Marketing & Trading, PJM and the Midwest ISO have entered a transmission upgrade agreement governing cost allocation under which Edison will provide phased funding of certain breaker upgrades and transmission upgrades to the NIPSCO facilities. NIPSCO will pay for other related upgrades. The upgrades are meant to address operating constraints first raised by NIPSCO in its complaint in FERC Docket No. EL05-103. With the agreement, the RTOs will not need to develop a cost allocation methodology between them to address the subject operational upgrades, and no costs will be allocated to their market participants.

PJM Clarifies Metering Obligations of Curtailment Service Providers

PJM has filed tariff changes at FERC to clarify that curtailment service providers are responsible for ensuring that demand side response participants have the proper metering equipment required by PJM. The changes revise prior language which was ambiguous and made reference to electric distribution company metering equipment.

PJM Files Cost Allocation for Bellow 500 kV Economic Projects

Consistent with a prior settlement, PJM filed tariff changes at FERC to allocate the cost responsibility for below 500 kV economic-only transmission upgrades to each Zone that shows a decrease in Load Energy Payment, on a pro rata basis.

FERC Sets Technical Conference on CAISO Import/Export Pricing

FERC ordered that a technical conference be held on August 20 regarding the California ISO's Market Efficiency Enhancement Agreements

(MEEA) between the ISO and eligible market participants. CAISO designed the Market Efficiency Enhancement Agreement as an alternative to the single hub pricing mechanism for imports and exports, but the terms have been subject to various protests. The technical conference will focus on the information necessary to execute a MEEA, and the transactions under a MEEA that should receive MEEA pricing.

PSE&G Receives Approval for Utility-Owned Solar

PSE&G received approval from the New Jersey BPU to build and own 80 MW of solar power by 2013 at a cost of $515 million. The program consists of installing 40 MW of distributed solar units (approximately 200 watts) on 200,000 utility poles in PSE&G's service territory, and 40 MW of centralized solar (500+ kW) on rooftop installations at PSE&G's own sites and third-party locations. Output from the distributed pole-top solar will be sold into the PJM wholesale grid.

CPower Receives Investment from Intel Capital

CPower said it has received an infusion of funding from Intel Capital, Intel's global investment organization. CPower did not disclose the size of the investment, but Intel said that it has invested a total of $10 million across five clean technology firms including CPower.

CAISO Launches Consumer Demand Response Pilot

The California ISO yesterday launched its pilot to allow consumers to offer demand response directly into the market to provide operating reserves. The state's three large investor-owned utilities developed pilots totaling 13 MW of load curtailment capability dispatchable by the ISO (Matters, 7/20/09).

DPL Earnings Lower on Weak Prices

DPL Inc. reported lower second-quarter earnings of $42.1 million, versus $47.6 million a year ago, on weak power prices. Wholesale revenues fell to $19.7 million from $39.8 million in the year-ago quarter, primarily as a result of a 54% decrease in average wholesale market prices, partially offset by a 6% increase in wholesale sales volume. RTO Capacity revenues were up at $34.7 million versus $20.7 million a year ago, but other RTO revenues were down at $21.4 million from $28.2 million a year ago, due to lower PJM transmission and congestion revenues.

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payment plan compliance. "If companies are flagrantly breaking the rules, there must be action taken to stop them and make them face consequences. Otherwise, these companies will continue to sidestep regulatory rules and protections at the expense of the market and perpetuate customer and regulatory distrust by consumer and advocates," Turner added.

Turner's review showed that the terms of service for Kinetic Energy limited the levelized plan to customers who enroll in a plan with a minimum term of at least one year. Spark Energy's levelized plan is limited to customers who have been with Spark for at least three months, and whose contract term is 12 months or greater.

Champion Energy Services (since amended) and MXenergy limited levelized plans to customers with no more than two delinquencies in the past 12 months. Champion, after discussions with Turner's staff, has removed such limitations.

Gexa Energy requires at least 12 months of usage history at the service address for customers to qualify for budget billing. First Choice Power requires nine months of usage history, while Green Mountain Energy requires six months of usage history for enrollment. YEP's terms of service state that the REP needs at least twelve months of billing history to "calculate" the levelized rate, though it does not address enrollment eligibility for customers without such history.

Turner said APNA Energy, Bounce Energy, Brilliant Energy, and Mega Energy do not include levelized payment information in their terms of service. Simple Power's terms of service references balanced billing, but merely directs customers to the REP's website or call center.

Ambit Energy's terms of service state that levelized payment customers must meet "Ambit Energy's eligibility requirements," which the REP says are those of the substantive rules, but Turner still questioned the provision. Turner also called Amigo Energy's terms of service vague with respect to levelized billing eligibility, though Amigo includes a detailed description of the plan's mechanics.

Turner questioned the ability of REPs to remove customers from average billing due to disconnection during the levelized plan, and whether once customers are again current, can the REP continue to restrict levelized payment participation. Stream Energy, as well as a few of the REPs previously cited, have provisions to remove customers from budget billing due to disconnection.

Turner's review said Texas Power did not include an average billing provision in its terms of service, though the version listed on Power to Choose on July 29 does. However, while defining average billing, the terms of service does not state how customers may avail themselves of the option.

Regarding his petition for a summer suspension on termination fees (Matters, 7/20/09), Turner said that the Commission has the authority to impose a moratorium on such fees, similar to its authority to impose a disconnection moratorium in 2006. Turner noted that a court challenge to that moratorium by REPower did not gain any traction. Turner dismissed arguments that a moratorium on termination fees would contravene Article 1, Sec. 16 of the Texas Constitution, which prohibits bills of attainder, ex post facto laws, retroactive laws, or any law impairing the obligation of contracts.

Disconnection Workshop

Staff announced that it would hold a workshop on customer protections related to disconnections and related issues (deferred payment plans, etc.) in Project 36131 on August 28.

In a memo regarding Turner's petition for a suspension of termination fees, Commissioner Kenneth Anderson raised several questions regarding levelized and deferred payment plans that should be explored in Project 36131:

• Is a payment plan available to customers on a variable rate plan?

• Define the term "currently delinquent." Does this include customers on a deferred payment plan?

• Should the re-payment period under a deferred payment plan be extended from three months to five months? Would such an extension make it more likely that customers can satisfy their obligations, thus reducing REP bad debt and customer disconnects?

• Should a "hard disconnect" policy be incorporated into the deferred payment plan?

• If customers are unable to satisfy their obligations under a deferred payment plan in the previous year, should they be excluded from a deferred payment plan in subsequent years?

Commission Touts Voluntary Actions

The PUCT announced yesterday that at least 10 REPs now offer enhanced benefits that go beyond existing customer protection laws and rules.

According to the Commission, Reliant, TXU, First Choice Power, Dynowatt, Stream Energy, Gexa, Green Mountain, and Direct Energy are all offering deposit waivers for seniors 62 or older (and as low as age 60 in some cases).

TXU, Stream, and Reliant are also offering credits up to $250 for customers who enroll in a new plan.

Dynowatt, Direct Energy, Tara Energy, Reliant, First Choice Power, Stream Energy, Green Mountain Energy, Gexa, Just Energy, TXU, and StarTex Power are providing additional announcements regarding the Lite-Up Texas discount program. TXU also provides its own low-income discount of 10% to eligible customers in addition to the Lite-Up Texas discount, helping over 133,000 customers.

The Commission noted most of the benefits are being offered for a limited time through September.

Reliant and Stream both announced they are offering 18-month fixed price plans to seniors as well. At Reliant, the plan includes $250 in bill credits paid over the life of the product. At Stream, a $250 credit for seniors is paid after one year of on-time payments.

TXU said it is waiving early cancellation fees this summer for its customers who want to re-enroll on a special reduced-price term plan.

Direct Energy announced additional funding of $300,000 for its "Fresh Start" assistance program that provides direct bill payment assistance to customers facing financial hardship but do not qualify for other low-income assistance funding, as well as critical care customers.

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that the effort will lead to 4,500 new customers by the end of fiscal 2009, with the potential for additional growth in 2010. UGI is using direct sales and telemarketing to reach this fragmented, but attractive, segment of customers.

Parent UGI Corporation reported a net loss for the third quarter of $3.6 million, versus net income of $15.7 million a year ago.