Energy Choice Matters
September 1, 2009

Smitherman Says PUCT Cannot Rely on System Benefit Fund to Resolve Disconnection Issues

The question of how to handle disconnections and customer protections in ERCOT will not be solved through the use of the System Benefit Fund, PUCT Chairman Barry Smitherman said in addressing a workshop held yesterday.

Smitherman pointed to the uncertainty in appropriations for the System Benefit Fund at the legislature, which in the 2005 session used the SBF for the general fund. Although the funding has been restored, increases in the fund to cover additional disconnection or deferred payment consumer protections (a solution suggested by some REPs) is not likely to be forthcoming, particularly given the current economic climate, Smitherman said, believing that maintaining the current SBF level will be a challenge.

Accordingly, the disconnection issue is one which must be addressed before the Commission by REPs and consumer advocates, who Smitherman said need to get on the same page.

Smitherman cited two main principles in addressing the disconnection issue. First, there are customers who need to be protected, and the Commission needs to figure out how to adequately safeguard such customers. Second, REPs are not responsible for giving away free electricity.

While some consumer advocates during the workshop suggested longer periods during which customers could pay arrearages under deferred payment plans (perhaps as long as 12 months), Smitherman expressed concern that extending the payment plan timeline too long will spill deferred payments into the next summer period, when bills will be high again, and customers will be less likely

Continued P. 6

PJM Tariff Changes to Correct Unintended Consequence of Prior Credit Reform

PJM has filed tariff changes at FERC to correct an unintended consequence of earlier credit reforms which have inadvertently resulted in a large increase in the credit requirements for load serving entities using Financial Transmission Rights to hedge congestion for their load. The proposal would change the definition of FTR Net Activity, which is used in the calculation of a market participant's historical Peak Market Activity, and ultimately used to determine the level of financial security that a market participant must post.

Earlier this year, FERC approved a tariff change to exclude historical FTR Net Activity (defined as the aggregate net value of the billing line items for auction revenue rights credits, FTR auction charges, FTR auction credits and FTR congestion credits) from the methodology by which Peak Market Activity is calculated (Only in Matters, 12/3/08). PJM had proposed the earlier change since its credit policy already included separate credit requirements for FTR activity, and it was unnecessary to include FTR activity in Peak Market Activity to protect members from credit exposure resulting from FTR activity, PJM said at the time. Moreover, it was determined that excluding such FTR activity from Peak Market Activity would provide a better matching of future transactions and credit requirements.

However, subsequent experience with these changes revealed that the removal of FTR activity

Continued P. 6

PUCT Staff Releases Preliminary Non-Volunteer POLR Designations

PUCT Staff released a preliminary analysis that would designate Large Service Providers (formerly known as non-volunteer POLRs) for each service area and customer class for the remainder of the 2009-10 POLR term (36967). REPs are permitted to challenge their eligibility to be a non-volunteer POLR by submitting appropriate documentation to the Commission. By rule, Staff is accepting challenges through Sept. 8. Final non-volunteer POLR designations will be made by Oct. 15.

Up to 15 REPs shall be designated as non-volunteer POLRs based on those with the greatest market share (by sales) in each customer class for each service area (AEP Texas Central and Sharyland combined). For a REP to be eligible as a non-volunteer POLR, the sum of the numeric portion of the REP's percentage of ESI IDs served and percentage of retail sales by MWhs in the POLR area, for the particular class, must be equal to or greater than 1.0 (among other requirements).

2009-10 Preliminary Non-Volunteer POLR Designations

Residential

Oncor	CenterPoint	TNMP	AEP North	AEP Central/Sharlyand
Ambit Energy	Accent Energy	Direct Energy	Accent Energy	Ambit Energy
Direct Energy	Ambit Energy	First Choice Power	Ambit Energy	CPL Retail
First Choice Power	Direct Energy	Gexa	First Choice Power	First Choice Power
Gexa	First Choice Power	Green Mountain	Gexa	Gexa
Green Mountain	Gexa	Reliant Energy	Reliant Energy	Just Energy
Reliant Energy	Green Mountain	Stream Energy	Spark Energy	Reliant Energy
Stream Energy	Reliant Energy	TXU Energy	Stream Energy	Stream Energy
TXU Energy	Spark Energy		TXU Energy	TXU Energy
	Stream Energy		WTU Retail	
	TXU Energy			

Small Non-Residential

Oncor	CenterPoint	TNMP	AEP North	AEP Central/Sharlyand
Champion Energy	Champion Energy	Champion Energy	Champion Energy	Champion Energy
Cirro Energy	Constellation NewEnergy	Constellation NewEnergy	Cirro Energy	CPL Retail
Constellation NewEnergy	Direct Energy	Direct Energy	Constellation NewEnergy	First Choice Power
Direct Energy	First Choice Power	First Choice Power	First Choice Power	Gexa
First Choice Power	Gexa	Gexa	Gexa	Just Energy
Gexa	Green Mountain	Green Mountain	Hudson Energy	Reliant Energy
Green Mountain	Just Energy	Just Energy	Just Energy	Strategic Energy (Direct)
Hudson Energy	Reliant Energy	Reliant Energy	Reliant Energy	TXU Energy
Reliant Energy	StarTex Power	Strategic Energy (Direct)	Strategic Energy (Direct)	
Strategic Energy (Direct)	Strategic Energy (Direct)	Tara Energy	Stream Energy	
Stream Energy	Tara Energy	TXU Energy	TXU Energy	
Tara Energy	TXU Energy		WTU Retail	
TXU Energy				

Medium Non-Residential

Oncor	CenterPoint	TNMP	AEP North	AEP Central/Sharlyand
Cirro Energy	Constellation NewEnergy	Constellation NewEnergy	Cirro Energy	Constellation NewEnergy
Constellation NewEnergy	Direct Energy	Direct Energy	Constellation NewEnergy	CPL Retail
Direct Energy	First Choice Power	First Choice Power	First Choice Power	First Choice Power
Gexa	Gexa	Gexa	Gexa	Gexa
Green Mountain	Green Mountain	Reliant Energy	Hudson Energy	Just Energy
Hudson Energy	Hudson Energy	Strategic Energy (Direct)	Reliant Energy	Reliant Energy
Integrys Energy	Integrys Energy	Suez Energy	Spark Energy	Strategic Energy (Direct)
Reliant Energy	Reliant Energy	TXU Energy	Strategic Energy (Direct)	Suez Energy
Spark Energy	Spark Energy		Suez Energy	TXU Energy
Strategic Energy (Direct)	Strategic Energy (Direct)		TXU Energy	
Suez Energy	Suez Energy		WTU Retail	
TXU Energy	TXU Energy			

Large Non-Residential

Oncor	CenterPoint	TNMP	AEP North	AEP Central/Sharlyand
Constellation NewEnergy	Constellation NewEnergy	Champion Energy	AEP Texas C&I Retail	AEP Texas C&I Retail
Direct Energy	Direct Energy	Constellation NewEnergy	Constellation NewEnergy	Champion Energy
Integrys Energy	Reliant Energy	Direct Energy	Gexa	Constellation NewEnergy
Luminant Energy	Sempra Energy	First Choice Power	Reliant Energy	CPL Retail
Reliant Energy	Strategic Energy (Direct)	Hudson Energy	Sempra Energy	Gexa
Sempra Energy	Suez Energy	Reliant Energy	Strategic Energy (Direct)	Reliant Energy
Strategic Energy (Direct)	TXU Energy	Sempra Energy	TXU Energy	Sempra Energy
Suez Energy		Strategic Energy (Direct)	WTU Retail	Shell Energy
TXU Energy		Suez Energy		Strategic Energy (Direct)
		TXU Energy		TXU Energy

PUCT Staff Revises Web Broadcasting Assessment Proposal

PUCT Staff released a revised proposal regarding the allocation of costs to broadcast public Commission meetings over the internet, with the proposed assessment on large REPs now varying with the size of the REP (Only in Matters, 8/21/09).

Staff is still proposing to allocate $90,000 of the $300,000 annual cost for internet broadcasting to REPs with more than 250,000 customers (a cutoff established in statute). However, Staff now recommends that the share allocated to each REP should be based on their pro-rata share of customers as of July 31, 2009.

As only reported in *Matters*, Staff originally proposed to assign each of the five REPs meeting that threshold (CPL Retail Energy, Direct Energy, Reliant Energy Retail Services, Stream Energy, and TXU Energy Retail Company) $18,000 each.

Under Staff's revised proposal, each REP would be allocated the following (figures rounded):

CPL Retail Energy	$6,000
Direct Energy	$7,400
Reliant Energy Retail Services	$29,500
Stream Energy	$6,600
TXU Energy Retail Company	$40,500

The allocation to generators with more than 5,000 MW of installed capacity in Texas is unchanged from Staff's earlier draft.

Staff will hold a workshop on the cost allocation on September 10.

Final Oncor Rate Order Maintains Inadvertent Gain Charge

The PUCT published a final order in Oncor's rate case that adopts, unmodified, provisions of a proposed order related to the competitive retail market (Only in Matters, 6/3/09).

Among other things, the final order adopts Oncor's Inadvertent Gain charge of $25 to be imposed on REPs that select an incorrect premise location from the ERCOT portal for a switch or move-in (thus requiring Oncor to correct the error). Two ALJs had concluded that the Inadvertent Gain charge will at least endeavor to place the costs of an erroneous switch on the REP selecting the incorrect premise if it were at fault, which is a more equitable allocation of those costs

The Commission also approved Oncor's proposal to waive the demand ratchet provisions for customers with maximum annual demand load of 20 kW or less, concluding that low load customers, such as youth sports associations, non-profit organizations, churches, and small business owners, usually use electricity during off-peak hours and weekends, and on a seasonal basis.

The PUC denied, however, Oncor's proposal to waive the demand ratchet provisions for all municipally-owned loads, finding that such an exemption is unreasonably preferential since it is not based on usage but is instead based solely on the identity of one group, municipalities.

Granting a waiver for anything other than usage opens the floodgates for others to make similar claims, the ALJs had noted in the proposed order.

Nstar Seeks Waiver from FERC Affiliate Restrictions

Nstar Electric Company, and affiliates Medical Area Total Energy Plant (MATEP), Inc., and MATEP LLC applied at FERC for a full waiver of the Code of Conduct and affiliate restriction requirements contained in their current market-based rate authorizations. Nstar argued that as a distribution company in a retail choice state, it has no captive wholesale or retail customers, and thus is eligible for a waiver from the FERC requirements.

Among other things, the affiliate restrictions require that FERC must approve any energy or capacity contract between a franchised public utility with captive customers and an affiliate market-based rate seller, to prevent cross subsidization or the transfer of benefits from captive customers to stockholders through a company's market-based power sales business. The restrictions also include prohibitions on information sharing and sharing of employees.

Even though Nstar retains the POLR responsibility, Nstar said that because Massachusetts is a "retail choice" state and all of the consumers within the Nstar Electric service area have the right to purchase power from other suppliers, it does not have captive customers.

Nstar said that continued application of the Code of Conduct will, "add unnecessary costs to the NSTAR Affiliates' operations."

Nstar, Northeast Utilities, and H. Q. Energy Services are currently developing a participant-funded transmission line with associated PPAs to import Canadian power into New England.

NYSEG/RG&E Say NYISO Modeling Error Restitution Report Ignored Feasibility

Addressing complex issues such as the reconstruction of Locational Based Marginal Prices is not required to provide Load Serving Entities with some form of "rough justice" to correct a New York ISO modeling error, NYSEG and Rochester Gas & Electric said in comments on a final NYISO report addressing potential remedies to the error (Only in Matters, 8/11/09).

As only reported by *Matters*, the NYISO said that there is "stakeholder consensus" that restitution to correct the values incorrectly introduced into the NYISO's Security Constrained Unit Commitment software for the Waldwick-Ramapo Phase Angle Regulator (PAR) for several days in January 2008 is not "reasonable," for a variety of factors.

The incorrect PAR inputs resulted in the redispatch of generation, causing an increase in Locational Based Marginal Prices west of the Total East interface, and a decrease in LBMPs east of Total East. The error caused certain western LSEs to pay in the aggregate $10.5 million in balancing congestion residuals.

NYSEG and RG&E said that FERC's directive to the NYISO in studying possible restitution scenarios was not to determine what was "reasonable" and the preference of stakeholders, but what was technically feasible.

While NYISO cited the complexity of reconstructing the market, NYSEG/RG&E countered that their proposed rough justice solution would not require the reconstruction of LBMPs, or the need to make various assumptions about market participant behavior, Transmission Congestion Contract positions, or other hedging strategies and derivatives.

Rather, NYSEG and RG&E noted that the NYISO has verified that the direct impacts resulting from the modeling error are $10.5 million in increased uplift payments, and $3.5 million in increased congestion revenues. Such information can be used craft a remedy to offset some of the impacts on the negatively affected LSEs without requiring a recalculation of market prices or making assumptions regarding market participant behavior, NYSEG and RG&E argued.

NYSEG, RG&E and several munis have proposed using the $3.5 million in congestion rents received by other LSEs due to the error to mitigate the additional costs borne by western LSEs.

IMM, Md. PSC Say PJM Opportunity Cost Filing Inconsistent with FERC Directive

The PJM Independent Market Monitor and Maryland PSC separately protested a PJM compliance filing which was required by FERC to incorporate opportunity costs for "energy and environmental limitations" into mitigated offer prices (ER08-47, Matters, 5/29/09).

The IMM and PSC, however, noted that PJM's compliance filing would allow a resource that is subject to operational limitations due to "energy ***or*** environmental constraints" imposed on the resource by applicable laws and regulations to incorporate opportunity costs into mitigated offers (emphasis supplied).

The IMM and PSC both interpreted the use of "or" to mean that PJM considers an energy constraint as something wholly different from an environmental constraint, even though PJM has not yet identified an energy constraint with specificity.

"Inclusion of the term 'energy,' introduces needless confusion, and worse, could create a basis of entitlement for the inclusion of this vague category of costs in cost development," the IMM said. Similarly, the PSC argued that, "[b]ecause energy constraint is undefined, there is a substantial risk that the term could be used by generators who seek to include other unit-specific opportunity costs that were not intended to be addressed in this filing."

While a prior Commission order did reference energy opportunity costs, they solely related to limitations inherent to pumped-storage hydro plants, not limitations imposed on a resource by applicable laws or regulations or an external authority - as is the case with environmental constraints, the PSC said. The Commission's May order "clearly intended" that opportunity costs beyond the narrow categories of environmental costs, and certain hydro costs, should be addressed in the PJM stakeholder process, the PSC added.

Briefly:

UGI Energy Services Seeking Illinois Gas License

UGI Energy Services applied at the Illinois Commerce Commission for an alternative gas supplier license to serve all customer classes, including residential customers, at Nicor Gas, North Shore Gas, and Peoples Gas.

Verde Energy USA Receives Connecticut License

The Connecticut DPUC granted Verde Energy USA an electric supplier license to serve residential, commercial and industrial customers (Matters, 6/17/09).

Constellation Enters New Credit Facility to Support Customer Supply Unit

Constellation Energy Group, Inc. said it has entered into a new five-year commodity-linked credit facility to help manage the contingent collateral requirements associated with the hedging of its Customer Supply business. The available capacity under the facility depends on natural gas price levels and allows for the issuance of letters of credit up to $500 million. The facility size could be increased to $750 million if certain conditions are met, including the closing of the nuclear joint venture with Electricite de France.

MXenergy Extends Exchange Offer Date

MXenergy Holdings again extended the expiration of its Exchange Offer and Consent Solicitation (until midnight September 4) of its outstanding Floating Rate Senior Notes due 2011 (Matters, 7/2/09). MXenergy said it was currently in discussions with the lenders under its existing revolving credit facility and existing primary natural gas hedge facility to obtain an extension beyond the current August 31, 2009 maturity date to provide additional time to consummate pending new hedge and supply facilities (Matters, 8/21/09).

ERCOT Launches Single-Entry Model

ERCOT said it successfully activated the single-entry model yesterday, which is the first of the core systems that will support the nodal market. The single-entry model (SEM) is an electric-transmission management system where utilities owning equipment on the grid can interactively view and update the ERCOT transmission model concerning changes to the grid such as new transmission lines, substations, and other equipment.

Just Energy to Withdraw Unused Commerce Certificate

Just Energy filed at the PUCT to withdraw the

REP certificate of Commerce Energy (#10029) which it acquired as the result of a series of transactions involving Commerce and Universal Energy. Commerce has not served customers in ERCOT since selling its book to Ambit Energy last fall.

CPower, SPi Partner to Enroll Ontario Load Response Customers

CPower and The SPi Group, a Toronto-based technology and backoffice provider, have announced a partnership to enroll and manage end-use electricity customers of local distribution companies for participation in the Ontario Power Authority's Demand Response 3 (DR3) program. CPower was awarded a DR3 contract in April 2008. Bluewater Power Distribution Corporation is among the distribution companies where CPower and SPi are enrolling customers.

Duke Energy to Build Wyoming Wind Farm

Duke Energy said it will build and operate a 200-megawatt wind energy project near Casper, Wyo., which will be its ninth U.S. wind farm. The project is expected to reach commercial operation by the end of 2010. PacifiCorp will purchase all of the plant's output and associated RECs.

Disconnects ... from 1

to be able to pay off their deferral.

During the workshop, Staff said that it was looking into REPs that are failing to comply with the Substantive Rules' bill payment assistance program, though no enforcement action has come before the Commission to date.

Consumer advocates, including the Texas Ratepayers Organization to Save Energy, also recommended that REPs not be permitted to charge amounts for discretionary services (particularly reconnect fees) in excess of what is charged to the REP by the TDU under its tariff. However, some REPs countered that they bear additional costs (though not cited, presumably backoffice/logistical costs) in processing reconnects not covered under the TDU fee, which only recoups the amount passed-through to the REP and not any incremental costs. Texas ROSE also said that REPs should not be permitted to charge customers for sending out a disconnect notice.

A consistent definition of critical care customer is also needed across all TDU areas, consumer advocates said. One advocate suggested using the definition of "permanently disabled" which is used under Social Security. Advocates also suggested that the PUCT, not TDUs, should make critical care determinations, and should house a centralized database of critical care customers to facilitate the retention of critical care status when customers change REPs.

Texas Legal Services Center also suggested that critical care customers and ill/disabled customers should receive actual notice of disconnection (such as through a physical visit with at least a door hanger if the customer is not present), rather than just a letter.

PJM ... from 1

from the Peak Market Activity calculation inadvertently resulted in a corresponding large increase in the credit requirements for those load serving entities who were utilizing FTRs to hedge congestion for the load they were serving, because FTR congestion credits were removed from the calculation of Peak Market Activity, but not the corresponding FTR congestion charges. In other words, in those instances where a load serving entity would hedge load congestion obligations, the removal of congestion credits comprising FTR Net Activity, without a corresponding removal of the FTR congestion charges, required load serving entities to provide significant collateral to PJM, even though the load serving entity had successfully hedged its load obligations and may have ultimately had no payment obligations to PJM.

PJM is seeking to correct this unintended consequence by proposing that the corresponding values for FTR congestion charges should also be included in the definition of FTR Net Activity. Specifically, PJM proposed to change the definition of FTR Net Activity to include the day-ahead and balancing/real-time congestion charges up to a maximum net value of the sum of auction revenue rights credits, FTR auction charges, FTR auction credits, and FTR congestion credits. Thus, as modified, PJM would remove all relevant FTR Activity from the calculation of Peak Market Activity, and will also remove the value of the load congestion which the load serving entity was hedging.

Importantly, the amount of congestion charges removed from FTR Net Activity is limited to the net value of the aggregate of the four listed FTR items, PJM stressed. Without such a limitation, a load serving entity that does not hedge, or only partially hedges, its load congestion through FTRs could find its calculation of appropriate financial security vis-à-vis its attendant transactional risks to be skewed. Thus, congestion charges that exceed FTR Net Activity should be, and will be, properly included in the calculation of Peak Market Activity, PJM said.