Energy Choice Matters

September 18, 2009

PUCT Staff Proposal Maintains Webcasting Assessment Based on REP Customer Count

PUCT Staff recommended making no changes to the proposed assessment on REPs with more than 250,000 customers in a final proposed order to fund the annual $300,000 cost of webcasting Commission meetings (Only in Matters, 9/1/09).

As such, Staff recommended imposing the following assessment on REPs surpassing the statutory customer threshold (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

Staff dismissed arguments from several REPs that Staff's proposal places a greater amount of the assessment on customers in competitive areas, since certain REPs, generators and TDUs are each allocated an assessment. In contrast, the vertically integrated electric utilities are assessed in the same method as the ERCOT TDUs (by load), which several REPs said ignored the generation and retailing functions of these integrated utilities.

However, Staff said that the Commission spends more time on matters relating to areas with customer choice than those without, and "it is therefore appropriate that large REPs, TDUs and [generators] each pay internet broadcasting assessments." The statute also gives the Commission

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PUCT Staff Schedules Disconnect Workshop, Issues Questions

PUCT Staff scheduled a workshop for November 20 to discuss issues related to the Commission's present protections for disconnections and issues raised in previous proceedings related to disconnections (36131). Staff asked for comments on a series of questions, many of which stem from earlier comments or an August workshop (Only in Matters, 9/1/09), which included queries relating to potential termination fee proration or waivers; extended deferral plans; and restrictions for customers not fulfilling a deferral plan:

1. Are early termination fees appropriate for all product offerings, including pre-pay and variable products? If so, should there be a cap on early termination fees?
   a. Should early termination fees be pro-rated or waived during the months of June through September for low income, disabled and elderly customers? If so, should there be any prerequisites or limitations?
   b. Should early termination fees be prorated for all products over the life span of the contract? For instance, should the termination fee for a cancellation after three months be different than a cancellation after 10 months?
2. Should the Commission adopt a standardized definition applicable to all REPs for levelized billing options, including requirements for customer qualification?

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D.C. PSC Adopts Gas Supplier Service Quality Reporting Requirements

The District of Columbia PSC adopted Natural Gas Quality of Service Standards which impose new obligations on competitive gas suppliers similar to reports recently adopted for electric suppliers (FC 977).

Under the adopted standards, all natural gas service providers must inform PSC Staff and the Office of People's Counsel when a billing error has affected 100 or more customers, or when the number of affected customers is equal to or more than 2% of the supplier's customer base, whichever is fewer. A supplier with a customer base of fewer than 100 customers shall report errors when two or more customers are affected.

Suppliers are required to submit an initial billing error notification via email to Staff and OPC within one business day of discovering or being notified of the error. After submitting the initial notification, the supplier must submit a follow-up written report within 14 calendar days and a final, written report within 60 calendar days.

The initial billing error notification shall contain the following information:

(a) Type(s) of billing error(s) found;

(b) Date and time the billing error(s) was discovered;

(c) How the supplier discovered the error(s); and

(d) Approximate number of customers affected.

Subsequent reports must identify causes and list corrective actions.

Affected customers must also receive notification of the error within 60 days.

Suppliers are also required to compile monthly compliance reports to be submitted to the Commission on a quarterly basis.

FERC Denies Marginal Loss Refund for Black Start, Reactive Control Payments

FERC conditionally accepted a compliance filing from PJM implementing a revised allocation of marginal loss surplus refunds, denying protests from financial marketers that payments related to black start and reactive control should be allocated refunds (EL08-14).

The Commission affirmed that refunds due to the over-collection of marginal losses shall only be paid to customers who pay the fixed costs of the transmission grid.

Black Oak Energy, EPIC Merchant Energy, SESCO Enterprises, Energy Endeavors and Solios Power argued that payments related to black start and reactive control are costs of the transmission system and are "largely" fixed costs, and thus should be included as part of transmission service eligible for marginal loss refunds. In a compliance filing, PJM rejected allocating refunds to such payments, stating, "such ancillary service payments do not support the embedded costs of the transmission system."

FERC agreed, and said that the exclusion of payments based on black start and reactive control is not unjust nor unreasonable. "[W]e find that arbitrageurs or virtual traders that only pay for ancillary services do not support the fixed costs of the entire transmission system and should not be eligible to receive a share of the marginal line loss surplus."

The approved compliance filing mainly implemented FERC's prior order finding that Up-To Congestion transactions should receive a share of the marginal loss surplus. The Commission dismissed concerns from the financial marketers that PJM's tariff language in the compliance filing was impermissibly vague and could be used to improperly exclude Up-To Congestion transactions from the surplus refunds.

FERC also directed PJM to clarify that, to qualify for a refund, a Network User or Transmission Customer that exports energy from the PJM region must have paid for transmission service during the hour as is required for Up-To Congestion transactions.

The Commission did agree with financial marketers that PJM should issue refunds dating back to December 3, 2007 (the date of an original complaint), reflecting amounts due to customers under the new tariff language which includes Up-To Congestion transactions in the surplus allocation. PJM had argued that the new tariff language should only be applied prospectively.

FERC Orders Soft Bid Cap Reporting Even for Proxy Bids

Sellers in the California ISO will have to justify bids above the soft bid cap even when such bids are the result of formulaic proxy bids, FERC ruled yesterday, but the reports of such proxy bids will not be due until seven days after receipt of a seller's final settlement.

The case involves transactions from Termoelectrica U.S. (Sempra) during the summer of 2007 which exceeded the $400/MWh soft bid cap. Termoelectrica explained that the prices received were not due to the submission of an actual bid for the aforementioned transactions, but were instead the result of the California ISO-calculated proxy price for Must-Offer energy. Termoelectrica was thus unaware of the bid until it received preliminary data from the CAISO for the months involved.

While it filed a bid report at the direction of FERC Staff, Termoelectrica argued that the proxy bids are not true bids but are rather ex post prices calculated pursuant to a formula in the CAISO tariff and submitted by the CAISO in real time on behalf of Termoelectrica. As such, the bids should not be subject to a reporting requirement, Termoelectrica said.

FERC noted that even with market reforms in place, volatility in gas prices can translate into higher spot market prices and are not the result of the exercise of market power by sellers of energy. "Accordingly, we will continue to require market participants to report sales in excess of the capped price, even those stemming from proxy bids whose resultant price is formula-based," the Commission said. Affected sellers will be permitted to submit their reports seven days after receipt of their final settlement statements from the CAISO to ensure that actual costs are reflected in reports justifying proxy bids in excess of the soft bid cap.

FERC accepted Termoelectrica's justification for revenues received from the sales above the CAISO bid cap as timely submitted in accordance with its finding. FERC said review of Termoelectrica's report indicates that on specific dates during June and July 2007 gas prices materially affected the price of energy, which translated into proxy bid prices in excess of the $400/MWh cap.

FERC Approves Semi-Monthly Invoicing in CASIO

FERC approved with some modifications the California ISO's filing to accelerate payments, including CAISO's proposal to implement semi-monthly invoicing.

FERC rejected a protest from Calpine, who had argued that CAISO should move immediately to weekly invoicing rather than first using semi-monthly invoicing. CAISO has said it plans to establish weekly invoicing in the future.

"Although weekly invoicing could further limit market participants' exposure to credit risk, we find that the CAISO's proposal to establish a payment acceleration program initially using semi-monthly invoicing is just and reasonable," FERC said.

"The payment acceleration program should result in a significant reduction in market participants' credit exposure as compared to payment and settlement provisions of the existing tariff. Although weekly invoicing and accelerated payment dates should further decrease the credit and default risks in the CAISO market, it is reasonable to allow CAISO and stakeholders a sufficient opportunity to verify that their settlement programs are functioning properly under payment acceleration, before further changes to the invoicing and payment timelines are made," FERC added.

The other protest filed by several suppliers was CAISO's failure to propose a lower unsecured credit limit of $50 million in the payment acceleration filing. CAISO has since separately filed to implement a $50 million unsecured credit limit, which FERC said it will address in that proceeding.

FERC found merit in a request from Powerex and Six Cities that CAISO's tariff should be required to state the length of time within which CAISO must respond to a valid settlement dispute. While CAISO indicates that it will include in a Business Practice Manual detailed process and timeline information for the CAISO's response to a settlement dispute, "we find that the maximum number of days that the CAISO has to respond to a dispute is a key parameter in the CAISO's settlement process, especially given the potential 36 month length of that process," FERC said. The Commission accordingly directed CAISO to include tariff revisions in its compliance filing that set forth the length of time within which the CAISO must respond to a settlement dispute. While noting that the current tariff provides a 25 business day period, FERC said CAISO may propose and justify an alternate date.

The Commission denied a request from Powerex that CAISO should clarify the steps that a market participant can take to address a dispute that has not been resolved after the 36-month sunset date. "We find that it is important to have a date by which the settlement process is deemed to be final and the proposed sunset date provides an appropriate time limit for bringing the process to a close," FERC said. Both the CAISO and the disputing party may seek redress from the Commission for any dispute that is not timely resolved before the final recalculation settlement statement is issued, FERC added.

The Commission also ordered CAISO to allow interest to accrue on incremental changes that may arise throughout the full 36 months of the settlement process.

Denying a protest from Six Cities, FERC approved CAISO's requirement that allows only seven days to dispute incremental changes in the fourth recalculation settlement statement.

FERC Issues NOPR to Adopt NAESB Demand Response M&V Standards

FERC issued a Notice of Proposed Rulemaking detailing its intent to incorporate by reference into its regulations the North American Energy Standards Board's initial set of business practice standards for the measurement and verification of demand response products and services (NAESB Phase I M&V Standards), and associated terms used in the WEQ-015 glossary.

The NAESB Phase I M&V Standards proposed for incorporation into FERC regulations, "provide a starting place to develop a more comprehensive set of standards for the provision of demand response products in wholesale markets," the NOPR says, as FERC requested comments on whether the Commission should establish a deadline for the development of additional critical standards.

The NAESB standards developed for organized markets -- for energy services, capacity services, regulation services and reserve services -- categorize such services, and require system operators to publish details of how they will measure and verify their performance.

The initial standards establish a template for a system operator to disclose how it measures the performance of the demand response based on the reduction in electricity load, the length of time required to reach such load reduction, the length of time the load reductions were sustained, and whether the reductions and timing meet the market operators' standards. FERC said that the standards are meant to enhance transparency, provide consistency, and reduce transaction costs for customers that participate in demand response programs, particularly customers that operate in more than one organized market.

Briefly:

Patriot Energy Seeks Pa. Gas License

Patriot Energy Group applied for a Pennsylvania natural gas broker/marketer/aggregator license to serve all sizes of non-residential customers in all service territories. As only reported by *Matters*, Patriot Energy is currently seeking an Ohio electric broker license as well (Matters, 8/25/09)

Public Power & Utility Submits Conn. Letter of Credit

Public Power & Utility submitted an irrevocable standby letter of credit in the amount of $250,000 in compliance with a Connecticut DPUC directive (Matters, 9/10/09).

Cross Border Energy Receives Maine License

The Maine PUC granted Cross Border Energy a competitive electricity provider license to serve the medium and large non-residential customer classes at Maine Public Service, Eastern Maine Electric Cooperative, Houlton Water Company, and Van Buren Light & Power District. Cross Border also received authority to act as a Standard Offer provider for all classes in those service areas (Only in Matters, 9/14/09).

PUCT Staff Recommends no Changes to Proposed Rules Governing Independent Organization Decertification

PUCT Staff posted a draft proposal for adoption containing rules to govern the decertification of an independent organization (currently ERCOT) and the transfer of assets to a successor organization pursuant to PURA §39.151(d), which contains no substantive changes from the proposal for publication (Only in Matters, 6/26/09). Staff rejected Texas Industrial Energy Consumers' recommendation that the rule should provide that the certification of a successor organization must be completed before the existing organization is decertified, as Staff said such a provision would limit the Commission's flexibility when handling such a significant and extraordinary case.

Webcasting ... from 1

discretion to establish the assessment on each category of market participants, Staff noted.

While the statute only authorizes an assessment for REPs with more than 250,000 customers, TXU Energy had noted that the statute is silent as to how the assessment should be allocated among that subset of REPs. TXU argued that Staff's proposal to base the assessment on relative customer size places larger REPs at a competitive disadvantage, and, among other suggestions, recommended assigning the REP share of the assessment based on load.

As only reported in *Matters*, TXU also said that, unlike with the capacity threshold related to generation in the statute, the statute does not limit the REPs which can be charged an assessment to those with more than 250,000 customers within Texas, and said that the assessment should include REPs whose customer counts are below 250,000 in Texas but above 250,000 nationwide.

Staff said that it recommended an assessment based on the number of Texas customers a REP has because Texans will be the primary beneficiaries of free internet broadcasts of Commission meetings. "Because companies with more Texas customers have more individuals that can benefit from the free internet broadcasts, it is appropriate that they pay a larger share of the total assessments paid by all REPs," Staff said.

"REPs with more customers have more customers from which to recover assessment costs, so the proposed assessment methodology does not place them at a competitive disadvantage," Staff added.

The assessments that would be paid by generators with more than 5,000 MW of capacity in Texas would be (figures rounded):

- Luminant $36,800
- NRG Energy $24,900
- Calpine $16,900
- FPL Energy (NextEra) $11,500

Disconnects ... from 1

3. Should the Commission adopt changes to the requirements for levelized billing options?

   a. Should the commission adopt best practices or minimum standards for a true-up cycle?

   b. If so, how long between intervals is appropriate? (such as quarterly, semiannually, or annually)?

   c. Should the average be a rolling average?

4. Should the standard for qualifying for a deferral plan be different from the current standard?

   a. Should the time of the deferral and standards be different only during the months of June through September?

5. What effect should a late payment have on a person's ability to qualify for a deferral plan and what effect should a late payment have on the ability to continue to pay under a current deferral plan?

6. Should deferred payment plans offered to customers be extended to 5 months?

7. Should customers on deferred payment plans be prevented from switching to another REP before fulfilling the obligations of the deferred payment plan?

8. Should there be restrictions on customers that fail to satisfy obligations of deferred payment plans? For instance, if customers are unable to satisfy their obligations under a deferred payment plan in the previous year, should they be excluded from a deferred payment plan in the following year?

9. Are any improvements needed in the administration of the LITE-UP program? Should REPs be required to increase the number of bill inserts provided to customers for the program?

10. What improvements are needed regarding critical care customers and ill and disabled?

   a. Should a standard definition for critical care and ill and disabled across TDUs and REPs be applied?

   b. Once deemed critical care, should a customer have to re-apply for critical care status annually?

   c. Are there certain medical conditions that should qualify for critical care status automatically, provided a note from a physician is provided on behalf of the customer?

11. How can education efforts be modified regarding the designation of critical care customers?