

Energy Choice

Matters

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FirstEnergy Ohio Utilities Seek to Eliminate Current Waiver of Switching Fee for First Switch

Cleveland Electric Illuminating, Ohio Edison, and Toledo Edison have filed supplier coordination tariff changes at PUCO which seek to impose the \$5 switching fee for any customer switching to a competitive supplier, except those in governmental aggregations (unless otherwise ruled by the Commission or court of law).

The fee would be charged on suppliers, not customers. Under the current tariff, a customer's first switch away from bundled service does not trigger the \$5 switching fee, and the fee is only charged to suppliers for any subsequent switches. The proposed revision strikes that exemption.

According to the distribution companies, "the Supplier Tariff is being modified to depict the outcomes regarding changing language for governmental aggregator switching fees as result of Case No. 09-423-EL-CSS."

While, as only read in *Matters*, NOPEC and Gexa have won a stay of the switching fee for customers in the NOPEC aggregation (arguing that the fee may not be charged to customers in opt-out governmental aggregations per SB 221), Case No. 09-423-EL-CSS does not directly implicate the switching fee charged, or not charged, to non-aggregation customers. Aside from the fact that PUCO has not ruled on the merits of the NOPEC/Gexa complaint (and only issued a stay pending review), the Commission's Aug. 12 and July 8 orders in the case do not contain any provision addressing the non-aggregation switching fee (Only in *Matters* 7/9/09).

The FirstEnergy companies have said, however, that prohibiting the switching fee for suppliers of

Continued P. 4

Constellation Urges Interim Process for Information, Communication of Choice Cap at DTE

Although competitive suppliers were generally supportive of proposed Michigan rules to allocate load under the 10% choice cap, Constellation NewEnergy said that the Michigan PSC should ensure interim measures are taken at Detroit Edison, in case migration there nears or reaches the cap before a final order is implemented (as is the case at Consumers Energy).

As only reported by *Matters*, the PSC's proposed rules would establish provisions governing the mechanics of the choice cap (Only in *Matters*, 8/26/09). Chief among the proposed provisions is that once customers are allocated load under the cap, they may remain on competitive supply regardless of whether the cap is later exceeded (even during future years where the cap potentially decreases due to lower utility sales).

Constellation supported the proposed clarification that customers would not be forced back onto bundled service once they have received an allocation under the cap, and urged the Commission to direct Detroit Edison to modify any existing forms of customer notifications regarding retail access so that they are consistent with the clarification. "CNE has experienced a great deal of customer confusion due to the manner in which Consumers has addressed this issue in the form letters that are being sent to customers that select competitive retail electric service," Constellation said.

Additionally, Constellation noted that alternative suppliers have recent, direct experience in the

Continued P. 5

Pa. ALJ Recommends Approval of UGI-PNG Settlement

A Pennsylvania ALJ recommended approval of a settlement among UGI Penn Natural Gas (PNG), the PUC Office of Trial Staff, the Office of Consumer Advocate, the Office of Small Business Advocate, and the Retail Energy Supply Association in PNG's 1307(f) rate proceeding.

Similar to a settlement at UGI Utilities - Gas Division (Matters, 8/24/09), the PNG settlement recommended for approval would commit PNG to providing eight months advance notice to retail suppliers prior to commencing direct assignment of storage capacity to choice suppliers.

PNG also agrees to match direct assignment of pipeline capacity with a retail supplier's pipeline delivery obligations, starting with implementation of pipeline direct assignments on December 1, 2010.

The stipulation provides that, subject to approval of tariff rules in PNG's base rate case, PNG will provide suppliers with a customer's Daily Delivery Requirements through EDI transactions, and will also communicate peak day requirements via EDI upon the commencement of direct pipeline assignments.

PNG will reduce swing supply service volumes by one half, and commits to review its remaining swing service volumes.

ERCOT Asks for Ruling on Wind Reactive Power Dismissal, Submits PRR

ERCOT asked a PUCT ALJ to rule on its January 2009 motion to dismiss a complaint brought by wind generators over ERCOT's interpretation of protocols relating to reactive power.

The motion was not previously addressed since the docket was abated, but the complaint has since been unabated with a new procedural schedule set (First in Matters, 8/19/09). In its motion for dismissal, ERCOT had said that the complaint is improper since wind generators did not first seek alternative dispute resolution at ERCOT as required by the protocols.

The case dates back to a November 2008

Protocol Clarification/Interpretation issued by ERCOT, in which ERCOT said that the Protocols require a generator to have and maintain a Unit Reactive Limit (URL) with a power factor capability of +/- 0.95 at all levels of generation. In response, several wind generators filed a complaint regarding that interpretation at the Commission, arguing that the Protocols hold that the minimum reactive capability is determined in proportion to the real power output of a generator.

ERCOT also noted that it continues to work on reactive power requirements through the stakeholder process, and this week issued Protocol Revision Request 830. Under PRR 830, wind generators that commenced operation on or after February 17, 2004, and have a signed Standard Generation Interconnection Agreement on or before November 1, 2009, may meet the reactive power requirements through a combination of the generator's Unit Reactive Limit (URL) and/or automatically switchable static VAR capable devices and/or dynamic VAR capable devices.

In addition, ERCOT said it has approved certain mitigation plans with individual generators to achieve compliance with the 0.95 Lead/Lag requirements by a date certain.

Dairyland Power Cooperative to Join MISO as Transmission Owner

Dairyland Power Cooperative intends to fully integrate into the Midwest ISO as a transmission-owning member on June 1, 2010, Dairyland and MISO announced yesterday. Dairyland provides wholesale electrical requirements and other services for 25 electric distribution cooperatives and 16 municipal utilities in Wisconsin, Minnesota, Iowa and Illinois, with over 3,100 miles of transmission.

Due to Dairyland's location between existing MISO members, its integration will eliminate a "significant" congestion management seam, MISO said.

"Dairyland recognizes that with recent regional changes and the increased efficiencies resulting from the Midwest ISO's Ancillary Services Market, membership in the Midwest ISO provides the most cost-effective solution for

Dairyland and our member cooperatives at this time," said Chuck Callies, Dairyland Vice President for Power Delivery.

The addition of Dairyland Power Cooperative incorporates approximately 1,450 megawatts of generating capacity into the Midwest ISO's footprint. Dairyland's historic peak load is 887 megawatts.

Briefly:

Md. PSC Authorizes Final Publication of RM 35 Gas Rules

The Maryland PSC yesterday authorized final publication of the proposed competitive gas market regulations under COMAR 20.59 (RM 35) published in the state register on July 6, subject to changes necessary to conform to COMAR drafting requirements. Among other things, the rules require LDCs to either purchase the receivables of competitive suppliers, or prorate partial payments equally between supply and delivery charges.

Md. PSC Denies NextEra Solar Compliance Refund Request

The Maryland PSC denied without prejudice a request from NextEra Energy Power Marketing to recover \$38,700 in alternative compliance payments made for solar RPS requirements as an SOS supplier. The Commission denied the request as it has not yet taken action on a pending proposal to address the solar requirements of SOS providers (Matters, 6/5/09). NextEra paid the compliance fees but later determined that it had no solar obligation under the full requirements service agreement, which was drafted and executed prior to the legislature's enactment of the solar RPS. However, Staff argued that the full requirements agreement does require suppliers to comply with any legislative changes to the RPS, and includes a process to recover any additional costs from the utilities. As noted, the Commission is reviewing a stakeholder proposal to address solar RPS compliance for years in which the full requirements agreement did not contain a solar responsibility. Staff reported that NextEra provided SOS supplies to Baltimore Gas and Electric Company, Allegheny Power, and Pepco in 2008.

DPUC Issues Final Supplier Reporting Change

The Connecticut DPUC issued a final order to change a current quarterly reporting requirement for electric suppliers to an annual requirement (Only in Matters, 9/3/09). Suppliers shall now annually file the information enumerated in Conn. Gen. Stat. §16-245p(b) as well as "any other information deemed relevant by the Department" no later than 30 days following December 31 of every year. The report covers data on rates and charges; applicable terms and conditions of contracts; generation fuel mix and emissions; and customer complaints.

RBS Files for Illinois Electric License

The Royal Bank of Scotland filed for an Illinois alternative retail electric supplier license, to serve non-residential customers with annual usage above 15,000 kilowatt-hours. Affiliate Sempra Energy Solutions is currently active in the state. RBS said it intends to offer single billing services.

First Choice Power Lowering Rates

First Choice Power said it has lowered prices for residential and small commercial customers on month-to-month plans by as much as 15%, including for customers on the legacy price to beat product. First Choice declined to disclose the new pricing of its legacy price to beat product, citing competitive concerns. First Choice said its rates are 30% lower than the levels from a year ago.

World Energy Solutions Says FirstEnergy Ohio Brokering Surpasses 1 Billion kWh

World Energy Solutions said its brokering in the FirstEnergy Ohio territories has exceeded 1 billion kilowatt-hours since May 2009, with savings of \$7 million versus the default utility rate. As previously reported, World Energy said it is continuing to expand its brokering at Duke Energy Ohio (Matters, 8/26/09).

PUCT Grants Withdrawal of Unused First Choice Power Certificate

The PUCT granted the request of First Choice Power Retail, L.P. to withdraw its unused REP certificate #10102 (Matters, 8/17/09). First Choice serves customers under its unaffected

First Choice Power Special Purpose entity (certificate #10008)

ICC Says ATSI's PJM Transmission Cost Proposal is Discriminatory

Echoing comments from Dayton Power & Light, the Illinois Commerce Commission said if FirstEnergy's American Transmission Systems wishes to join PJM, it should be subject to costs associated with PJM baseline transmission projects on the same basis as any other transmission owner within PJM, rather than only paying for projects approved after its integration date as FirstEnergy proposed (Matters, 9/10/09). "If the Commission grants FirstEnergy's request, it will be unduly discriminatory towards all existing PJM members," the ICC said. Given that PJM's cost socialization of regional transmission costs has been put into question by the 7th Circuit, the ICC noted that, "FirstEnergy would be unfairly advantaged relative to every other PJM member if it is provided a measure of certainty on those cost allocations that is not provided to the other PJM transmission owners or loads within PJM."

FERC Initial Decision Says La. PSC Failed to Prove Allegations of Uneconomic Generation at Entergy

A FERC initial decision would find that the Louisiana PSC failed to carry its burden of proof in alleging that Entergy had imprudently established minimum capacity generation levels for its generating units for making commitment and dispatch that exceeded actual minimum capacity values, thus decreasing the potential savings from off-system purchases from merchants. A witness for the Louisiana PSC testified that he could find no evidence supporting the PSC's original allegation or that Entergy operated generation units in an uneconomic manner. The initial decision also addresses various disputes regarding allocations under the Entergy System Agreement.

FERC Issues Demand Response Report

FERC yesterday issued a fourth annual report on demand response and advanced metering which essentially repackages findings and conclusions from a comprehensive June report

to Congress. A review of the June report may be found in our 6/19/09 issue.

PUCO Approves Revised Dominion East Ohio Agreements

The Public Utilities Commission of Ohio approved various unopposed changes to several Dominion East Ohio agreements and general terms and conditions including: (i) Full Requirements Pooling Service (FRPS) Agreement; (ii) Daily Pooling Service (DPS) Agreement; (iii) General Pooling Service (GPS) Agreement; (iv) Local Production Pooling Service (LPPS) Agreement; (v) Full Requirements Pooling Service Agreement - West Ohio Pool; (vi) Daily Pooling Service Agreement - West Ohio Pool; and (vii) General Pooling Service Agreement- West Ohio Pool (Matters, 6/24/09). Among other things, the revised Local Production Pooling Service Agreement provides for DEO to receive Production Volumes and Pool-to-Pool Volumes (as defined in the General Terms and Conditions) requested by a supplier to be delivered to the supplier's pools for allocation by DEO to the supplier's other pools or to LPPS accounts of other suppliers within the State of Ohio. Section 5 of the LPPS Agreement provides that DEO shall not operate its LPPS in a manner to provide any advantage or disadvantage to any other supplier (including any of DEO's affiliates), either in preference to or in derogation of the rights of any other supplier.

FirstEnergy ... from 1

governmental aggregations would prevent them from recovering costs associated with switching. The tariff changes would ostensibly add a new revenue stream from initial switches currently exempt from the fee.

Specifically, the proposed new tariff language would read that a, "\$5.00 per Customer processing fee will be charged to the Certified Supplier for each customer selecting or switching to the Certified Supplier except that the \$5.00 processing fee will not be assessed with respect to any customer accounts associated with a governmental aggregation unless otherwise ruled by the Commission or a court of law."

The FirstEnergy companies also included several other tariff changes in their petitions, in order to 1) provide a clearer delineation of Transmission and Distribution loss factors, 2) update settlement and pricing services offered by the utilities, and 3) revise supplier registration requirements. "These changes provide clearer, more concise information for suppliers operating [in] the Company's service territory and better reflect the proper level of settlement services the Companies offer with respect to operation in the MISO and pricing mechanisms of the [Electric Security Plan]," the companies said.

Among other things, the tariffs would remove the current provision for the reimbursement of suppliers' Network Integration Transmission Service and Retail Tariff Ancillary Services, due to changes in the formation of generation rates.

The revised tariff also adds a provision which holds that Unaccounted for Energy will be determined by comparing the aggregate load of all competitive suppliers and the utility, "at the generation level including losses to the FE Local Control Area load less non retail load for each respective hour." The difference will then be allocated to individual suppliers based on a ratio of each supplier's load to the total load of the suppliers and the utility on an hourly basis.

The utility will also act as the Meter Data Management Agent (MDMA) as defined in the Midwest ISO OATT for all load data within the FE Local Control Area. At the option of the competitive supplier, the utility may act as MDMA for generation data within the FE Local Control Area. Competitive suppliers supplying retail load in the utility's service territory shall cooperate with the utility to ensure compliance with the applicable requirements under Ohio Revised Code Section 4928.64 (alternative energy standards). A supplier may allow the utility to calculate a supplier's baseline and may permit the utility to upload the baseline value to PJM-GATS on the supplier's behalf.

The tariff would also be modified so that suppliers wishing to obtain Coordination Services must now include in their application a completed Market Participant Agreement (including CP Node) under the MISO tariff.

Michigan ... from 1

Consumers service territory regarding how the flow of information about the cap and remaining space for new choice load is paramount to managing customer expectations and minimizing potential risks that are imposed upon suppliers. "As a result of that experience, CNE is concerned about how DTE intends to handle this issue over the course of the next few months. If experience in the Consumers service territory is a barometer of what we can expect in the DTE service territory, there will need to be some interim measure that is adopted immediately, as the cap could be hit during the 60-day timeline that is allowed for implementation," Constellation noted.

As another means to increase information transparency, Constellation recommended that utilities should provide suppliers with a list indicating which Customer Grouping each of the supplier's customers is in. As noted in our August story, there are five customer groupings establishing different rights and abilities to take competitive service for new and expanded load.

Energy Michigan noted that during a collaborative, there was agreement by all parties that customers should be able to contact the utility to find out which customer group they are in, though the provision was not reflected in a post-workshop draft from Staff.

Consumers Energy added that the PSC draft did not specify the method or the timing for the calculation of each customer's individual allotment for the upcoming year (only the total cap). Consumers suggested that annually prior to February 1, Group Three, Four and Five customers (those who were not shopping prior to April 2008 and may face restrictions) shall be informed of their allocation status for that year.

Energy Michigan and Constellation sought to clarify the definition of a customer's "Annual Energy Allotment" to ensure that the term is based on the customer's purchases in the prior year (or utility sales to the customer). The current wording -- "the level of megawatt-hours (MWh) assigned to a customer based on its actual sales" -- could be construed as referring to sales by the customer, rather than utility sales to the customer.

Otherwise, Staff's proposed revisions to the

Commission's draft answered most of suppliers' concerns. Suppliers supported modifications that will give suppliers two business days, instead of one, to inform the utility that a customer waiting for a load allocation under the cap wishes to accept the allocation and execute a queued enrollment, upon notification from the utility that space has become available. Suppliers likewise backed Staff's new language which does not apply a 90-day time limit for the customer (and their supplier) to be service ready in cases where the delay is caused by the utility.

Competitive suppliers also welcomed the removal of proposed language that would have prohibited the imposition of any fees on a customer by both utilities and suppliers due to either a customer's premature return to bundled service, or failure to take competitive service, if the cause of such action is the 10% limitation on choice. During a collaborative session, suppliers noted that the Commission lacks authority to interfere with or abrogate terms of supplier contracts.

Constellation reiterated arguments, rejected in the proposed rules, that the calculation of the 10% cap should only apply to existing utility commodity sales, and not include any load that had already been on competitive supply prior to the cap.

Consumers recommended that "preceding calendar year sales," used to set the cap, should be calculated using the same methodology and source data as used in the preparation of MPSC Form P-521. The Commission's August proposal would use Form P-521 to set the baseline level of sales, but stakeholders noted timing issues related to the filing of the final Form P-521 versus deadlines in the choice cap allocation. Consumers' approach would essentially produce the same baseline as the Commission proposal, without the requirement that a final Form P-521 be presented.