

Energy Choice

Matters

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TXU Calls Staff Proposal for Internet Broadcasting Assessment Discriminatory

PUCT Staff's proposal to base the allocation of costs for the internet broadcasting assessment on a REP's customer count is discriminatory and contrary to PURA, TXU Energy said in comments on Staff's proposed assessments.

As only reported by *Matters*, REPs with more than 250,000 customers would split a \$90,000 allocation of costs under Staff's draft. The REPs above the threshold are CPL Retail Energy, Direct Energy, Reliant Energy Retail Services, Stream Energy, and TXU.

Originally, Staff had proposed dividing the \$90,000 equally among the five REPs meeting the statutory customer threshold, but later revised the proposal so that the allocation amounts were weighted by customer count (Only in *Matters*, 9/1/09). TXU would be allocated \$40,500 under Staff's revised proposal.

While statute does set a minimum customer threshold below which the Commission cannot assess REPs, TXU noted that there is no statutory mandate requiring the Commission to base the assessment on customer share.

"An allocation based on the number of customers served is discriminatory against REPs that serve more customers and subjects those REPs, such as TXU Energy, to a competitive disadvantage, contrary to the requirements of PURA," TXU said. Noting that PURA § 39.001(c) prohibits the issuance of rules or orders that discriminate against any participant in the competitive market, "TXU Energy suggests that Staff's proposed allocation runs afoul of this important prohibition."

Continued P. 5

Integrys Energy Services Counters New Brunswick Generation Market Power Study

Arguing that New Brunswick Power Generation Corporation's market power in the New Brunswick System Operator Balancing Authority Area is "clear," Integrys Energy Services (Integrys) petitioned FERC to prohibit New Brunswick Generation from continuing to make market-based rate sales in the Northern Maine Independent System Administrator region (*Matters*, 8/11/09).

"Despite NBP Generation's attempts to use the data in a way most favorable to it, it is simply inescapable that NBP Generation possesses market power in the NBSO BAA and Maritimes BAA," Integrys said.

Integrys presented an expert affidavit finding that, among other things, New Brunswick Generation's delivered price test overestimated the import capacity of the New Brunswick System Operator Balancing Authority Area, and ignored New Brunswick Generation's "preferential access" to energy supplies.

New Brunswick Generation's analysis of Available Economic Capacity is, "not economically plausible," Integrys said, based on actual market behavior. Although New Brunswick Generation says it has no Available Economic Capacity at 105% of market prices for 70% of the year, New Brunswick Generation was nevertheless able to go into the market and procure rights to serve additional load in Northern Maine, Integrys noted. New Brunswick Generation, "must have access

Continued P. 7

Dayton Power Says FERC Should Deny ATSI Transmission Cost Proposal in PJM Move

American Transmission Systems Inc. (ATSI, FirstEnergy) should be required to pay for PJM regional transmission projects under the same provisions applicable to other members, should the FirstEnergy transmission owner join PJM, Dayton Power & Light said in a protest at FERC (Matters, 8/18/09).

While DP&L said that the ability to withdraw from an RTO is a fundamental and necessary right, DP&L argued that the transmission project cost responsibility proposal offered by FirstEnergy in its application to leave the Midwest ISO and join PJM amounts to special treatment that would not produce just and reasonable rates.

As only reported by *Matters*, FirstEnergy asked that its responsibility to pay for the costs of socialized reliability transmission projects in PJM only include projects approved after its integration date (proposed as June 1, 2011). The request is a departure from PJM's current process which holds that socialized costs are re-allocated annually, with new members responsible for their pro rata share regardless of when the project was approved (with exiting members not retaining any cost responsibility).

FirstEnergy made the request since it will be required to pay for MISO regional reliability projects approved prior to its exit even after it leaves MISO.

Dayton estimated that upon joining PJM, FirstEnergy would be responsible for up to \$500 million in PJM socialized transmission costs (only including the American Transmission Systems companies and not the FirstEnergy utilities already in PJM).

DP&L said it is unclear what FirstEnergy's MISO cost obligations will be, and whether FirstEnergy is seeking to pay a smaller amount in ongoing MISO costs to avoid much larger PJM expenses. DP&L requested that FERC require FirstEnergy to quantify its remaining MISO transmission obligations and its expected PJM obligations, if it were assigned PJM costs under the current process.

FERC, DP&L added, already addressed the question of whether new members must pay

PJM transmission cost socialization for prior projects upon joining PJM, in FERC's Duquesne Light decision. The Commission, DP&L noted, affirmed that under PJM's tariff, socialized costs are assigned on an "evolving, superseding" basis, with new transmission owners liable for the costs of existing and new projects once their load joins PJM.

DP&L reiterated its opposition to the 100% reliability cost socialization in PJM for 500+ kV facilities (noting the 7th Circuit's recent remand), but said that until FERC issues an order on remand, FirstEnergy should be bound by the current procedures. "[T]here is no reason to carve out a special rule for FirstEnergy in order to make its choice [to join PJM] more beneficial to it," DP&L said.

CAPP Says Savings Show Need for Opt-Out Aggregation

The Cities Aggregation Power Project (CAPP) and the South Texas Aggregation Project said yesterday that more than 140 Texas communities saved a collective \$37 million on their municipal electric bills in 2008 as members of the two aggregations.

CAPP's \$17.6 million in savings were derived by comparing the average of Houston and Dallas prices for residential and commercial customers for one-year fixed price forward contracts as published in Megawatt Daily (\$0.12170) to CAPP's 2008 quarterly energy prices. CAPP saved \$17.3 million during the first two quarters and \$3.8 million during the third quarter. CAPP's fourth quarter price exceeded the Megawatt Daily benchmark price, and the aggregation experienced negative savings of \$3.4 million.

The South Texas Aggregation Project used a similar process, comparing its rate (below 8 cents per kWh) against the same Megawatt Daily benchmarks, but with an adjustment for South Zone pricing. The differential of \$0.05605 was multiplied times the aggregation's 2008 consumption of 364 million kilowatt-hours to produce an annual savings of \$20.4 million.

CAPP was served by Direct Energy Business Services during 2008. The South Texas Aggregation Project was served by Constellation NewEnergy in 2008, with the contract replaced

by one with Direct Energy for 2009.

In a press release, CAPP said, "The savings realized are the result of legislative action that permits cities and other political subdivisions to pool their purchases of electricity for their own power needs, such as city street lights, traffic signals and utility pumps. The groups have urged the Legislature to extend group-purchase options to residents under proposed citizen aggregation plans."

Ostensibly the last sentence refers to municipal opt-out aggregation, which CAPP has repeatedly sought, since opt-in aggregation of residential customers is permissible under current regulations. Interestingly, the process by which the 140 members joined CAPP or the South Texas Aggregation Project, and saved millions, is an opt-in process, but CAPP has called it "unrealistic" for the opt-in process to work for mass market customers.

PG&E Says KRCD Novation Now Unlikely By Jan. 1

Pacific Gas & Electric now believes that is unlikely that the KRCD-Department of Water Resources contract will be novated by January 1, 2010, since KRCD does not believe PG&E meets the contractual requirements to be a replacement counterparty.

In an August report on novation status, PG&E had said that it believed there was sufficient time to resolve the counterparty issue, but now says in its September report that novation prior to January 1, 2010 is unlikely (Only Matters, 8/26/09). PG&E did not report any other substantive changes in novation status, with the novation of the Coral and PacifiCorp contracts still dependent on the resolution of FERC litigation.

As only noted in *Matters*, Southern California Edison has completed an agreement to novate the Mountain View Power Partners contract, and intends to submit an application to the PUC this month (Only in Matters, 9/8/09). Otherwise, SCE cited no change in its view that novation of its other contracts before January 1, 2010 is unlikely.

SCE said that work on novation of its JP Morgan contract continues to be delayed by San Diego Gas & Electric's lack of progress on its

two JP Morgan contracts, which SCE says JP Morgan wishes to address first. However, SDG&E said JP Morgan has informed SCE that while JP Morgan's preference is to link all of its contract novations, such linking is not necessarily required. SDG&E concluded SCE's efforts can thus proceed independent of SDG&E's progress. SDG&E said it remains ready to complete all novations by January 1, 2010, but will only undertake novations if required by the novation of priority contracts as scheduled.

PUCO Rules RPM Costs Cannot be Recovered in Transmission Rider

The Public Utilities Commission of Ohio granted a rehearing request brought by industrials, and found that Dayton Power & Light shall not include Reliability Pricing Model costs in its transmission cost recovery rider (Only in Matters, 5/28/09). However, DP&L retains authority to recover the RPM costs in a separate RTO rider permitted under its electric security plan, PUCO said.

Although the Commission can authorize a broad range of costs in a transmission rider, it found that statute does not provide for the recovery of generation-related costs imposed by RTOs through a transmission rider.

PUCO found that, as described by DP&L, RPM is designed to ensure "adequate generation capacity" and provide that, "adequate generation will be built and maintained."

"These statements appear to be an explicit acknowledgement by DP&L that RPM payments are intended to pay for the construction and maintenance of generation capacity in PJM in order to meet customer demand. Although the generation capacity paid for by the RPM may ensure the reliability of the grid, upon further review, we agree with [Industrial Energy Users-Ohio] that this is not a sufficient basis to classify the RPM costs as a transmission or transmission-related cost."

Briefly:

DPUC Orders PP&U to Submit Larger Bond

The Connecticut DPUC ordered Public Power & Utility to submit a bond or letter of credit in the amount of not less than \$250,000, no later than September 18, due to PP&U's 2008 Connecticut electric sales of over \$14 million, which exceed its current bonding level (Matters, 9/2/09). "Failure of PP&U to submit this information by this deadline will adversely affect the status of its electric supplier license," the Department said.

CAISO Files to Lower Unsecured Credit Limit to \$50 Million

The California ISO filed tariff changes at FERC to reduce the maximum unsecured credit limit for market participants to \$50 million, from the current \$150 million, effective January 5, 2010. CAISO said that the reduced limit is appropriate given its pending payment acceleration proposal, which will reduce the cash clearing cycles and estimated aggregate liabilities of market participants by approximately 70 percent.

Prier Energy Files to Add Two Trade Names

Prier Energy filed for an amendment to its REP certificate at the PUCT to add the trade names General Power & Light, and Todays Energy.

WTU Retail Energy Lowers Legacy Rate

WTU Retail Energy has dropped its price for customers on its legacy price to beat residential product 8% to 13.4¢/kWh. The rate remains at the high end of the AEP Texas North market, with numerous plans on Power to Choose in the 9¢ range.

Reliable Power Alternatives Seeks Md. License

Reliable Power Alternatives Corp. applied for an electric broker license at the Maryland PSC to serve non-residential customers at the four investor-owned utilities, Choptank Electric Cooperative, and the Southern Maryland Electric Cooperative.

Md. PSC Approves Satori Broker License, Orders Fine for Past Activity

The Maryland PSC granted Satori Enterprises an electric broker license and ordered Satori to

pay \$107.18 for its prior unlicensed brokering activities. Satori's license allows it to serve non-residential customers at Baltimore Gas & Electric and Pepco.

Woolf, Nazarian Continue to Cite Maryland Supplies in Re-regulation Debate

Maryland policymakers continued to stress the lack of new capacity in Maryland under deregulation during a House Economic Matters hearing yesterday (Only in Matters, 9/7/09). Deregulation "has simply failed" residential customers, Maryland Energy Administration Director Malcolm Woolf told lawmakers. "Solutions that focus exclusively on customer choice and ignore supply and demand will likely fail," he added. PSC Chair Douglas Nazarian, who earlier this summer said a lack of substantial migration in the mass market given current prices would be an indictment of deregulation (Matters, 6/17/09), said yesterday that even with robust migration, deregulation has to be evaluated in terms of whether it produces an optimal supply/demand balance. Competitive suppliers urged lawmakers to focus on market enhancements (referral programs, etc.) to allow customers to take advantage of lower competitive prices (such as current savings of 15%). Merchant generators also noted the higher prices resulting from re-regulation in Michigan.

Pepco, Delmarva Complete Upgrades to SOS Bidding System

Pepco and Delmarva Power reported to the Maryland PSC that they have made requisite upgrades to their SOS bidding systems that went into production on September 9. Both utilities said that they are ready to conduct the next solicitation, with the upgrades allowing for more efficient processing of bid form spreadsheets and reporting. As only reported by *Matters*, the Commission ordered the upgrades after problems experienced during the last procurement, including the slow response of the system, and instances where the price reported on a summary level differed from the actual bids on the submitted bid form spreadsheets (Only in Matters, 6/15/09).

Md. PSC Rules PATH Allegheny Transmission Company Ineligible for CPCN

The Maryland PSC dismissed a CPCN application from Allegheny Power on behalf of affiliate PATH Allegheny Transmission Company to build the Potomac-Appalachian Transmission Highline as the Commission ruled that, under statute, it can only issue a CPCN to an "electric company" as defined by statute. PATH is undeniably not an electric company as defined by statute, the PSC said, and "the law does not allow us to ignore or circumvent this requirement by granting a CPCN to Potomac Edison (Allegheny) 'on behalf of' PATH when Potomac Edison will neither construct nor operate the proposed line." The Commission has justified backstop electric supply procurements (in the form of demand response) based on prior and potential delays in PATH and other transmission projects. It again cited the supply-demand balance in a House hearing yesterday (see earlier story). Certain stakeholders continue to press for backstop procurement of non-market generation on the same reliability grounds. Commissioner Lawrence Brenner dissented from the PSC's decision in part, arguing that the PSC's wide discretion to support the public interest permits it to grant the CPCN given the benefits of the line.

Nationwide Energy Portal Enters Share Exchange with Pluris Energy

Oil/gas developer Pluris Energy Group said it has entered into a share exchange agreement with Nationwide Energy Portal, a Houston-based provider of proprietary software that allows competitive retail suppliers and brokers to store and manipulate data related to their commercial contracts. Under the reverse merger, Nationwide shareholders will control approximately 80% of Pluris upon closing. Nationwide will place its management at Pluris and name the board; Pluris' management will be dismissed. Nationwide Energy Portal offers software solutions for broker agent management; lead generation; ESI-ID lookup; letter of authorization generation; load forecasting; credit checks; contract generation; and other services.

TXU ... from 1

Even if the Commission believes that it is appropriate to allocate the assessment based on the relative size of REPs, TXU argued that nothing in the statute limits the customers at issue to those in Texas. Furthermore, the statute explicitly limits the generators which may be charged an assessment to those owning, "more than 5,000 megawatts of installed capacity *in this state*" (emphasis added). However, with regard the REPs, the statute only holds that the Commission may levy the assessment on a, "retail electric provider that serves more than 250,000 customers."

"[A]s a legal matter, the principles of statutory construction suggest that the statute's express inclusion of a limitation on the installed capacity of power generation companies to that capacity installed in this State, implies that no such geographic limitation was intended with respect to REPs," TXU argued.

If the assessment is based on customer count, "maybe the customers counted should include all customers served by the REP, and not only those served in Texas," TXU reasoned.

It is worth noting that "retail electric provider" is not defined in the relevant section of PURA governing the assessment (Chapter 12), nor is there a general definition applicable to all sections of PURA. Two other sections do define a REP, however.

Chapter 17 (Customer Protection) defines "retail electric provider" as, "a person that sells electric energy to retail customers in this state after the legislature authorizes a customer to receive retail electric service from a person other than a certificated retail electric utility." Chapter 31 (General Provisions for Subtitle B) similarly holds that a retail electric provider is, "a person that sells electric energy to retail customers in this state. A retail electric provider may not own or operate generation assets."

To the extent parent retail suppliers serve their non-Texas customers under separate legal entities from their certified Texas "retail electric providers", TXU's suggestion to include non-Texas customers in the customer count evaluation may be moot. For example, two REPs with parents whose total customer counts exceed the 250,000-customer threshold when

including non-Texas customers (Just Energy and Dominion Retail) serve Texas customers under distinct legal entities (Just Energy Texas LP and Cirro Group, Inc., respectively, per the names appearing on their certificates). Ostensibly, neither Just Energy Texas LP nor Cirro Group, Inc. serves any customers outside of Texas (though affiliates may), meaning they would not meet TXU's revised 250,000 customer threshold, except under a strained interpretation where parent customer counts were included.

TXU alternatively said that, rather than using customer count, "perhaps it would be fairer to base the allocation on megawatts served, rather than customers." As there is no statutory authority to assess a charge on REPs with 250,000 customers or less (regardless of how many megawatts they serve), TXU's proposal would ostensibly only re-allocate the shares paid by the five REPs with more than 250,000 customers to reflect their load rather than customer count, versus adding any new REPs to the assessment.

Regardless of the method, TXU said that any allocation based on a REP's relative size encounters practical challenges, due to the churn experienced by REPs. Noting that a REP's customer count will vary over time, TXU asked whether the allocation will be adjusted to reflect such changes, and if so, how often.

Aside from allocation concerns within the REP bucket, TXU also opposed Staff's overall allocation of the \$300,000 total broadcasting cost among different market participants (including REPs, generators, Transmission and Distribution [TDU] utilities, and telecom companies).

Among other things, TXU argued that categorizing vertically integrated utilities such as Entergy Texas and Southwestern Public Service as TDU companies under-assigns costs to those companies, since the integrated companies include generation and retail sales, but their cost allocation would be done through the same method as used to calculate the fee for stand-alone TDUs such as Oncor (pro rata allocation based on 2008 system megawatt-hours).

TXU noted that in ERCOT, each of the three market segments will pay an assessment: the

TDU plus (above certain thresholds) the generator and the REP. Staff's proposal, TXU contended, does not take into account any incremental assessment to reflect the fact that non-ERCOT utilities include generation and retail sales. Allocating costs to integrated utilities based only on their share of system delivery sales ignores their other functions, TXU said.

"A comparison of the costs borne by entities within and outside the competitive areas of Texas reveals the disparity," TXU said. "Solely for illustrative purposes, Entergy, which performs the functions of a generator, a TDU, and a retail electric provider ('REP'), would be required to pay less than six thousand dollars (\$6,000). Adding TXU Energy's proposed share to the shares of Luminant (a generator) and Oncor (a TDU), by contrast, which collectively perform those same functions, totals more than one hundred ten thousand dollars (\$110,000) - more than one third of the total amount of the assessment."

TXU recommended treating vertically integrated utilities as a distinct group separate from TDUs with their own cost allocation.

TXU further argued that while the Staff assigned only 10% of costs to telecom entities, based on the small amount of open meeting time devoted to telecom, Staff did not following the same logic in assigning costs to the electric side. "If the Commission determines that the cost allocated to the telecommunication utilities should be based on the amount of the Commission's time devoted to those issues, there would be a logic and consistency to dividing up the allocation among electric industry market participants on a like basis. Looking forward, for example, it is entirely likely that the pending and upcoming utility rate cases will be prominent aspects of the Commission's agendas over the next 18 months," TXU said.

TXU concluded by arguing that dividing the \$300,000 cost equally among all market participants identified by the statute would, "satisfy the legal requirements and appear fair."

Oncor and CenterPoint Energy both said they have no objections to Staff's proposed allocation.

New Brunswick ... from 1

to additional energy that was not measured as Available Economic Capacity," Integrys concluded.

Integrys also reiterated previously cited concerns regarding vertical market power, contending that merchant generators in Northern Maine cannot export power because of New Brunswick Generation's holding of firm transmission into ISO New England which it is only willing to cede upon viewing a competitor's business plans.