

Energy Choice Matters

August 24, 2009

Illinois Adopts CUB Discount Rate in Approving Ameren POR

The Illinois Commerce Commission approved a Purchase of Receivables program at the Ameren utilities, adopting the Citizens' Utility Board's "Fair Cost Allocation Adjustment" mechanism in setting a discount rate. Ameren has estimated that using CUB's mechanism would produce a discount rate of 1.63% versus the 1.12% initially proposed by Ameren (08-0619 et. al.).

As only reported by *Matters*, the adopted CUB proposal essentially places all costs of POR and utility consolidated billing into the discount rate, while simultaneously collecting 75% of such implementation costs from all delivery customers. As suppliers pay the discount, such receipts are used to refund to delivery customers their outlays for POR implementation, with interest (Only in *Matters*, 7/16/09).

Adopting the reasoning of a proposed order, the Commission agreed that, "The simple fact that legislation now exists requiring the larger incumbent electric utilities to offer UCB and POR service is a boon for competitive suppliers and a significant step toward the goal of residential and small commercial customers having competitive options."

"The level of the discount rate, while not insignificant, is unlikely to be the only factor in a RES' [retail electric supplier] decision to enter the Illinois residential and small commercial market. The Commission recognizes that RES would prefer the lowest discount rate possible, but RES preferences are not the only perspectives to consider," the ICC added.

Placing more implementation costs on all delivery customers, rather than on retail suppliers (and

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UGI Gas Division to Defer Pipeline Capacity Release Until December 2010

UGI Utilities - Gas Division will defer implementation of pipeline direct assignments until December 1, 2010, under a settlement in its Section 1307(f) rate investigation supported by the LDC, PUC Trial Staff, the Retail Energy Supply Association, the Office of Consumer Advocate, and Office of Small Business Advocate.

Additionally, the mix of pipeline capacity directly assigned to choice suppliers will reflect the suppliers' pipeline delivery obligations. Such a requirement will ensure that suppliers can meet their peak day requirements and will enhance reliability to customers, RESA said.

Furthermore, UGI agrees to provide eight months notice to suppliers of any intent to commence the direct assignment of storage capacity to choice suppliers. The various capacity release deferral or notice provisions will provide suppliers with a reasonable opportunity to incorporate the pricing changes associated with capacity release programs into their contracts, and customers will have time to adjust their contract terms, RESA said.

Under the settlement, the choice tariffs would be clarified to hold that capacity released by UGI to choice suppliers will be recalled on critical days only in cases where the choice supplier fails to have such released capacity scheduled for delivery in the first NAESB-defined timely nomination cycle.

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Green Mountain Offering Commodity Supply at ConEd

In an anticipated move, Green Mountain Energy announced it is now offering electricity to residential and commercial customers at Consolidated Edison.

It's the first extension of Green Mountain's commodity supply marketing from Texas since withdrawing from several Northeast markets such as Ohio and Pennsylvania about four years ago, mostly due to Seams Cost Elimination Adjustment charges and decreasing headroom in rate capped markets. In a sad commentary on the FERC process, the SECA docket remains unresolved, some three years after an initial decision.

Green Mountain has maintained a presence in New York (and other states) as a REC marketer, through National Grid's GreenUp program.

Green Mountain's residential offerings at ConEd include a 100% wind product, and a product blending wind and hydro. Green Mountain is also offering commercial service via custom products.

NYISO Proposes Lower Unsecured Credit Limit

The New York ISO submitted several tariff changes to reduce credit exposure at FERC, including reducing the unsecured credit limit to \$150 million for most market participants.

The current unsecured credit cap is just over \$500 million. Investment-grade utilities possessing a legal right to recover costs from their customers would be eligible for a \$250 million unsecured credit limit, but only for use in meeting the credit requirements of serving their native load customers.

NYISO would also eliminate the use of an unsecured limit in the Transmission Congestion Contract market under its proposed changes.

The ISO proposed that new market participants must demonstrate six-months of timely payment history, either with the NYISO or another RTO, prior to being eligible for unsecured credit. Currently there is no payment history criteria for obtaining unsecured credit.

A new credit assessment methodology would

also be implemented to allow NYISO to reduce unsecured credit available to a market participant based on a variety of market and financial factors. NYISO would also create a new credit category for public power entities.

As part of its FERC filing, NYISO also proposed several changes to its default rules to reduce the risk of bad debt losses.

Among the changes is that NYISO would reduce to one business day, from two, the time a market participant has to cure a payment default. The time granted to cure a creditworthiness default would be shortened from three business days to two business days.

NYISO would also create a new default category: failure to cure a default in another RTO. In addition to seeking suspension or termination of market participants experiencing such a default, NYISO could alternatively reduce or eliminate unsecured credit to such market participants, demand immediate payment of all obligations, or impose a requirement for the participants to prepay estimated charges on a weekly basis for the next 12 months.

NYISO's proposed modifications would also give it explicit authority to require immediate payment if a market participant's unsecured credit limit is reduced by 50% or more. In such situations, NYISO could also require the participant to prepay estimated charges on a weekly basis for the next 12 months. The 12-month prepayment mandate could also be imposed if a market participant is late in paying more than one invoice in the prior 12 months.

WPTF Calls Mitigation in Start-Up/Minimum Load Proposal Overly Broad

The Western Power Trading Forum called mitigation measures contained in a California ISO proposal to allow more frequent changes in generators' start-up and minimum load costs, "unnecessarily conservative," even as the California PUC said that the CAISO proposal does not provide enough mitigation.

Due to an increase in the number of quick-start generation units that are repeatedly committed at minimum output for a short period of time in the real-time market and then quickly de-committed under the Market Redesign and

Technology Upgrade, CAISO has proposed changes to allow for more frequent updates to generators' start-up (SU) and minimum load (ML) offers, to reflect higher "wear and tear" costs associated with the increased run times. Under CAISO's proposal, generators could change start-up and minimum load costs under the Registered Cost option from once in a six-month period to once every thirty days.

However, to mitigate market power concerns, CAISO would reduce the cap on Registered Cost option costs in Non-Local Capacity Areas from 400% of the Proxy Cost to 200% of the Proxy Cost.

But WPTF said that a second option offered by the Market Surveillance Committee (MSC) is preferable -- namely, that the Department of Market Monitoring (DMM) be allowed to unilaterally cap start-up and minimum load costs at 200% of the projected proxy cost if DMM determines a generator is using its ability to change its start-up and minimum load costs to exercise significant unilateral market power. Thus, the lower cap would only be imposed on specific units when market power, or the potential to exercise market power, is evident, rather than imposing a blanket cap on all generators.

"Given California's resource adequacy program, which requires Load Serving Entities ('LSEs') to procure an amount of capacity equal to or greater than 115% of the LSE's projected monthly peak demand and further requires the suppliers of that capacity to bid that capacity into the CAISO's markets, adequate competition exists and thus, there is no potential to exercise market power - for units outside load pockets," WPTF said.

"That units may exercise market power as a result of CAISO's proposed changes in the ability to more frequently change start-up and minimum load bids is simply speculation on the part of the MSC," WPTF added.

However, the California PUC said that the MSC indicated concerns that the 30-day fixed cost time frame raised significant market power concerns even with a reduced price cap. The PUC thus asked FERC to impose further market power mitigation tools in addition to the 200% cap.

Briefly:

Major Energy Services Revises Target Markets in Pa.

Major Energy Services has revised its Pennsylvania natural gas supplier application to include the territories of Columbia Gas, National Fuel Gas, and T.W. Phillips Gas and Oil Co., as Major said it was only going to operate in areas with POR (Only in Matters, 8/7/09).

Md. PSC Staff Offer Changes to Make SOS Letter of Credit More Flexible

Maryland PSC Staff, presenting consensus recommendations from the SOS Procurement Improvement Process working group, proposed two changes in the required SOS letters of credit intended to make the documents more flexible and more acceptable to bidders and their banks. Bidders/suppliers and their banks should be given an option regarding whether or not the letter of credit is transferable, under both the bid assurance letter of credit and performance assurance letter of credit accompanying the Full Requirements Service Agreement (FSA), Staff said. Additionally, the bid assurance letter of credit required of SOS bidders should be changed so that it is effective for a minimum of 60 days, rather than expiring on a date certain, Staff said.

Ameren Seeks to Remove Unnecessary Daily Capacity Component from Default Service Contracts

The Ameren Illinois utilities petitioned the Illinois Commerce Commission to amend their existing capacity agreements executed under the Illinois Power Agency procurement process to reflect FERC and NERC determinations impacting a daily capacity component included in the existing agreements. Ameren said due to recent FERC and NERC rulings, there is no need for a daily capacity requirement going forward, and asked to amend the existing contracts to alleviate an administrative burden that is no longer necessary. Alleviating suppliers from the burden will, "send a clear signal to the supplier community that the [Ameren utilities] are willing to work with them to help reduce inefficiencies in the process," Ameren said, which could encourage greater supplier interest in

procurements.

New Era Energy Seeks Texas Aggregation License

New Caney, Texas-based New Era Energy applied for an aggregation certificate from the PUCT to pool residential, commercial and industrial customers. Sole proprietor Bruce Ewing formerly was a sales agent for TXU Energy and several of its contractors, including Andexco and Spherion.

PUCT Issues Written Order on Disconnect Moratorium Petition

The PUCT published a written order of its denial of a petition for a disconnection moratorium filed by various consumer advocates in Project 37142. For various reasons enumerated at prior open meetings, the Commission found that there is no imminent peril to the public health, safety or welfare, or a requirement of state or federal law that warrants the adoption of the proposed rule on an emergency basis (Matters, 7/31/09).

N.J. BPU Weighs Raising BGS Load Cap

The New Jersey BPU asked for comments regarding whether the statewide Basic Generation Service load cap should be raised from about 37% of the tranche target to 45%, and whether individual utility-specific load caps would need to be adjusted if the statewide cap is adjusted. The BPU also asked for stakeholder comment on eliminating the provision in the Supplier Master Agreement requiring wholesale suppliers to satisfy RPS requirements, for either all RPS classes or a specific class.

N.Y. PSC Drops Proposed Preference for Renewable Projects Receiving Stimulus Funds

A written order released by the New York PSC confirms that the Commission will not give any priority to projects receiving federal stimulus funds in conducting its fourth main tier RPS solicitation, as suggested in an earlier notice (Matters, 8/21/09). The Commission said that limiting the eligible projects to those entering service after the effective date of its order is sufficient to leverage projects which are eligible for federal stimulus funds. A further scoring

preference for projects receiving funds is not necessary as such funding should be reflected in lower bids, the PSC said. Regarding opposition to the mandate prohibiting existing projects from competing in the solicitation, the Commission said, "We note that large-scale investment in a renewable energy project is a matter that requires financial sophistication and such investors should understand that RPS incentives are not an entitlement and are subject to changing policies as we further refine our objectives in response to changing circumstances."

Mass. DPU Lets Net Metered Customers Determine Disposition of RECs

The Massachusetts DPU will not require net metering host customers to sell RECs to the distribution utility or otherwise restrict customers' disposal of RECs or other renewable/environmental attributes, under a model net metering tariff adopted last week. While the Attorney General had pushed for a requirement mandating that net metered customers sell RECs to distribution utilities, the DPU agreed with distributed renewable developers who argued that customers should be able to dispose of RECs in a manner they see fit, perhaps selling RECs to other entities with RPS obligations such as competitive suppliers, or selling RECs into the voluntary markets. The model net metering tariffs govern the relationship between net metering host customers and the distribution company, except in the case that the host customer is an aggregator, supplier, energy marketer, energy broker, electric company or generation company as defined in statute.

SUNY Withdraws Capacity Release Petition

The State University of New York withdrew its petition for declaratory ruling in which it was seeking an exemption from mandatory assignment of capacity by LDCs for itself and its marketers (09-G-0257). National Fuel Gas Distribution and NYSEG/Rochester Gas & Electric objected to the petition as contrary to established Commission rule, arguing that it amounted to a petition for preferential treatment for a single customer.

Munis, Large Customers Oppose Higher MISO CONE

The Illinois Municipal Electric Association and Coalition of Midwest Transmission Customers urged FERC to reject the Midwest ISO's proposal to increase the Cost of New Entry under Module E to \$90,000/MW-month from the current \$80,000/MW-month, arguing that the proposal is unsupported by evidence (Only Matters, 8/4/09). The munis and large customers said MISO presents no analysis that the overnight capital costs and estimated operating and maintenance costs presented relate in any way to a new peaking generator in MISO. Various adjustments to costs were also unsupported, the munis and large customers argued.

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presumably on a pass-through basis their shopping customers), in order to, "sweeten the deal," for suppliers, "may seem inappropriate," the Commission ruled.

The ICC adopted the Attorney General's proposed definition for power and energy services covered under POR, which modified settlement language among Ameren and suppliers. The approved language holds that:

"Power and Energy Service for purposes of the UCB/POR Program refers to the RES charges included in the receivables purchased by the Company and shall include such charges for Power and Energy Service the RES is obligated to procure to meet its Customers' instantaneous electric power and energy requirements. Such charges may also include charges for Transmission Services and related Ancillary Transmission Services and costs of compliance with any and all applicable renewable portfolio standards The accounts receivables purchased for the RES shall not include any other costs."

Regarding consumer protection measures, the Commission first said that it has statutory authority to implement additional measures if warranted.

"While subsections (c) and (d) of Section 16-118 [of the Public Utilities Act] do not explicitly direct the Commission to develop rules addressing consumer education and protection,

the Commission is of the opinion that Section 10-101 of the Act provides a legitimate basis upon which to develop such rules. Disregard for consumer education and protection, particularly in the absence of clear statutory language barring the Commission from acting in the area, would most likely harm customers and eventually the competitive market, contrary to the very goals of Article XVI," the Commission reasoned.

The Commission found that those aspects of consumer education and protection already addressed to at least some extent in Ameren's tariffs, or logically tied to existing consumer education and protection provisions in the tariffs, should be added to the tariffs if consensus can be reached on them in the ongoing Office of Retail Market Development (ORMD) workshops. However, other areas of consumer education and protection may not be appropriate for the utility tariffs, the ICC noted, such as a possible requirement that suppliers disclose any force majeure declarations. Such protections may be better included in an administrative rule.

While the Commission deferred to workshops most proposed consumer protections in the case, it did order Ameren to modify its Supplier Handbook to require that suppliers provide customers with the telephone number for the ICC consumer services division if the customer is unsatisfied with the supplier's response to their complaint.

The Commission believes sufficient time exists for consumer education and protection plans to be developed prior to the effective date of the POR tariffs (in late October 2009) in the ORMD workshops. For those portions of the consumer education and protection plans upon which consensus is developed in the ORMD workshops, those aspects appropriate for inclusion in Ameren's tariffs shall be submitted to the Commission via tariff filings. If the provisions are deemed reasonable by the Commission, they will be allowed to go into effect.

With regard to those portions of the consumer education and protection plans appropriate for inclusion in Ameren's tariffs but not agreed upon in the ORMD workshops, Ameren shall submit a separate tariff filing. If necessary, the Commission can suspend these disputed

provisions and investigate them without delaying implementation of those agreed upon provisions offered separately.

"Whether agreed to or not, the Commission ultimately expects to see within the tariff filings a full explanation of the customer protections under AIU's [Ameren's] dispute resolution process. This process is intrinsically significant and should be publicly available and not easily altered," the Commission added.

For those aspects of the consumer protection plans not appropriate for inclusion in the tariff, Staff shall submit no later than December 31, 2009 a Staff Report, proposed first notice rule, and draft First Notice Order for the Commission's consideration. In establishing such a procedure, the Commission rejected the Attorney General's suggestion that the ORMD publish consumer education and protection plans prior to November 1, 2009.

"Given the Commission's conclusion that not every aspect of such plans are appropriate for inclusion in tariffs, the rulemaking process that Staff has been directed to initiate is the next most expedient means of establishing consumer education and protection plans. Pending the adoption of a final rule, the Commission expects RES and incumbent utilities to work in good faith with each other and, most importantly, consumers," the ICC said.

The Commission directed the ORMD workshops to discuss, among other things:

- What information should be included on a disclosure form to be provided to customers at the time of enrollment;
- The appropriate length of a penalty-free cancellation period for contracts between a supplier and a customer;
- Appropriate rules governing uniform terminology in supplier product offerings;
- Appropriate rules governing "green" products;
- Use of a "do not call" or "do not market" list;
- A requirement that suppliers be required to disclose if they have declared force majeure within the past 10 years; and
- What information should be included on the Commission's website.

Workshops must also address the possibility of presenting all charges on a per kilowatt-hour basis. While the Commission agrees such a rule

would facilitate comparisons of service offers, the Commission said it was "hesitant" to require that all charges be presented on a per kilowatt-hour basis given the lack of evidence on how such a rule may impact suppliers' service offerings.

The Commission's final rule softened language regarding the transferring of calls from Ameren to suppliers. CUB had recommended that Ameren transfer calls regarding supplier complaints to the appropriate supplier. The Commission denied the request out of concern that the customer may perceive Ameren and the supplier to be affiliated, stating it will "not now" require Ameren to transfer calls to a supplier.

A proposed order had used language holding that the Commission would, "not now and is unlikely to in the future," require Ameren to transfer any calls to a supplier due to such concerns, but suppliers noted such a broad prescription could hinder the development of supplier referral programs where customers could be transferred from Ameren to a supplier for enrollment.

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UGI will continue to communicate daily delivery requirements to choice suppliers through EDI transactions. Peak day requirements relating to the pipeline assignment beginning next year will be communicated electronically via EDI and other means.

UGI also agrees to reduce its swing supply service volumes by one half beginning in December 1, 2009. For its remaining swing supply service volumes, UGI will submit a plan in its 2010 Purchased Gas Cost filing detailing whether swing service should be continued, modified, or eliminated for the period beginning December 1, 2010.

The stipulation is subject to Commission approval.