Energy Choice Matters
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N.Y. PSC Denies Delay of Charging ESCOs for NTAC, Ancillary Costs at NYSEG, RG&E

The New York PSC denied ESCOs' request to delay the movement of the ancillary service costs and the NYPA transmission adjustment charge (NTAC) from the NYSEG/Rochester & Gas Electric nonbypassable rate to the utilities' bypassable supply charge for bundled customers, in an order accepting NYSEG and RG&E's petition to revise the methods used to calculate their variable supply and nonbypassable charges for bundled service customers due to the termination of the fixed price option (FPO) at the end of this year (07-E-0479, 09-E-0227 et. al., Only in Matters, 7/7/09).

With such ancillary and NTAC charges moved to the bypassable supply rate, NYSEG and RG&E will stop reimbursing ESCOs for the charges, as is the current practice. As only reported by *Matters*, the Retail Energy Supply Association had asked to delay the movement of the ancillary and NTAC charges until 2012, as ESCOs are serving customers on long-term contracts that do not include such charges in the rate, since such charges have always been reimbursed to ESCOs and have not been in the price to compare.

However, the PSC noted that in its order approving extension of the fixed price option, the Commission advised stakeholders that the fixed price option would be revisited and perhaps eliminated, and that the peculiar method of recovering NYISO commodity supply costs through the nonbypassable charge (NBC) was tied to the FPO offering.

"ESCOs should have, in their contracts, provided for the potential that this change to the NBC might occur," the Commission said in rejecting RESA's proposal.

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N.Y. PSC Extends Mitigation of NYSEG/RG&E Nonbypassable Charges to All Customers

All customers at NYSEG and Rochester Gas & Electric will receive mitigation of higher nonbypassable charges with relief starting October 2, under a One Commissioner Order by New York PSC Commissioner Maureen Harris (09-E-0228 et. al., Matters, 5/18/09).

Under a May PSC order, mitigation of higher nonbypassable charges (approved in the same order due to under-recoveries) was limited to customers taking service under the utilities' fixed price option (FPO). Mitigation was funded through payments from the Asset Sale Gain Accounts (ASGA).

As exclusively reported by *Matters*, manufacturer Pactiv Corporation filed a complaint arguing that customers on fixed-price ESCO contracts should receive equal mitigation, since in both cases customers entered into fixed supply arrangements with the expectation that the nonbypassable charges (NBC) would remain constant (Only in Matters, 8/18/09).

Harris agreed that, "customers taking a fixed-price commodity service from an ESCO that is the equivalent of the FPO service RG&E and NYSEG offer are situated similarly to the utility FPO customers."

"Moreover, while only utility FPO customers were exempted from the NBC increases, all customers supported the collection of the amounts deposited in the ASGAs that fund the costs of the exemption. Exempting the utility FPO customers from the entire NBC increase using ASGA

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REPs Oppose OPC's Higher Small Commercial Customer Cutoff

Expanding the threshold for a small commercial customer in Texas from 50 kW to 500 kW or 1,000 kW would, "raise rates for larger customers, add meaningless administrative burdens for REPs and provide no value," several REPs said in reply comments in two PUCT rulemakings regarding customer billing and expiration notice procedures (Projects 37070, 37214).

As only reported by *Matters*, the Office of Public Utility Counsel has recommended increasing the definition of small commercial customer to 500 kW or 1,000 kW (Only in Matters, 9/15/09).

Several REPs, however, noted that the Commission recently affirmed the current 50 kW cutoff (above which point customers may waive many customer protections) in February 2009 in Project No. 35768. In that proceeding, the Commission found that the, "current 50 kW standard is appropriate for the waiver of customer protections, as it has not seen undue harm resulting from the current standards," noted a coalition including the Alliance for Retail Markets, CPL Retail, Direct Energy, First Choice Power, Gexa Energy, Green Mountain Energy, Reliant Energy, Stream Energy, the Texas Energy Association for Marketers, TXU Energy, and WTU Retail.

Furthermore, the REPs argued that, "numerous customers less that 50 kW complain about the fact that they cannot negotiate different provisions than those that appear in the customer protection rules."

Broader application of the customer protection rules would simply increase costs with no customer benefits, the REPs added. For example, if OPC's recommendation were granted, the Electricity Facts Label (EFL) would be required for customers up to 500 kW (or 1,000 kW). The EFL requires that the total average price be expressed in cents per kilowatt-hour based on 1,500, 2,500, and 3,500 kWh usage with an assumed 30% load factor. A 50 kW customer at 30% load factor would use 10,950 kWh, more than three times the maximum usage listed on the EFL, the REPs noted. "An EFL in this instance is not without expense to produce, yet it is completely meaningless to the customer and without value," the REPs said.

"Many other provisions are equally without meaning to larger customers," the REPs continued. PUC Subst. R. 25.475(c)(2)(A) limits contracting paragraphs to 250 words. "This is simply unworkable for larger customers," the REPs said.

Fox, Smolen & Associates, however, reiterated that customers under 500 kW, "are not very different than customers with demand under 50 kW."

"In our experience representing commercial customers above or below demand of 50 kW, we find that the vast majority of these customers are not in a position to exercise bargaining power with the REPs," Fox, Smolen & Associates said.

Expiration Date on Non-Residential Bills

The REPs also argued that PURA does not require the expiration date for a term product to be displayed on the bill for non-residential customers, as interpreted by OPC and others. REPs noted that under HB 1822, PURA §39.112(c) states, "A retail electric provider shall include on each billing statement the end date of *the* fixed rate product (emphasis added)."

"The Commission must ensure the meaning of the phrase 'the fixed rate product' in PURA §39.112(c) is properly reflected in the rule. Under the rules of statutory construction, the Commission must presume that every word or phrase in a statute has been chosen for a particular purpose," the REPs said, noting that the Legislature chose to use the phrase "a fixed rate product" in PURA §39.112(b), a subsection which clearly applies only to a fixed rate product provided to a residential customer.

"Conversely in PURA §39.112(c), the legislature chose to use the phrase 'the fixed rate product.' Under rules of statutory construction, the phrase 'the fixed rate product' in PURA §39.112(c) must refer to a specific type or category of 'fixed rate product' previously mentioned in the statute. The only specific type or category of 'fixed rate product' mentioned in the statute prior to PURA §39.112(c) is found in §39.112(b), i.e., a residential fixed rate product. If the Legislature intended that PURA

§39.112(c) apply also to the non-residential market, it could have used the words 'a,' 'any,' or 'every' to modify the phrase 'fixed rate product' there, as it did in §39.112(b)," the REPs said.

The Texas Electricity Professionals Association countered that, "We are not attorneys so we do not have a legal opinion on this, but it is clear from the plain reading of the law and the statements by Chairman [Burt] Solomon [sic] during the hearings that he did not mean to limit this to residential customers."

Expiration Notices

OPC and several consumer groups opposed the REPs' recommendation that expiration notices not be required to contain the amount of any termination fee applicable if the customer switches prior to the 14-day waiver period before expiration. REPs have argued that HB 1822 only requires a "description" of the termination fee but does not mandate any amount be listed.

The Texas Ratepayers' Organization to Save Energy, Texas Legal Services Center and AARP Texas said that the, "amount of the fee is a part of the description and we would conclude [that it is] the most important part of the description for the consumer," urging the Commission to reject the notion that a description of fees does not include the amount of the fee.

The REPs objected to the "alarmist" language that was proposed by the Steering Committee of Cities Served by Oncor to be included in the expiration notice if the EFL for the default renewal product is not included with the notice. As previously reported, the Oncor Cities said that REPs should inform the customer that the default renewal product may include, "substantially different -- and possibly higher -- rates."

"The point of the notice should not be to scare the customer, but to simply let the customer know that there is going to be a change and the customer needs to make a decision," the REPs said. The REPs noted that the Commission's language requires the REP to provide the EFL for the default product at least 14 days prior to the expiration of the contract. "Therefore, the customer will have ample time to review the default EFL before taking action in the two weeks preceding contract expiration. No additional scare tactics are necessary or appropriate," REPs said.

REPs also objected to a proposal to require term contracts to end on a specific date one year after their start regardless of TDU meter reading, as suggested by some load representatives.

"The meter reading cycle process is part of the market design that exists at this time, and REPs render bills in accordance with this part of the market design. To the extent that the TDUs cannot guarantee that every meter read will be performed on an exact date, REPs should not be subjected to the impossible requirement of guaranteeing the exact date upon which every residential fixed rate contract will end," REPs said.

REPs likewise opposed any extension of the 14-day period prior to the end of a contract during which time termination fees must be waived. While load representatives said that no termination fee should be enforced from the time the REP sends the expiration notice, REPs noted that the Commission recently adopted the 14-day waiver period in response to the current switching timeline. As there has been no change in the switching timeline, no change in the waiver period is appropriate, REPs said.

The Texas Energy Association for Marketers reiterated its argument that HB 1822 does not impose any requirement for the REP to send an Electricity Facts Label for the default renewal product with the renewal notice. Since sending an EFL after the customer has switched in response to a renewal notice would create confusion, TEAM said that REPs should only be required to notify customers how to obtain the default product EFL.

OPC agreed with REPs that REPs should not be required to send residential contract expiration notices through both mail and email, and that notices should only be sent via the customer's preferred method of contact. The Commission's proposed rule amendments would require notices via mail and email.

Changes in TDU Charges

REPs reported a problem that has arisen due to PUC Subst. R. §25.475(d)(2)(B), which requires that following an allowed price change to a fixed product, each bill shall either show the price change on a separate line item, or shall include a conspicuous notice stating that the amount billed includes allowable price changes. "[T]his provision cannot always be implemented due to how TDUs implement rates," the REPs said.

For example, in one recent rate change, the market was notified on a Friday that new rates would be implemented effective on Thursday, which required cancel/rebilling of invoices that had already been generated by the TDU. "Although the market had been working toward an effective date for those rates that would be a few days later, the TDU implemented the rates on the previous day because the order made rates effective on the date the order was signed, and in this case the ALJ signed and filed the order sooner than expected. Notwithstanding the costs to REPs for handling customer confusion surrounding the cancel/rebilling of these particular invoices, the process used to implement TDU rates may force REPs to forego cost recovery or to recover such TDU rate changes by spreading them to a set of customers on whose behalf the costs were not incurred in the first place," REPs said.

"The rules applicable to REPs must be conformed to accommodate how the Commission is allowing TDU rate changes," REPs argued, citing the implementation of transition charges as another example of the problem, since these charges take effect with little or no notice.

Such rate changes that go into effect based simply on when a filing is made or when an ALJ signs an order provide no predictability for REPs to be able to plan for the rate change and adjust billing systems in accordance with the rule, REPs added.

REPs suggested modifying the current rule so that REPs may comply with price change notice requirements by stating on bills that the rate "may" include price changes allowed by the rules of the Public Utility Commission, rather than including a definitive statement whether the rate includes, or does not include, any Commission-approved changes.

Only a related issue, several TDUs supported a clarification that REPs may pass-through changes in TDU charges to customers on variable products in the same way they may do so with fixed and index products. As Reliant, Gexa, Green Mountain, and Stream noted in earlier comments, there is currently no explicit authority allowing REPs to pass through such TDU charges on variable products, while rules requiring that the variable rate billed in the initial month to equal the rate on EFL could be construed as preventing any immediate pass-through of changes in TDU (or similar) charges. Oncor, the AEP companies and Texas New Mexico Power said clarification that REPs have such authority to pass-through revised TDU charges is needed, since REPs will experience losses without being able to pass-through higher TDU-imposed costs. "REPs could work to reduce their exposure to these losses by beginning to actively oppose necessary changes to TDU rates," the TDUs said.

"While potentially beneficial to REPs in the short-term, such a posture would be detrimental to the market as a whole in the long-run if it led to reasonable and necessary investments and expenses being delayed, reduced, or eliminated," TDUs noted.

CenterPoint Energy agreed that prohibiting the pass-through of revised TDU charges to variable priced products "makes little sense."

Billing Terms, Effective Date

OPC argued that all discretionary service charges should be defined through Commission-approved common terms, not simply "meter re-read" as proposed in the rule.

The Steering Committee of Cities Served by Oncor opposed the REPs' petition that REPs be allowed to use billing terms not materially different from the Commission-adopted common terms (such as using "charge" or "fee" or "factor" in lieu of "surcharge").

"In order for consumers to make apples-to-apples comparisons between billing plans, they must have the capability to compare identical billing terms, not merely similar ones. Using terms not defined by the Commission introduces significant confusion into the billing process," Cities said. "A term that one REP considers not 'materially different' from those defined by the Commission might be considered different by a consumer attempting to compare electricity deals," Cities added.

OPC opposed the REPs' request that they be given until March 1, 2010 to comply with any rule changes, as OPC said that REPs, "have been on notice for quite some time that changes were coming and were to be effectuated to assist customers in understanding their bills and to provide notice of fixed-price contract expiration dates."

Direct Energy Announces Gas Marketing Agreements With Three Ohio Cities

Direct Energy announced new marketing agreements with three Ohio municipalities under which Direct will offer residential and small business customers in those jurisdictions term natural gas products.

Under the Direct Choice product, Direct said that the City of Marietta has arranged for Direct Energy to offer its residential and small business customers a natural gas price of $6.98 per mcf for the first three months of service (November 2009 through January 2010 bill cycles); and a price of $6.854 per mcf for the remaining nine months of the program (February 2010 through October 2010 bill cycles).

The City of Barberton has arranged for Direct Energy to offer its mass market customers a natural gas price of $6.66 per mcf for the first year (December 2009 bill cycles through November 2010 bill cycles) of the two-year program.

The Village of Lisbon has arranged for Direct Energy to offer its mass market customers a natural gas product priced at $.737 per ccf for the first year (November 2009 bill cycles through October 2010 bill cycles) of the two-year program.

Direct said that it supplies opt-out aggregations run by Barberton and Marietta, but said that the Direct Choice product is separate from the aggregations and requires the customer to choose and actively enroll onto the product. Aggregation opt-out notices with the aggregation prices will be received by customers in those two cities in either September or October.

REPs Must Be Able to Pass-Through TDU Charges in Same Manner as TDUs, REPs Say

REPs must be able to pass through any TDU rate changes in the same manner and on the same timeline that the TDU applies the rate change, including, as necessary, providing REPs with adequate notice after a rate change is approved before it goes into effect, REPs said in response to comments from CenterPoint Energy and the AEP companies, who had urged the PUCT to ensure more timely recovery of transmission costs changes imposed on distribution service providers (Only in Matters, 9/15/09).

The REPs jointly filing comments were CPL Retail Energy, Direct Energy, First Choice Power, Gexa Energy, Green Mountain Energy, Reliant Energy, TXU Energy, WTU Retail, the Alliance for Retail Markets, and the Texas Energy Association for Marketers.

As only reported by *Matters*, AEP and CenterPoint all but asked for authority to change the transmission cost recovery factor (TCRF) charged by distribution service providers to REPs more frequently, in a PUCT rulemaking examining Subchapters H through J of Chapter 25 of the Substantive Rules.

The REPs deferred any substantive discussion on the frequency of TCRF changes to a rulemaking to be opened by Staff to address Transmission Cost of Service and TCRF filings, but said that any changes must address the effect of such changes on REPs and end-use customers.

Texas Industrial Energy Consumers opposed any more frequent updates to the TCRF, which may currently be updated twice annually, by arguing that regulatory lag is inherent in the regulated utility model, and that utilities are compensated for such lag through their rate of return.

Briefly:

BlueStar Energy Services Seeks Pa. Electric License

BlueStar Energy Services applied for a Pennsylvania electric supplier license to serve commercial customers over 25 kW, industrial customers, and governmental customers in all service areas.

Electric Advisors Seeks Pa. Broker License

Electric Advisors Inc. applied for a Pennsylvania electric broker/marketer license to serve all classes of customers in all service areas. Electric Advisors said it will initially focus on PPL.

Illinois ALJ Would Deny Suppliers' Recommendations for ComEd Smart Grid Plan

An Illinois ALJ's proposed order which would approve a smart grid pilot program for Commonwealth Edison would deny the objections raised by competitive suppliers (Only in Matters, 9/9/09). The draft decision would grant ComEd a waiver of the Integrated Distribution Company code so it could market its smart grid pilots to customers, ordering ComEd to include Staff's additional language holding that, "The Company will not act to discourage customers from switching to [competitive] service." The proposed order would deny the Illinois Competitive Energy Association's recommendations that: (1) ComEd be required to inform all customers in the pilot areas of retail choice; (2) that customers who leave the pilot for competitive service be allowed to keep any in-home devices received under the pilot and retain incentive payments; (3) ComEd be required to subsidize suppliers' behind-the-meter offerings similar to its own under the pilot; and (4) ComEd should not be allowed to implement hold harmless provisions for pilot customers. ICEA also failed to link ComEd's smart grid pilot with implementation of Purchase of Receivables, the ALJ said.

Luminant, CPS, NRG File PRR to Improve ERCOT Load Forecasting

Luminant, CPS Energy and NRG Texas have submitted Protocol Revision Request 834 at ERCOT to monitor and establish performance standards for ERCOT's load forecasting of the ERCOT Region and ERCOT Congestion Zones, in an effort to improve load forecasting and reduce over-commitment which can depress prices. According to its sponsors, the PRR would introduce a widely accepted practice in forecasting, by probability weighting multiple load forecasts and reducing the load forecast error. The sponsors requested urgent status for the PRR given the problems associated with the current over-commitment, as noted by the Independent Market Monitor and reiterated by the PUCT last week.

FERC Approves MISO Interchange Schedule Revisions

FERC accepted without modification the Midwest ISO's tariff filing to prohibit a market participant from submitting or modifying Interchange Schedules during the operating hour, except as necessary for reliability purposes as determined by the Midwest ISO. MISO said that the changes are needed to prevent market participants from scheduling large quantities of intra-hour imports and exports during the fourth quarter of the hour, after they have seen the prices that will be included in the integrated hourly settlement price for that operating hour (Only in Matters, 7/31/09). FERC rejected an exception sought by AMP-Ohio, finding that AMP had not justified the exception (Matters, 8/20/09).

NTAC ... from 1

"The NYISO ancillary and NTAC costs that NYSEG and RG&E currently recover through NBC charges are commodity costs appropriately borne by the commodity supplier. Moving the recovery of these costs from NBC charges to commodity rates is therefore appropriate," the Commission said.

The PSC further held that the capacity which NYSEG purchases for its variable rate customers is correctly charged to those customers at NYISO spot market prices rather than at monthly auction prices, because NYSEG purchases the capacity in the spot market.

For customers other than those charged mandatory hourly prices, capacity tags will be established through load profiles. A customer-specific tag will be established for mandatory hourly pricing customers.

The Commission accepted NYSEG's proposal to allocate unaccounted for energy (UFE) proportionately to ESCOs based on the load they serve, rather than absorbing those costs itself. However, the PSC held that to assist the ESCOs in adjusting to this change in practice, NYSEG must furnish them with historic data on the unaccounted for energy costs. The PSC directed NYSEG to provide ESCOs with the percentage, on an hourly basis, of total sub-zone load that was allocated to UFE during calendar years 2007 and 2008. Based on 2008 data, the cost to the ESCOs will amount to about $1.0 million annually.

NYSEG's current practice of crediting eastern zone customers with an offset against commodity price differences between eastern and western NYISO zone prices shall end with the termination of the fixed price option, the Commission held, as there is no longer a need for this equalization practice. "Its elimination is also justified by cost causation principles, because commodity prices in the eastern zone after elimination would then reflect the fact that NYISO prices are higher in the eastern zone," the PSC found.

To reduce volatility upon their proposed return to monthly variable nonbypassable charges, NYSEG and RG&E shall forecast the variable supply charge for each month in a manner similar to that used to forecast the nonbypassable charges, based on energy futures prices, the Commission ordered. Two months later, true-ups will be conducted for both the supply and nonbypassable charges. "This revised method will reduce volatility, as the NBC and variable charges will move in opposite directions depending upon changes in energy futures prices," the Commission said.

The Commission denied Constellation Energy's request that NYSEG and RG&E make a list of customers on the fixed price option available to ESCOs. "The utilities ... developed these lists of customers as competitors of the ESCOs, and that sort of competitive data is not normally shared," the PSC concluded.

The PSC also rejected RESA's petition that the Commission impose a five-year stay-out on any re-introduction of the fixed price option.

RG&E and NYSEG said that they intend to hedge 60% of their supply obligations. However, the Commission said that merely setting a hedging percentage does not comply with the Commission's supply portfolio orders, and said that the utilities' compliance will be based on the content of required quarterly hedging reports.

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funds retained for the benefit of all customers appears inequitable," Harris said.

Accordingly, Harris ruled that all customers shall receive mitigation of the higher nonbypassable charges, including all ESCO customers and variable-priced bundled service customers.

"Spreading mitigation to all customers paying the NBC, including ESCO fixed-price customers and all variable-price customers, is appropriate. Since those customers all contributed to the ASGA, they are entitled to a reasonable share of the benefits flowing from the ASGA. Moreover, this outcome results in equitable treatment of all customers, whether taking commodity supply from an ESCO or from a utility. It therefore furthers the equitable and fair administration of the competitive marketplace for retail electric commodity service," Harris found.

The mitigation shall start October 2 through the end of the current nonbypassable charges on December 31, 2009. No retrospective relief to ESCO customers was ordered.

The expanded mitigation will not fully offset the increased nonbypassable charges as the original mitigation did. The extension of mitigation to all customers will also result in a reduction in the current mitigation paid to utility FPO customers.

The per-kWh credit for mitigation for all customers at NYSEG is expected to amount to about 0.6¢ per kWh. For customers at RG&E, the mitigation is expected to amount to about 1.2¢ per kWh. "Under this approach, the impact of the increase on utility FPO customers will no longer be mitigated in its entirety. Those customers, however, have already received a disproportionate benefit from full exemption of the NBC increases for four months while other customers received no mitigation, and they will continue to see substantial mitigation, through the credit applicable to all customers," Harris noted.

NYSEG and RG&E were directed to file tariff amendments implementing the revised mitigation to become effective on a temporary basis on October 2. The amendments shall not become effective on a permanent basis until approved by the Commission.