

Energy Choice

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PUCT Directs Review of Hard Disconnect Policy in Collaborative, Favors Voluntary Payment Database

The PUCT directed Staff to include discussion of a hard disconnect policy in the current collaborative process addressing disconnect rules and protections, and ordered a second workshop to be quickly held in the collaborative to focus on a hard disconnect policy (Matters, 7/28/09).

The disconnect project (36131) is currently focused on the level of customer protections, particularly with respect to any weather-related or summer moratoriums, as well as deferred payment plans. Originally, hard disconnects were not included in its scope.

However, Commissioner Kenneth Anderson said that hard disconnects, "may become necessary," if disconnection protections are expanded. Anderson noted that municipals and cooperatives currently use hard disconnects.

While not taking a stance on a hard disconnect rule from a policy standpoint, Anderson does believe that the Commission has authority to institute a hard disconnect policy under PURA §39.101(e), which gives the Commission authority to adopt rules governing the extension of credit and termination of service.

The Commission also directed Staff to focus rulemaking efforts on clarifying how REPs could use third-party administrators to create a voluntary customer bill payment history database, after concluding that the Commission lacks authority to compel funding of a database.

Commissioners were reluctant to give the payment history database to ERCOT, where funding could arguably be compelled as part of the administrative fee, due to the current strains on ERCOT's

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ICC Finds Lower Electric Violated ABC Law, Orders Prospective One-Month Suspension

The Illinois Commerce Commission found that Lower Electric violated the ABC law and ruled that, should Lower ever file for an ABC license, it shall be subject to an immediate one-month license suspension upon receiving its license. The Commission, adopting the reasoning of a proposed order, found that Lower failed to disclose anticipated remuneration to a customer during a solicitation as required (Matters, 6/25/09)

As only reported by *Matters*, BlueStar Energy Services filed a complaint against Lower in June of 2008, alleging that Lower did not comply with the required remuneration disclosure. Among other things, the ABC law requires agents, brokers and consultants required to be licensed under the Act to disclose to customers in writing anticipated remuneration from their activity. The ICC has previously affirmed that the law took effect on October 11, 2007.

The Commission, in finding that Lower violated the law, rejected various defenses from Lower, including arguments that the ABC code of conduct provisions were inapplicable until the ICC defined an ABC in a rulemaking; that Lower was not an ABC as it had no authority to contract on behalf of the customer; and that Lower met the exemption from the disclosure requirement for ABCs acting on behalf of a single supplier.

The Commission ruled that the code of conduct provisions in the law, including the remuneration

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PUCT Defers Action on Revised Nodal Surcharge

The PUCT declined to act on a non-unanimous stipulation which would have set the revised nodal surcharge at 37.5¢/MWh, as the Commission wants to review the nodal fee in concert with the administrative fee, which is scheduled to be taken up at the September ERCOT Board meeting. Commissioners approved an extension of the current 16.9¢/MWh nodal surcharge through the end of the year.

PUCT Chairman Barry Smitherman, reiterating comments from an earlier hearing (Only in Matters, 8/20/09), said it is difficult to think about the nodal fee in a vacuum apart from the administrative fee, especially since after go-live there will just be one fee.

Smitherman noted that with the current 2011 administrative fee forecast of 64¢/MWh, combined with the requested nodal fee of 37.5¢/MWh, the combined fee would be over \$1/MWh, which is "unacceptable" to him at this time. The combined total of both current fees is about 58¢/MWh.

The "light" amount of parties joining the non-unanimous stipulation also gave the Commission pause.

N.Y. PSC Approves EDI Changes to Support ESCO Budget Billing

The New York PSC approved modifications to the EDI standards for bill ready consolidated billing to facilitate the inclusion of ESCO budget billing information on utility bills (98-M-0667).

The changes are meant to facilitate ESCO compliance with the Home Energy Fair Practices Act which requires ESCOs serving residential customers to offer budget plans and display the status of these plans on a customer's bills. HEFPA also requires that bills issued under a budget or other levelized payment plan must display the sum of the actual and budget amounts billed to date, as well as the difference (credit or debit) between these amounts. Currently, ESCOs must place free form text in the "bulletin board" section of the bill in order to provide the budget billing information.

The KeySpan LDCs proposed changes in the

TS810 Bill Ready (Invoice) Standard to enable ESCOs to transmit to the distribution utility budget bill data for presentation on the ESCO portion of the customers' consolidated bill. KeySpan also proposed to add two new data segments to enable ESCOs to transmit cumulative actual charges and budget plan installments billed to date for presentation on the ESCO portion of a residential customer's consolidated bill when that customer is on a budget plan for ESCO charges.

The Commission adopted the KeySpan proposal, as well NYSEG/Rochester Gas & Electric's recommendation regarding testing of the new EDI standards. NYSEG/RG&E had recommended that once the programming necessary to add the new segments has been completed, Phase II testing with an experienced ESCO should be conducted before full scale Phase III testing is conducted with the remaining ESCOs active in their service territories. Staff said that incremental testing can be limited to replicating the test of Scenario BRI003 as described in version 3.1 of TOP Supplement 4.

As the Commission is concerned that customers in bill ready territories may not be getting adequate information on the status of their ESCO budget plans, it ordered the two KeySpan LDCs, NYSEG, and RG&E to complete incremental Phase II EDI testing for the transmittal of budget data on or before November 2, 2009, and to commence Phase III testing with its active ESCOs by November 30, 2009.

PJM Files to Restore Incentives for Economic Demand Response

PJM has proposed at FERC to reinstate incentive payments for economic demand response as part of a series of changes meant to jumpstart the "immature" market which has seen reduced demand-side settlements since the incentives ended. PJM said that the changes to the economic program are designed to, "improve the functionality of demand response through the PJM wholesale energy markets while transitioning to a future fully functional price responsive demand paradigm at the retail level."

Under PJM's proposal, incentive payments

would be provided to customers that reduce consumption in the nine percent of hours when LMP is at its highest levels. For Fixed Price Customers (those on a static retail rate), the incentive payment would equal their retail generation rate, as PJM would pay load reductions at the full LMP, without the normal reduction for the customer's generation rate. Customers would thus be receiving the value of the full LMP plus their avoided cost of retail generation during their curtailment.

For customers purchasing power at LMP, the incentive payment would be a fixed payment of \$75/MWh, which PJM said represents the average generation and transmission components of the fixed price retail rates in PJM. The value to LMP customers from their reduction would thus be the LMP paid for the reduction plus the \$75/MWh incentive.

The incentives would not be a permanent feature, but rather would sunset when there is 1,000 new megawatts of additional price responsive demand capability for small and medium-sized end-use customers in the PJM footprint, which PJM said would indicate a more robust market. As of June 24, 2009, there were approximately 337 MWs of LMP-based contract demand resources registered in the economic program.

Another change to the economic program is that Fixed Price Customers would be compensated for their demand response at the LMP less only the generation portion of their retail rates, rather than reducing demand response payments by both the generation and transmission portions of retail rates. PJM said that the change would alleviate the "underpayment" to Fixed Price Customers; result in similar compensation for Fixed Price Customers and LMP-based customers that reduce demand; and provide Fixed Price Customers the same incentives as LMP-based customers to reduce demand because they will receive the full market value of their demand response.

PJM would also make all participants that self-schedule demand reductions, or are dispatched for reductions in the real-time Energy Market, subject to debit payments when settlement of their daily activity shows that the participant's credits accumulated for reducing

demand are less than accumulated debits for failure to reduce. The change would apply the same risks currently faced by real-time LMP customers to Day-Ahead LMP customers and Fixed-Priced Customers. Fixed Price Customers also would be subject to debit payments for reductions that are self-scheduled if the applicable zonal LMP drops below the applicable generation charge in the customer's retail rate.

PUCT Denies TCOS Petition, Opens Broader Rulemaking

The PUCT denied a petition for rulemaking to allow updates to the interim transmission cost of service (TCOS) rate twice annually, rather than once annually, but directed Staff to open a broader rulemaking to address such issues as well as related concerns, such as the reduction in regulatory lag that would result from implementation of the petitioners' request, and the concomitant impact on the utility's financial risk and return on equity.

As only reported by *Matters*, several transmission service providers asked for more frequent interim TCOS updates to reflect increased investments for Competitive Renewable Energy Zone transmission, and to reduce the time during which such new investments are not included in the TCOS (*Matters*, 7/13/09).

Commissioner Kenneth Anderson, however, said that the current TCOS process is "pretty generous" and said that transmission service providers will need to make strong arguments for any modification. Chairman Barry Smitherman said that REPs raised interesting issues with respect to the petition. In comments, Reliant Energy cautioned against any accompanying increase in the frequency of changes in the transmission cost recovery factors (TCRF) charged to REPs by distribution service providers, and more broadly criticized an increasing number of TDU charges that change frequently outside of rate cases, imposing burdens on REPs.

Commissioner Donna Nelson, though, said that the frequency of TCOS updates is something the Commission needs to look at.

Md. PSC Sets Oct. 8 Deadline for RM 35 Compliance Plans

The Maryland PSC extended the time under which LDCs will have to file compliance plans and tariffs under RM 35 (competitive gas market rules) to October 8, 2009, due to the granting of emergency status to the new regulations by the Joint Committee on Administrative, Executive, and Legislative Review, effective for the period July 16, 2009 through December 30, 2009.

The Commission said a rulemaking session to determine whether to finally adopt permanent competitive gas supply regulations is scheduled for September 10, 2009.

The rules require that LDCs shall file a compliance plan and tariffs within 45 days of the rules' effective date, but since the new rules became effective under emergency status rather than through the normal rulemaking procedure, approximately 30 days of the 45-day period had elapsed when the gas utilities received notice of the effective date in the August 14 state register. Under the normal process, new regulations would become effective 10 days after the publication of the adopted regulations in the Maryland Register, ensuring that the LDCs had a full 45 days to complete their compliance plans. Accordingly, the Commission waived the time requirement in the rule, and directed tariffs to be filed by October 8.

Among other things, the rules include a requirement either for purchase of receivables, or pro-ration of partial payments between supply and delivery charges.

PUCT Approves \$15,000 Settlement with Amigo Energy

The PUCT accepted a stipulation under which Amigo Energy (Vega Resources LLC) will pay an administrative penalty of \$15,000 for violations relating to a host of billing provisions in PURA and the Substantive Rules, occurring in the wake of Amigo's acquisition of part of National Power's book (Only in Matters, 6/23/09).

Amigo Energy failed to bill certain customers within 30 days of service in June and a portion of July 2008; billed certain customers who switched away from Amigo Energy prior to July 2, 2008 based on incorrect rates; and printed

bills that did not match the corresponding Electricity Facts Labels (EFLs).

Noting the amount of complaints generated in the wake of the acquisition last summer, PUCT Chairman Barry Smitherman said his "gut reaction" was that the penalty was low. However, Staff said that Amigo's errors resulting in the complaints were inadvertent and not intentional.

According to the stipulation, during the mass migration of National Power customers to Amigo Energy, a critical field was left unpopulated when relevant data regarding the former National Power customers was imported into Amigo Energy's system, causing bills not to be generated. Approximately 4,422 customers did not receive a bill for service from Amigo Energy in June 2008. Approximately 1,509 customers did not receive their July 2008 statements from Amigo Energy within 30 days of the provision of service. Customers who switched away from Amigo Energy prior to July 2, 2008 with a final bill generated after such date were incorrectly charged based on the Electricity Facts Label in effect at the time the bill was printed (July 3, 2008) rather than the May EFL which was in effect for the usage period. Due its call center configuration and the volume of complaints generated by these errors, Amigo customers experienced long hold times and substantial abandonment rates.

Kim Casey, executive vice president for Amigo and its parent Fulcrum Power Services, said Amigo has taken several remedial measures in consultation with Staff and has, "done everything we can do to make sure that we never have a mistake like this again." Casey said in response to the mistakes which occurred last summer, two of Fulcrum's founding partners were deployed full time at Amigo.

Briefly:

Glacial Energy Joins BidURenergy.com

BidURenergy.com announced that Glacial Energy has joined the online brokering website. BidURenergy also officially announced the addition of Hudson Energy Services, first reported by *Matters* earlier this week (Only in Matters, 8/25/09).

I.C. Thomasson Seeks Pa. Gas License

I.C. Thomasson Associates applied for a natural gas broker/marketer/aggregator license at the Pennsylvania PUC to serve non-residential customers at all LDCs.

PUCT Approves Freedom Certificate Amendment

The PUCT approved an amendment to the REP certificate of Texas-based Freedom Power to recognize new ownership under CIB Irrevocable Trust, and to change the certificate name to Penstar Power (from Freedom Group LLC). Freedom's existing management team remains in place under the new ownership (Only in Matters, 7/8/09).

PowerChoice Seeks Conn. Aggregation License

Start-up PowerChoice, LLC applied for a Connecticut electric aggregator certificate to serve residential and commercial customers. PowerChoice said its marketing would include direct mail, personal sales, internet advertising, and print advertising. Principals Christopher Reilly and Nadeem Khan have backgrounds in sales and management in several non-energy industries.

PUCT to Hold Workshop on Internet Broadcasting Assessment

PUCT Staff will schedule a workshop and accept comments on a proposal to allocate the costs of free internet broadcasts of Commission meetings, noting that an original proposed order has generated considerable discussion. As only reported by *Matters*, Staff's original proposal would have assessed \$18,000 each to CPL Retail Energy, Direct Energy, Reliant Energy Retail Services, Stream Energy, and TXU Energy Retail Company to fund the broadcasts, in addition to assessments on generators, utilities, and certain river authorities (Only in Matters, 8/21/09). Statute permits an assessment to be levied on REPs with more than 250,000 customers. Staff said it would publish for comment its latest proposal for allocating the \$300,000 annual total cost of the broadcasts.

PUCT Sets Date for Joint Climate Change Summit

The PUCT said that its joint climate change legislation summit with the Railroad Commission of Texas and Texas Commission on Environmental Quality will be held on September 22. The summit will focus on establishing solid data regarding the cost implications of various proposals.

Smitherman Says SPP Must Decide Affordable Level of Wind

The Southwest Power Pool Board and Regional State Committee need to determine how much wind the RTO can afford, PUCT Chairman Barry Smitherman said during yesterday's open meeting, during which time SPP updated Commissioners on stakeholder initiatives regarding transmission planning and cost allocation, including the "synergistic" planning process. Smitherman cited the CREZ process in ERCOT where wind benefits such as the downward pressure on prices and environmental considerations were balanced against transmission costs.

Constellation NewEnergy Supplying RECs to U.S. Open

Constellation NewEnergy said it is supplying about 2,000 Green-e certified wind RECs for the United States Tennis Association U.S. Open, in the continuation of a three-year relationship.

Energy Transfer Partners, FERC Staff Announce Confidential Settlement

Energy Transfer Partners, L.P. and FERC Enforcement Staff have entered into a settlement to resolve FERC claims against Energy Transfer Partners, but details of the settlement remain confidential pending FERC approval. Staff has alleged that Energy Transfer Partners manipulated wholesale gas prices at the Houston Ship Channel to benefit ETP's financial positions and other physical positions between December 2003 and December 2005.

FERC Grants MBR Authority to Vista Energy Marketing

FERC granted market-based rate authority to Vista Energy Marketing, accepting the marketer's representations that two individuals

associated with Vista (one as an employee and another as an investor in its parent) who previously pleaded guilty to charges of natural gas price manipulation in 2006 will not engage in trading electricity or futures of natural gas or electricity, and will not exercise managerial control over the marketer (Matters, 3/2/09). Additional safeguards were also put in place by Vista to ensure compliance.

Hard Disconnects ... from 1

time under nodal, and the high projections for the administrative fee.

Commissioner Donna Nelson reported that some stakeholders believe that the cost of the database would be close to the cost of REP bad debt. If true, Nelson would be concerned about moving forward with the database since it would not appreciably help lower rates.

Still, Commissioners generally were receptive to the database idea as a means to lower the need for REP deposits, even if Commissioners shied away from a mandatory database. Chairman Barry Smitherman noted the Commission's history of expanding the conditions under which deposits are not required (such as expanding waivers to domestic violence victims, elderly customers, and customers displaced by hurricanes). Nelson expressed surprise that consumer advocates opposed the payment database since the database would help customers prove their payment history and avoid deposits, which can hinder switching, particularly after a mass transition where the customer may be unable to claim their existing deposit from a failed REP.

Smitherman said he'd like the REPs to figure how to create a database voluntarily, and said that a rulemaking should clarify what information can be shared by REPs, and to determine whether REPs can use third parties to facilitate their obligations to share payment history. Smitherman noted PUC Subst. R. §25.472(b)(1)(b) allows a REP to share with its agent, vendor, partner, or affiliate customer information under certain conditions.

Several REPs, however, have said that a voluntary database would be ineffective, especially if many REPs choose not to participate, since there would be too many gaps

in customer payment history (Matters, 7/23/09). Under a voluntary system, REPs may opt not to participate for competitive reasons, particularly if they have large books of former incumbent customers, or due to the burden from reporting requirements.

Lower ... from 1

disclosures, applied to any person or entity acting as an ABC on and after the effective date of the law, irrespective of whether licensing requirements have been adopted by the Commission.

"We do not assume that the legislature enacted a provision to 'protect Illinois consumers from unfair or deceptive acts or practices' but suspended such protection until the licensing rulemaking process has run its course," the Commission said.

"It is not reasonable to conclude that the General Assembly found certain acts and omissions inimical to the public interest, yet contemplated their indefinite recurrence without penalty," the Commission added, concluding that the code of conduct requirements took effect immediately.

The Commission also said that its licensing process is not required to define an ABC subject to the code of conduct, since an ABC is defined in the Act, as a person or entity that performs certain actions (attempted procurement or sale of retail electricity, for or to a customer).

As the Commission recently concluded in sending ABC licensing rules to a legislative rules review committee (Only in Matters, 7/31/09), the definition of ABC does not require that the entity have a contractual authorization to procure power on behalf of a customer. The definition is broader, the Commission reiterated, covering a range of activities, including soliciting and screening bids without purchasing authority.

Even if the Commission accepted Lower's argument that, since it did not have purchasing authority from the customer it was not an ABC, the Commission said Lower fell under the "attempts to sell" definition of an ABC and thus was subject to the disclosure requirement. The ICC dismissed Lower's argument that it was not attempting to sell electricity under the law since it did not have possession of the electricity. The

ABC law, the Commission said, recognizes that ABCs do not possess the commodity, by stating that the act applies to persons selling or buying "for third parties."

Lower has argued that, while it works with several suppliers overall, it was acting as the exclusive agent of Strategic Energy in the solicitation involved in the complaint, and thus was exempt from the disclosure requirements. The Commission rejected that argument for two reasons.

First, the Commission said that the exclusivity exemption only applies to ABC acting in the entire retail electricity marketplace solely on behalf of a single supplier. "Lower's view thus creates a per-transaction licensing regime that is not only unworkable, but also effectively nullifies the ABC Law," the Commission said, since an ABC with multiple seller clients could avoid the code of conduct through the exclusivity exemption by simply presenting offers to customers one at a time, "presumably starting with the offer most beneficial to the agent."

Second, Lower did not provide explicit notice of its exclusive relationship with a supplier as required under the law. Simply presenting a single offer to the customer, as Lower did, does not qualify as notice that an ABC is an exclusive agent of a supplier, the ICC held.

The ICC also rejected Lower's argument that the violation was de minimis since the customer did not enter into a transaction through Lower. Regardless of whether the customer was harmed, the ICC said violations can harm the retail electric marketplace.

The Commission found that it can order a prospective suspension of a license under the ABC law. Accordingly, the Commission ruled that if Lower acquires an ABC license, the Commission will at that time impose the minimum suspension of one month for the violation. "Although the ABC Law allows for longer suspension for an initial violation (arguably, for any time between one and six months), the Commission is not inclined to impose a more lengthy penalty in our first enforcement proceeding under the ABC Law," the ICC said.