

Energy Choice

Matters

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RG&E Moves to Dismiss Pactiv Complaint on Nonbypassable Charge Mitigation

Rochester Gas & Electric moved for a complaint from Pactiv Corp. cornering mitigation of nonbypassable charges (NBC) to be dismissed with prejudice, arguing that Pactiv has failed to state a cause of action against RG&E.

As only reported by *Matters*, Pactiv is seeking relief, either through a complaint or rehearing order, from higher nonbypassable charges at RG&E approved in May. As part of its order, the New York PSC directed RG&E to use credits in the Asset Sale Gain Account (ASGA) to mitigate the impact of the higher unavoidable charges experienced by customers on RG&E's fixed-price option (FPO). However, customers on competitive supply were not granted similar relief, prompting Pactiv to seek the same treatment for customers on fixed competitive contracts.

RG&E moved for dismissal as Pactiv's complaint does not allege a single violation of the Public Service Law, Commission rules/orders, or the utility's tariff.

"Pactiv's entire 'complaint' appears to be an attempt to circumvent the fact that the time for seeking rehearing has expired," RG&E said, as the complaint was filed some 98 days after the Commission's order, well past the 30-day rehearing deadline.

The Retail Energy Supply Association said that, "[t]he Commission's preferential application of ASGA credits to the exclusion of all customers, except utility FPO customers, including those who take supply service from an ESCO, is unreasonable, inconsistent with the non-discriminatory standard codified in the Public Service Law and at odds with previously established Commission

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Pa. ALJ Would Deny Use of Non-Utility Generation for Met-Ed/Penelec Default Service

A Pennsylvania ALJ would deny the Office of Small Business Advocate's proposal to dedicate a portion of the output of Non-Utility Generation at Met-Ed and Penelec to meet the default service needs of commercial customers, rather than selling the output into the market with all distribution customers receiving a debit or credit (Only in *Matters*, 8/10/09). The ALJ, in a recommended decision in Met-Ed/Penelec's default service application, would also accept without modification terms of an unopposed settlement, and would set the load cap in the default service auctions at 75%.

As only reported by *Matters*, OSBA sought to dedicate the Non-Utility Generation output, representing contracts executed under the Public Utility Regulatory Policies Act, to the default service requirements of commercial customers, arguing that such allocation would produce a least-cost default service consistent with statute. Retail suppliers opposed the request on the grounds that it is not competitively neutral, and because all customers, even those who shop, have paid for the above-market PURPA contracts which are now forecast to be below-market in the future.

The ALJ found OSBA's petition to be inconsistent with the Choice Act, which, "plainly requires power for default service to be procured through a competitive procurement process." As PURPA contracts, the Non-Utility Generation was clearly not the result of a competitive solicitation and cannot be used for default service, the ALJ said.

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ALJ Recommends 14-Day Electric Rescission Period at Consumers Energy

The rescission period for electric customers at Consumers Energy would be extended to 14 days under an ALJ's proposed decision in Consumers' rate case (U-15645, Only in Matters, 4/29/09).

As only reported by *Matters*, Michigan PSC Staff had recommended the extension from the current three-day rescission period in order to mirror recent changes at Detroit Edison, which now has a 14-day rescission period, and to increase consumer protection.

"Giving customers in Consumers Energy's service territory the same basic protections as those in Detroit Edison's service territory seems reasonable," the ALJ said in recommending a 14-day period, which the ALJ found to be "significantly less onerous" for competitive suppliers than Consumers' original proposal for a 30-day rescission period.

Consumers Energy's request to make retail access customers pay part of the distribution subsidy enjoyed by residential customers would be denied, as Consumers has not provided any compelling basis for the Commission to change the current cost-based retail access delivery charges, the ALJ found. Accordingly, the subsidy would continue to be paid only by non-residential bundled service customers.

During the case, Constellation NewEnergy raised objections to current provisions in Consumers' tariff which hold that, "Only the [Retail Open Access] Customer may initiate the return to Company Full Service by contacting the Company." As interpreted by Consumers, the provision means that even at the end of a term product, the competitive supplier must continue to serve the customer if the customer does not request a return to bundled service. Currently, suppliers may only institute such a drop to bundled service by presenting Consumers with written customer authorization.

The proposed decision would allow competitive suppliers to return customers to bundled service if suppliers have a "properly executed agency agreement" with the customer which gives the supplier authority to make the decision regarding the return to bundled service.

For customers for whom the supplier does not have a letter of agency, Consumers would develop acceptable forms of notice that would be accepted as meeting the tariff's standard for the customer initiation of a drop to bundled service.

The proposal for decision would not require Consumers to take any specific action regarding supplier access to customer information, as Consumers says it is working on testing a web portal program that should address concerns raised by Constellation. Constellation had noted that the website formerly used to facilitate the process was no longer functional, and that Consumers was processing requests manually, which proved to be time-consuming and burdensome to suppliers.

The ALJ's draft would approve several unopposed retail choice tariff provisions, including specifying that the load profiles used by retail suppliers in developing the schedule for their load shall be the rate class profiles approved by the Commission as used by Consumers in its planning and cost of service analysis. The proposed order would also accept modifications to the section of the Retail Open Access tariff governing the billing of retailer charges by Consumers, in order to align the tariff with comparable service at Detroit Edison.

Staff's proposal to require competitive suppliers to provide residential marketing materials and contracts for Staff review before marketing begins would also be approved by the ALJ.

The ALJ would deny Constellation's request to end the Choice Incentive Mechanism, as the ALJ said more time is needed to evaluate experience under the tracker which is intended to eliminate revenue volatility experienced by Consumers due to changes in migration levels.

The draft decision would also deny a proposed revenue decoupling mechanism, finding that no analysis has been presented of the potential rate impacts, cost effectiveness, or ability of a decoupling mechanism to reduce overall consumption of fossil fuels. Energy Michigan had opposed the proposed sales-change tracking mechanism, because they would have billed retail access customers for generation-related costs or sales losses that reflect generation-related costs. Energy

Michigan said any sales tracking mechanism for retail access customers should be limited to distribution service, since shopping customers do not use system generation and should not benefit or be hurt by adjustment mechanisms which offset the financial consequences of changes in utility energy sales. On rebuttal, Energy Michigan noted that Consumers and Staff both appeared to agree that competitive supply customers should not be charged for generation-related costs under the sales trackers.

Md. PSC Staff Propose Use of Out-of-State Solar RECs for RPS Through End of 2011

The Maryland PSC Staff have proposed changes to the solar RPS carve-out, including a provision that would allow the use of out-of-state solar RECs until January 1, 2012 under certain conditions. The proposed changes to Subtitle 61 of the Code of Maryland Regulations were docketed as RM 39.

Among other things, the revisions would hold that, prior to January 1, 2012, an electric supplier may submit for compliance solar RECs from a solar renewable energy facility not connected with the electric distribution grid serving Maryland if the solar RECs are registered in PJM GATS. "Any supplier that submits solar RECs under the preceding subsection of this regulation must submit a list of all bids made for solar RECs created in Maryland or other evidence that it has purchased or attempted to purchase all available solar RECs from a solar renewable energy facility not connected with the electric distribution grid serving Maryland," the proposed language states.

The revisions would also clarify that a Maryland eligible REC issued to a renewable on-site generator is valid for compliance during the year of generation and the following two compliance years.

FERC Orders CAISO to Include Additional Information in Exceptional Dispatch Reports

FERC ruled that the California ISO's Exceptional Dispatch Informational Reports have complied with Commission directives despite concluding that, "[a]fter reviewing the first three Exceptional Dispatch Informational Reports, we find that without sufficient detail and consistency across reports, it is difficult to ascertain from the data which solutions may be most appropriate or how improvements should be prioritized, thereby defeating the fundamental purpose behind the reporting."

Accordingly, FERC said it would "clarify" its intent behind the reporting requirement, in order to better inform stakeholder-driven solutions to the problems that have resulted in the greater use of Exceptional Dispatch. Several marketers and generators have protested the lack of specific information in the reports, arguing that the reports are not meaningful due to high-level, aggregate data.

Among other things, FERC said it did not intend for the volumes of Exceptional Dispatch to be reported only at the aggregate level, as CAISO has done. FERC said it will require reporting of the megawatts, hours, and megawatt-hours for each specific instance of Exceptional Dispatch, including commitments and dispatches for incremental and decremental energy. The Commission will also require CAISO to provide information about whether each Exceptional Dispatch was for incremental or decremental energy, or neither, and if the Exceptional Dispatch was for commitment of the resource.

CAISO will also be required to report the specific local reliability area (e.g. Humboldt) of exceptional dispatched resources in addition to the utility service area. The list of reasons cited for the Exceptional Dispatch must also be consistent and defined in a manner that clearly explains to market participants the impetus for each Exceptional Dispatch, FERC ruled.

The ISO must include a separate column for each charge code associated with the cost of each Exceptional Dispatch, including the cost of each resource commitment made via Exceptional Dispatch. The start-up costs for

each commitment should also be noted in a separate column. A separate column for miscellaneous, additional costs related to each Exceptional Dispatch will also be required to help ensure transparency, FERC said.

To provide some insight into the full cost of Exceptional Dispatch and its impact on market prices, FERC directed CAISO to provide data and analysis on hourly real-time prices at two distinct pricing nodes for the entire reporting period. CAISO should choose two nodes that (1) are most heavily impacted by exceptional dispatches during the reporting period, and (2) for the purpose of diversified data, are not located in the same Load Aggregation Point. "This information is intended to indicate whether, and the extent to which, the Exceptional Dispatch affected the relevant locational marginal price," the Commission said. The CAISO should include a comparison between the locational marginal price that would have resulted if the exceptional dispatched resource(s) had cleared economically, and the actual locational marginal price at that node, FERC added.

CAISO will not need to resubmit any prior reports under the new requirements.

FERC declined to order a technical conference regarding proposed remedies from marketers and generators (such as pricing exceptional dispatched resources into the market), leaving such proposals to the stakeholder process.

The Commission approved, for resources with contracted resource adequacy capacity, CAISO's proposal to only offer an Interim Capacity Procurement Methodology designation for the amount by which an Exceptional Dispatch exceeds the upper limit of the resource's forbidden operating region.

FERC dismissed protests regarding the frequency and timing of exceptional dispatches to be outside the scope of compliance filing.

Briefly:

End Users; LBE, LTD Move to Dismiss Complaint

Illinois end users Arlington Lanes and RLD Corporation and broker LBE, LTD jointly moved to dismiss Arlington and RLD's complaint

against LBE under the state's ABC law without prejudice (Only in Matters, 2/18/09). No reason was cited in the one-sentence motion filed with the Illinois Commerce Commission. As only reported by *Matters*, Arlington and RLD had alleged that LBE did not disclose remuneration as required under the ABC law. The ICC recently issued a final order regarding a similar complaint against Lower Electric (Matters, 8/27/09).

Wellsboro Files New Generation Rate

Wellsboro Electric Company filed at the Pennsylvania PUC an increased generation supply service rate of 8.5294¢/kWh, effective for the three-month period beginning October 1. The current rate is 7.7516¢/kWh.

Md. PSC Denies Alternative Energy Sales Broker Application

The Maryland PSC denied without prejudice the electric broker application of Alternative Energy Sales, LLC for deficiencies in the application, including failure to include a Maryland certificate of good standing, a statement of managerial and technical competency, and a \$10,000 bond.

PUCT Draft Would Approve Lower CenterPoint Discretionary Charges

A PUCT proposed order would approve CenterPoint Energy's lower meter-related Discretionary Service charges reflecting the progressive reduction in costs resulting from advanced meter deployment. Charges would only be lower for services for premises with (or planned to have) activated remote connect capability. Charges would be unchanged for poly-phase and >200 amp meters. The proposed fees for the six affected Discretionary Service charges can be seen in our exclusive 6/15/09 story. The charges had previously been approved on an interim basis.

IPPNY Seeks FERC Extension to Allow for Weekly Billing Talks

The Independent Power Producers of New York asked FERC to extend the comment deadline regarding various credit reforms at the New York ISO until September 30 to allow additional time for mediated discussions regarding weekly billing, in hopes a compromise can be reached

for consideration in the FERC review. As only reported by *Matters*, the NYISO reforms included a reduction in the unsecured credit limit, but did not include weekly invoicing (*Matters*, 8/24/09).

FERC Finds MISO Interconnection Cost Allocation Proposal Deficient

FERC informed the Midwest ISO that its petition to alter the cost allocation of Network Upgrades for generation interconnection projects meeting the Regional Expansion Criteria and Benefits (RECB) test is deficient, and requested more information. In a story that first appeared in *Matters*, MISO applied to end the subsidization of network interconnection costs by load in the local pricing zone by shifting all costs (or nearly all for 345+ kV projects) to the interconnecting generators (*Matters*, 7/10/09). FERC directed MISO to provide, among other things, a list of all of the interconnection projects affected by the proposal, justification for its attrition rates of projects in the interconnection queue, and justification for the proposed elimination of the current requirement that interconnecting generators show a one-year power purchase agreement or one-year designation as a Midwest ISO network resource.

Constellation Repays \$500 Million Bond

Constellation Energy said it has repaid a \$500 million, 6.125 percent fixed-rate bond. The company said repayment of the bond without refinancing, "underscores significant improvement in its available liquidity."

FirstEnergy Ohio EDCs Launch Second REC Procurement

The three FirstEnergy Ohio utilities announced a second RFP for RECs (www.firstenergyrenewable.com/2009OhioRFP2). The RFP will focus on, "solar and other renewable energy RECs generated in Ohio." No energy or capacity will be procured.

Conn. Supplier Reports Would be Required Annually in January Under Draft

Under a draft decision released yesterday, the Connecticut DPUC would amend the reporting obligation placed on all competitive electric suppliers such that suppliers would be required

to report annually the information enumerated in Conn. Gen. Stat. §16-245p(b) as well as "any other information deemed relevant by the Department." The report would be due no later than 30 days following December 31 of every year. Suppliers are currently required to file quarterly reports containing data on rates and charges; applicable terms and conditions of contracts; generation fuel mix and emissions; and customer complaints (Only in *Matters*, 8/25/09).

FERC Releases Final 2008 State of the Markets Report

FERC released a final 2008 State of the Markets report covering the electric and gas industries. The report generally endorses Staff's findings released during the spring (*Matters*, 4/17/09) and does not present new conclusions. The final report affirms Staff's conclusion that physical market fundamentals alone cannot explain the entire rise for both futures and spot gas prices in early 2008, attributing such spikes to the flow of capital into various financial instruments which turned commodities such as natural gas into investment vehicles.

RG&E ... from 1 policy."

RESA noted that in applying mitigation only to utility fixed price option customers, the Commission has essentially imposed a different nonbypassable charge for delivery-only customers from that charged to bundled fixed price option customers.

RESA argued that such a result is inconsistent with the NYSEG Commodity Order in Case 07-E-0479 (whose findings were applied to RG&E in Case 03-E-0765), which held that, "NYSEG's non-bypassable charge will become a forecasted, fixed charge that will be the same for all customers, whether they receive fixed price service, default service, or service from an ESCO." The joint proposal accepted under the NYSEG Commodity Order similarly stated that, "The customer's applicable NBC will be fixed at the same rate, whether they take choose to take [sic] supply service from NYSEG or from an ESCO," RESA said.

RESA noted that the Commission, "has

exhibited a troubling tendency to protect utility customers that chose a utility FPO service."

"With respect to natural gas service, the Commission previously allowed NYSEG to defer and recover significant losses it incurred from the offering of fixed gas rates. In this proceeding, the Commission has chosen to protect only utility FPO customers who voluntarily chose fixed priced service, from the economic impact of their decision. This creates an unlevel playing [field] for ESCOs and deters them from operating in areas where the Commission provides the utility with a distinct competitive advantage," RESA said.

Met-Ed/Penelec ... from 1

Additionally, statute holds that any bilateral contracts procured competitively still must be found to produce a price no greater than the cost of obtaining generation under comparable terms in the wholesale market. OSBA presented no evidence to show that the Non-Utility Generation would meet this test to qualify as a source of default service supplies.

Furthermore, the ALJ concluded that OSBA's proposal has not been shown to be consistent with the "least cost" goal of default service. "As the Commission recently noted, 'competition among utilities and independent suppliers of generation is the best means available to keep the cost of electricity down,'" the ALJ said, since under competition many suppliers will be competing to serve the same customers. The presence of competitors will, over the long term, drive prices as low as possible, the ALJ noted.

"A crucial key to creating a competitive market is to implement a default service plan that is market responsive so competitors have a fair and realistic opportunity to compete," the ALJ noted. But OSBA's proposal of inserting the output of Non-Utility Generation contracts into the default supply for commercial customers, "will create a default service procurement plan that will eliminate or minimize competition because the default rate will not be reasonably based on the market," and thus would hinder least-cost service over time, the ALJ said.

The ALJ would also accept the utilities' proposed load cap of 75% in default service auctions. OSBA, Direct Energy, and the Retail

Energy Supply Association favored a 50% load cap.

The ALJ concluded robust supplier diversity, which can insulate customers from default risks, is achievable under a 75% load cap, noting that nine different winners won tranches in the FirstEnergy Ohio utilities' recent procurement which did not contain any load cap. Other provisions, such as bidder guarantee and credit requirements as well as make-whole provisions in the Supplier Master Agreements, also achieve the same goal of protecting customers from losses from defaults in lieu of a lower load cap, the ALJ added.

The ALJ recommended approval of the unopposed settlement with respect to all other provisions of Met-Ed and Penelec default service. A full analysis of the settlement can be found in our 8/19/09 story. In short, the settlement would establish a two-year laddered procurement for 75% of residential supplies, with 25% procured through block and some smaller spot purchases. Commercial customers will be served on one-year full requirements contracts, with 90% of supplies procured at a fixed price, with the remaining 10% priced at the spot market. Industrials will be served on hourly pricing, with a one-year transitional fixed product available on an opt-in basis. The utilities also commit to file a non-recourse POR plan with no discount under the settlement.