Energy Choice Matters

August 28, 2009

Christy Says Pa. PUC Has Broader Authority Over Supplier Complaints in Dissent

The Pennsylvania PUC dismissed a complaint against Hess Corporation from Philadelphia HGI Associates which the Commission determined amounted to a contractual dispute outside of its jurisdiction, although Vice Chairman Tyrone Christy would have allowed the complaint to move forward to develop an evidentiary record, arguing that the Commission has broader powers over natural gas suppliers with respect to consumer protections.

The complaint arises due to an outsourcing agreement between HGI and Celeren Corporation, which declared bankruptcy last year. Under the agreement, Celeren supplied natural gas for HGI's Hilton Garden Inn hotel through an ancillary purchase agreement with a natural gas supplier. Celeren subsequently arranged for gas supply from Hess for the hotel.

The complaint states that under the outsource service agreement, Celeren assumed responsibility for paying for the hotel's utilities, including natural gas. HGI in turn agreed to pay Celeren a monthly amount of about $26,000 for this service. HGI alleged that Celeren failed to pay Hess for the natural gas supplied to the hotel for the months of February, March, April, May and June of 2008, and that the outstanding balance owed to Hess is approximately $33,000.

HGI filed the complaint against Hess, arguing that Hess should be ordered to collect payment for all bills accrued through June 30, 2008 from Celeren rather than HGI, and that the Commission should bar Hess from collecting any additional deposits or connection fees from HGI as a result of the bills which were not paid by Celeren

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Cawley Encourages UGI LDCs to Voluntarily Offer POR in Accepting Rate Case Settlements

Pennsylvania PUC Chairman James Cawley encouraged UGI Penn Natural Gas (PNG) and UGI Central Penn Gas to explore the possibility of filing voluntary Purchase of Receivables programs, as the Commission approved settlements in each LDC's rate case.

As only reported by *Matters*, the settlements contain various provisions meant to reduce barriers to competition. At both LDCs, a Merchant Function Charge (MFC) will be established for the purpose of unbundling supply-related uncollectibles from base rates. However, further unbundling will not occur at this time (Only in Matters, 7/7/09).

The Merchant Function Charges would differ by customer class. At PNG, the LDC will apply a class specific uncollectible rate in the Merchant Function Charge of 3.20% for Rate R customers, and a rate of 0.4% for Rate N customers. At Central Penn, the LDC will apply a class specific uncollectible rate in the Merchant Function Charge of 2.60% for Rate R customers, and a rate of 0.14% for Rate GS customers. Merchant Function Charges will be reflected in the price to compare.

While the Merchant Function Charges are a "step in the right direction," Cawley said that including only uncollectibles in the MFC, "ultimately falls short of efforts to create a truly level playing field."

Cawley argued that the LDCs still maintain a competitive advantage by not including the following supply-related costs in the bypassable Price to Compare: storage working capital, Purchase Gas

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Pa. PUC Approves PECO Solar REC Procurement

The Pennsylvania PUC approved a settlement permitting PECO to purchase via competitive RFP up to 8,000 solar Tier I alternative energy credits (AECs) annually for a 10-year period to satisfy a portion of the company's solar-related Alternative Energy Portfolio Standard requirements.

Under the settlement, the Commission may only accept the RFP results if a minimum of three bidders compete. Affiliates of PECO are allowed to compete, and there is no price cap on bids. Facilities must be capable of generating at least 300 solar AECs per year to be eligible to participate in the bidding process.

During yesterday's public meeting, Commissioner Robert Powelson lauded the New Jersey solar model, while not perfect, as showing that, "you can bring utility companies to the table and have them enter into long-term contracts with customers for the purchase of SRECs, which makes long-term financing possible for solar projects." The capital provided by distribution companies is "critically important" to meet Act 129 compliance goals, Powelson added.

Chairman James Cawley also encouraged other utilities to follow the PECO template now that it has been approved.

While supportive of the settlement, Vice Chairman Tyrone Christy criticized the ability of out-of-state developers to qualify as producers of solar RECs under Pennsylvania law, when some PJM states exclude out-of-state RECs from their programs. Christy noted some benefits of solar development, such as enhancing distribution system reliability and peak shaving benefits, are lost if solar facilities are remotely located, and said that Pennsylvania should consider similar limitations.

Cawley said that excluding out-of-state solar RECs seems to amount to "invidious economic discrimination" which is not permitted under the Commerce Clause.

Christy also cited cost concerns over the solar requirements, stating that at current prices for solar AECs, the statewide compliance cost to Pennsylvania electric customers could be over $250 million per year.

ERCOT Legal Advises Board Members to Refrain from TAC, Subcommittee Voting

ERCOT Legal has advised Board members to refrain from participating as a member or voting at Technical Advisory Committee (TAC) or TAC Subcommittee meetings or any other working group or task force whose decisions may be appealed to the Board.

The direction mostly arises from HB 1783 which requires all Board meetings, and meetings of a subcommittee that includes a member Board, to be broadcast online.

ERCOT Legal said that no Board Member or Board Alternate should vote at, or otherwise hold himself or herself out as a member or alternate of, TAC, a TAC Subcommittee, or any other working group or task force or committee whose actions are ultimately appealable to the Board (including non-TAC entities such as the Credit Working Group and Regional Planning Group).

Aside from statutory considerations regarding broadcasting, ERCOT Legal said its direction is a best practice, since voting at one level and then potentially voting again as a Board member is problematic at best. ERCOT Legal will also be proposing bylaw language to codify its decision.

Consumers Seeks Approval of Six Renewable PPAs

Consumers Energy asked the Michigan PSC to approve power supply contracts with six new Michigan-based renewable energy projects totaling 9.4 MW to be owned and operated by third parties. The projects are:

- A landfill gas generation project, owned and operated by Okemos, Mich.-based North American Natural Resources, located at the Venice Park Landfill, in Lennon
- A hydroelectric generation project, leased and operated by Northville, Mich.-based Elk Rapids Hydroelectric Power, LLC, located in Elk Rapids
- An anaerobic digestion generation project, owned and operated by Novi, Mich.-based Fremont Community Digestor, LLC, located in Fremont
- An anaerobic digestion generation project,

owned and operated by Hamilton, Mich.-based Scenic View Dairy, LLC, located in Kent County's Boone Township, near Freeport. Scenic View Dairy is being assisted by Phase 3 Renewables

- A landfill gas generation project, owned and operated by Zeeland, Mich.-based Zeeland Farm Services, Inc., located in Ottawa County
- A landfill gas generation project, owned and operated by Houston, Texas-based WM Renewable Energy, located at the Northern Oaks Landfill in Harrison.

Consumers said that the total cost of the proposed contracts are approximately 5.5% higher than the amounts included in the company's renewable energy plan, and are incurred earlier than assumed in the plan. Consumers also argued that the costs for these resources are lower than the estimated cost of wind-based generation included in the renewable plan. "The Company believes that the shorter term associated with some of the more costly contracts provides opportunities to acquire RECs for use in the post 2015 period at a lower cost than included in the [plan]," Consumers said.

Adjusted levelized total costs ranged from $113/MWh to $150/MWh.

Most projects submitted pricing, as requested, based upon the actual Day Ahead Locational Marginal Price for energy delivered, the bid price for capacity accepted by the Midwest ISO for resource adequacy purposes, and the bid price for RECs delivered. One proposal provided a fixed energy price over the term of the agreement to reduce the risk associated with the project revenues for financing purposes.

Regardless, Consumers proposed to use the same Transfer Price approach for all six of the contracts. The PSC is required to annually set a transfer price for renewable costs that will flow through the company's Power Supply Cost Recovery (PSCR). The transfer price is simply a mechanism for estimating and allocating the reasonable and prudent costs of renewable energy between the PSCR and the bypassable renewable surcharge.

Consumers proposed to establish the Transfer Price for the energy component of the contracts based on the LMP forecast used in the company's renewable energy plan. The Transfer Price for the capacity component of the contracts would be the forecasted capacity price used in the company's renewable plan, which is the most recently approved schedule of transfer prices at the time the PPAs are submitted for approval.

Briefly:

MAAGIC Signs Supply Contract with Metromedia

The Mid-Atlantic Aggregation Group Independent Consortium (MAAGIC) notified the Maryland PSC that it has entered into a two-year contract with Metromedia Power to arrange for the supply of electrical power for its commercial customer members. MAAGIC's previous contract with Direct Energy ended on August 20, 2009.

Pa. PUC Grants Metromedia Broker License

The Pennsylvania PUC granted Metromedia Power an electric supplier license as a broker/marketer/aggregator serving all sizes of non-residential customers statewide (Only in Matters, 6/24/09). Affiliate Metromedia Energy already has a gas supply license in the state.

World Energy Solutions Receives Pa. Broker License

World Energy Solutions was granted a Pennsylvania electric broker license to serve commercial customers over 25 kW, industrial customers, and governmental customers statewide (Only in Matters, 6/4/09).

Employers' Energy Alliance of Pa. Awarded Electric License

Granting expedited consideration as requested, the Pennsylvania PUC awarded Employers' Energy Alliance of Pennsylvania an electric broker/marketer license to serve non-residential customers in all utility territories (Only in Matters, 8/25/09). The Employers' Energy Alliance of Pennsylvania will serve as the supplier for members of the Erie-based Manufacturer & Business Association.

Amerex Receives Pa. License

The Pennsylvania PUC approved Amerex Brokers' application for an electric broker license to serve commercial customers over 25 kW, industrial customers, and governmental customers in all service areas.

Energhx Green Energy Seeks Ontario Licences

Energhx Green Energy Corporation has applied to the Ontario Energy Board for a gas marketer licence and an electricity retailer licence. Energhx is a service-based consortium providing green energy generation and energy management, efficiency and engineering services for industrial facilities, residential dwellings, and commercial/institutional buildings as part of Canada's ecoENERGY action initiative.

Dynowatt Offering 16-Month Product

Dynowatt officially announced a 16-month fixed product in the ERCOT market. The product is priced at barely any premium over its 12-month fixed plan and at a noticeable discount to its 24-month plan. Per Aug. 28 prices on Power to Choose, at Oncor, Dynowatt is offering a 12-month fixed rate of 10.4¢/kWh, a 16-month fixed rate of 10.6¢/kWh, and a 24-month fixed rate of 11.5¢/kWh. At CenterPoint, Dynowatt is offering a 12-month fixed rate of 11.2¢/kWh, a 16-month fixed rate of 11.4¢/kWh, and a 24-month fixed rate of 12.5¢/kWh. Dynowatt's product is the only 16-month rate in the Oncor and CenterPoint markets. Cirro Energy and Stream Energy (seniors only) both offer 18-month fixed rates, which is the only other term length available between 12 and 24 months. Dynowatt had been marketing its 16-month product earlier this year as allowing customers to lock-in price protection for two summers (2009 and 2010), though now a new enrollment would now longer cover two full summers.

Md. PSC Grants Broker License to NorthEast Energy Partners, Imposes Fine for Unlicensed Activity

The Maryland PSC granted NorthEast Energy Partners, LLC an electric broker license to serve non-residential customers at the four investor-owned utilities. The PSC fined NorthEast Energy Partners $100 for prior brokering activity conducted without a license.

A Better Choice Energy Services Receives Md. Licenses

The Maryland PSC granted start-up A Better Choice Energy Services electric and natural gas brokering licenses to serve all classes of customers at all five jurisdictional LDCs, the four investor-owned electric utilities, and at Southern Maryland Electric Cooperative and Choptank Electric Cooperative.

Md. PSC Denies Natures Current Gas License Application

The Maryland PSC denied without prejudice the natural gas broker application of Natures Current, LLC for failure to submit a complete application. Staff said that Natures Current, among other things, failed to clarify if the company currently operates in Maryland, or operates in Pennsylvania. Natures Current also did not include required verification authorization forms.

Respond Power Denied License at Md. PSC

The Maryland PSC denied without prejudice the natural gas broker application of Respond Power for failure to submit a complete application. Deficiencies cited by Staff included Respond Power's failure to provide certificates of good standing, a statement of managerial and technical competency, various compliance affidavits, and completed verification authorization forms.

True Electric Completes ERCOT Test Flight

True Electric, the REP now owned by oil and gas firm New Century Exploration, completed its ERCOT test flight (Only in Matters, 2/24/09).

ERCOT Requests Additional 2009 CRE

ERCOT requested TAC approval to modify the 2009 Closely Related Elements (CREs) to add the Waco West to Waco Woodway line segment as a CRE. ERCOT said that the line segment is in series with two existing CREs, Waco Woodway-Waco Atco and Waco Atco-Cottonbelt. Congestion on these lines has required the use of both zonal and local methods, though zonal methods have been more effective, ERCOT said.

Pa PUC Approves Gas Supply Rates at Pike County, Valley

The Pennsylvania PUC approved a gas supply rate of $5.2374/Mcf at Pike County Light & Power, and a gas cost rate of $5.4868/Mcf for Valley Energy. Both rates, which are set annually for small LDCs, take effect Sept. 1.

DPUC to Issue RFIs in Termination Fee Case

The Connecticut DPUC said it intends to issue interrogatories regarding Dominion Retail's petition for a declaratory order on the permissibility of supplier termination fees imposed on mass market customers on September 4 (09-04-40). The Department intends to issue a draft decision no later than October 15, 2009. As only reported by *Matters*, Dominion Retail has asked the DPUC to find that Connecticut General Statute § 16-244c(k)5 prohibits the imposition of termination fees on any customer eligible for Standard Service (Only in Matters, 7/9/09).

Mich. Staff File Estimate of Avoided Costs under Renewable Plans

Michigan PSC Staff estimates the monthly savings for the average residential customer from the avoided costs of building and operating a new conventional coal-fired electric generating power plant due to the development of renewable energy plans is $3.90 per month (U-15800). Electric providers subject to 2008 Public Act 295, Part 2 (Energy Standards), Subpart A (Renewable Energy) Subsection 45(5)(d) are required to list such avoided costs on monthly customer bills. Staff's statewide estimate may be used in the first year of the program prior to the development of customer-specific avoided costs developed by providers.

FERC Accepts MISO ISO Cost Recovery Adder Revisions

FERC approved the Midwest ISO's proposal to revise its methodology for calculating the ISO Cost Recovery Adder, under Schedule 10 of its tariff, to permanently set at 50% both the percentage of billing units that are based on megawatt-hours of energy, and the percentage of billing units that are based on megawatt-hours of reserved capacity (Only in Matters, 3/30/09). FERC agreed that the revised methodology will eliminate potential cost shifts to high load factor customers that could occur under the existing methodology, since the current tariff contemplates the percentage of billing units allocated to energy rising to 100%. Schedule 10 is used to recover costs of operating the Midwest ISO and administering the tariff, to the extent such costs are not recovered in other rates. The Commission also accepted the removal of the $0.15/MWh transition period cap on the maximum sum of the energy rate and the reserved capacity rate.

HGI Complaint ... from 1

However, Hess said that because Celeren was HGI's authorized agent, the ultimate supply contract and payment responsibility rested with HGI. Hess further argued that the Commission lacked jurisdiction over the complaint since (1) it amounted to a contractual dispute, and (2) Hess is not defined as a public utility under the Public Utility Code subject to regulations regarding adequacy of service.

The issues raised in the complaint do not involve the violation of the Commission's natural gas supplier regulations (such as standards of conduct), the PUC held, but rather include allegations of breach of various contracts involving HGI, Celeren and Hess. The Commission agreed that the Public Utility Code does not give the Commission the authority to entertain an action for breach of contract, or to award damages or any other form of relief in an action for a breach of contract.

Christy, however, objected to dismissal prior to compiling an evidentiary record, because the case, "presents issues of first impression that likely will establish precedent for future disputes involving electric generation suppliers (EGSs) and NGSs [natural gas suppliers] under the emerging electric and natural gas competitive programs."

Christy argued that HGI did not allege that it had a contract with Hess, and did not seek a remedy from the Commission based on breach of contract. HGI, rather, alleged that the parties to the supply contract were Celeren and Hess, and that Celeren did not notify HGI of the Celeren-Hess Agreement. Accepting as true the material facts as pleaded by HGI, as well as the inferences therefrom for the purposes of ruling on Hess' preliminary objections, "the Commission must assume that there is no contract between HGI and Hess that allows Hess to seek payment for gas supply service directly from HGI," Christy said, arguing that the determination of whether Hess may seek payment must be established in an evidentiary proceeding.

Furthermore, Christy noted Section 2008 of the Natural Gas Choice and Competition Act addresses the regulation of NGSs as follows: "[T]he commission ***may*** forbear from extending its regulation of natural gas suppliers beyond licensing, bonding, reliability and ***consumer services and protections***, including all applicable portions of 52 Pa. Code Ch. 56."

"My interpretation of this statutory provision is two-fold. First, the Commission may exercise jurisdiction over NGSs beyond licensing, bonding, reliability and consumer services and protections if it so chooses. In other words, the Act does not automatically divest the Commission of jurisdiction over NGSs. The exercise of jurisdiction over customer complaints against NGSs is a matter within the Commission's sound discretion. Second, the Commission is required to oversee the activities of NGSs related to licensing, bonding, reliability and consumer services and protection," Christy said.

"It seems reasonable to conclude that, not only may the Commission exercise jurisdiction over cases involving consumer services and protection, it is in fact obligated to do so," Christy added.

Chairman James Cawley, however, said that the complaint contained no allegations that Hess had done anything wrong under the PUC's regulations, and that the matter is properly addressed in the Court of Common Pleas as a contractual dispute.

UGI ... from 1

Cost (PGC) cash working capital, and certain administrative and operations & maintenance costs associated with procuring gas supplies and managing upstream transportation and storage capacity for Purchase Gas Cost sales customers.

Since further unbundling will be litigious, with Cawley noting that the LDCs were reluctant to provide the necessary analysis to permit the quantification of carrying costs for gas in storage, Cawley said that a POR program would be "a more optimal solution."

Cawley said that he would like to see all LDCs file voluntary POR programs, noting that three have already done so (Columbia, National Fuel, and T.W. Phillips, as only read in *Matters*, 4/6/09).

The PNG settlement, which was joined by the Retail Energy Supply Association, included several other provisions sought by retail suppliers. Among them is that PNG withdrew its proposal to use gas index prices for Texas Eastern Zone M-3 as an option for calculating its critical Maximum Daily Excess Balancing Charges. RESA opposed the use of Texas Eastern Zone M-3 because gas cannot be delivered directly from that point to PNG's system.

The approved stipulation also modifies PNG's supply transfer (imbalance trading) charge from 25¢/Mcf to $125 per transaction. RESA had said that the supply transfer fee was too high and should not be based on volume. The settlement also clarifies that supply transfers will be allowed where such transfers are physically possible given pipeline interconnections and delivery point limitations.

Under the settlement, PNG will only recall capacity on critical days where the supplier fails to nominate such capacity in a timely manner. PNG will also clarify that it will not restrict marketer deliveries for economic reasons.

For Rate MBS (Monthly Balancing Service), PNG will eliminate Balance Account Valuations, as RESA said that the Balance Account Valuation feature would significantly reduce the value of Rate MBS service.

The current daily balancing tolerance of 2.5% and current collateral requirements at PNG will be addressed in the PUC's generic rulemaking on such natural gas market issues, rather than in the rate case.