

Energy Choice

Matters

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Md. PSC Orders POR Discounts at BGE, Pepco, Delmarva; Accepts Proposed Start Dates

In orders repeating its findings with respect to Allegheny Power, the Maryland PSC ordered Baltimore Gas and Electric, Pepco, and Delmarva Power to file appropriate discount rates for their electric Purchase of Receivables programs, denying their applications to recover various implementation and uncollectible expenses in distribution surcharges (Only in Matters, 10/7/09).

In language appearing in three separate letter orders specific to each utility, the PSC reiterated that, "[t]he Commission is not willing to impose the cost of implementing customer choice on ratepayers, especially in a manner that absolves suppliers of all cost and risk. "

"Suppliers should bear an appropriate share of the cost and risk of their business - risks already mitigated by the new regulatory requirement that the utilities purchase their receivables," the Commission held, in ordering the utilities to negotiate a discount rate to be applied uniformly by rate classes to all retail suppliers.

The Commission declined to allow utilities to collect a return or profit from the purchase of receivables; however, to the extent the utilities end up realizing some "return" from the difference between the discount and their actual collections, that is acceptable.

The discount rate should be comprised of the following components: (1) commodity-related bad-debt collections; (2) program development and operation costs associated with COMAR provision implementation, including administrative and collection costs; and (3) the risk associated with the continuation of the supplier-customer relationship. The utilities may develop a methodology that allows them to review the factors on an annual basis, and propose changes in the discount

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Md. PSC Staff Issues Additional Questions for Long-Term Contract Proposals

Maryland PSC Staff issued a list of additional elements that prospective respondents to the Commission's request for long-term contract or generation proposals in Case 9214 should include in their proposals.

As only reported in *Matters*, the PSC opened a new proceeding to investigate whether it should exercise its authority to order electric utilities to enter into long-term contracts to anchor new generation, or to construct, acquire, or lease and operate new electric generating facilities in Maryland. The Commission's order said that proposals should address the following factors, at a minimum: the location of the proposed facility, the number of megawatts to be produced, the type of generation technology to be utilized, the Commercial Operations Date, and for long-term contracts, the contract length.

Last Friday, Staff notified potential respondents of additional elements which should be addressed:

1. The structure and type of contract offered (contract for differences, cost-based contract, PURPA/avoided cost, etc.);
2. Pricing terms sought for each element of the contract;
3. Options the party making the offer would be willing to consider in the contract;

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FERC Approves MISO Firm Redirect Reforms

FERC accepted the Midwest ISO's proposal meant to correct a tariff flaw related to changes in Receipt and Delivery Points on a firm basis (firm redirects), clarifying that the higher-of pricing policy sought by MISO shall only be applicable to short-term firm redirects (ER09-1543).

As only reported in *Matters*, MISO sought to close a "loophole" regarding firm redirects which has allowed market participants to use unscheduled reservations to PJM to avoid otherwise applicable transmission service payments, resulting from the elimination of through and out rates (*Matters*, 8/12/09). MISO proposed that, for firm redirects that would result in a lower transmission rate, the customer shall be charged the applicable transmission rate, plus the difference between the lower rate and rate for the original path.

Although FERC had previously rejected such higher-of pricing, the Commission found that MISO has now shown that parties have redirected 16.45 million MWh of energy to zero-rate transmission paths for delivery to PJM, with 89.9 percent of the redirects (or 14.69 million MWh) being unscheduled. FERC noted that all of the unscheduled firm redirects were short-term redirects (daily, weekly, or monthly).

"Certain transmission customers have essentially used the Tariff to avoid paying transmission costs associated with their initial transmission reservations. This has resulted in inefficient use of the transmission system and such customers failing to pay their fair share of the costs of the transmission system," FERC held.

As the Midwest ISO only presented evidence of market inefficiencies with respect to "short-term" firm redirects, FERC limited the new higher-of pricing to short-term firm redirects.

"Moreover, because we are limiting the revised tariff language to short-term firm redirects, Midwest ISO would not over-recover its costs since all short-term firm service is revenue credited on an annual basis to the transmission owners' transmission revenue requirement. However, because market participants continue to pay the transmission rate on the original path,

we will require Midwest ISO to develop and implement an appropriate crediting procedure to provide a credit to the redirecting customer if Midwest ISO resells the released capacity on the original path and the path is constrained at the time of resale," FERC ordered.

FERC dismissed protests from Cargill Power Markets and DTE Energy Trading, who had argued that MISO's proposal would result in less firm available transfer capability. FERC concluded that under the Midwest ISO's proposal, "more efficient transmission reservations could occur by market participants because they would have to pay for the transmission they reserve; this in turn should decrease the reservations and increase the available transfer capability."

The Commission also denied a request to grandfather existing reservations or allow a one-time annulment option. "We have found that certain market participants are taking advantage of the Tariff and that it is necessary to correct this behavior as soon as possible to protect the integrity of the market," FERC said.

Texas ALJ Dismisses Wind Generators' Reactive Power Complaint

A PUCT ALJ has dismissed a complaint from competitive wind generators against ERCOT regarding reactive power requirements, finding that the matter should first be addressed in ERCOT's alternative dispute resolution process (36482, *Matters*, 8/19/09).

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.

With the case recently unabated, ERCOT asked for a decision on its pending motion for dismissal on procedural grounds, arguing that

the protocols require use of the alternative dispute resolution process prior to bringing a complaint before the Commission (Matters, 9/11/09).

The ALJ affirmed that PUC Proc. R. § 22.251(c) requires use of the alternative dispute resolution process prior to filing an appeal, except for a showing of good cause. The ALJ further concluded that silence regarding the alternative dispute resolution process in Subst. R. § 25.503(f)(2)(A) does not mean that the Substantive rule permits an appeal without use of the alternative dispute resolution, since such an interpretation would conflict with the plain requirement for use of alternative dispute resolution under § 22.251(c).

Furthermore, while § 22.251(c) contains an exception for direct appeals to the Commission, the ALJ noted that the exception applies when compliance with the ERCOT procedures would inhibit the provision of continuous and adequate service. The wind generators' complaint, however, "appears to relate fundamentally to expense rather than the ability to provide continuous and adequate service," the ALJ found, concluding that the exception does not apply.

Whole Foods Says Conn. Assessment Inapplicable to Self-Suppliers

WFM Intermediary New England, the affiliated electric supplier of Whole Foods, petitioned the Connecticut DPUC to clarify the applicability of the assessment in Conn. Gen. Stat. § 16-49 to entities which self-supply electric service. WFM argued that the assessment is not applicable to customers that self-supply generation service from the wholesale market.

Conn. Gen. Stat. § 16-49 requires certain entities to pay an annual assessment to the DPUC for that company's share of all expenses of the Department and the Office of Consumer Counsel. Among various utilities, the assessment applies to any electric supplier that had more than one hundred thousand dollars of gross revenues in the state in the calendar year preceding the assessment year, except any such supplier not providing electric generation services to retail customers in the state.

While WFM holds a retail supply license, it does so for the sole purpose of self-supply, arguing that it does not fall under the definition of retail supplier in § 16-49.

WFM stressed that it, "provides no such [electric] services to retail customers in Connecticut, or any other state."

WFM dismissed arguments that its parent Whole Foods is its retail customer, claiming that such a view conflicts with the language of its supply license which designates Whole Foods as a self-supply customer. The DPUC's licensing order granted, "WFM an electric supplier license to self-serve its stores in Connecticut."

WFM contended that a customer cannot be considered both retail and self-supply; "it is a choice of one or the other."

Additionally, WFM cannot be considered a retail supplier, it said, since its license, per DPUC order, "is for the limited circumstance of when a NEPOOL Market Participant End-User forms an affiliate for the purpose of buying power from the NEPOOL wholesale market and reselling to an affiliated NEPOOL Market Participant End User."

WFM further noted that it sells its wholesale power purchases to itself, at cost, and derives no mark-up or profit from the supply transactions. "The assessment rendered by the CT DPUC is clearly intended as a tax, to be applied only to those entities seeking to profit off of retail supply business within the state of Connecticut, as evidenced by both the gross revenue exception as well as the no retail customer exception included in 16-49," WFM said.

FERC Staff Issues Questions on Transmission Cost Allocation

FERC's, "best remaining opportunity to eliminate barriers to new transmission construction," may be to provide greater certainty in cost allocation policies, particularly for facilities that cross multiple transmission systems, FERC Staff said in issuing a series of questions regarding transmission planning for stakeholder comment (AD09-8).

FERC Staff asked for comments on whether existing cost allocation practices may create a disincentive to invest in new transmission, and if

so, how they might be changed. Staff is also seeking comment on whether the Commission should pursue generic reform in the area of cost allocation, or rather should continue to address cost allocation issues as they arise on a case by case basis.

Among several questions posed by Staff is whether cost allocation mechanisms should continue to differ based on whether a project is deemed necessary based on reliability and adherence to approved reliability standards, versus economic considerations. Should the determination of beneficiaries of a transmission facility include generators as well as loads, Staff asked.

Staff also sought comments on transmission planning across neighboring transmission systems, and interconnection-wide planning. "[T]here appears to be a lack of consistency across existing transmission planning processes regarding the treatment of certain types of resources. Planning transmission facilities necessary to meet state renewable resource requirements must be integrated with existing transmission planning processes that are based on metrics or tariff provisions focused on reliability or in some cases production cost savings. As a result, some areas are struggling with how to adequately address transmission expansion necessary to integrate renewable generation resources ... In some regions, there are transmission planning practices that disproportionately affect certain types of generation, such as resources developed by independent power producers. The interconnection queue process may serve as a further hindrance to the efficient planning of transmission investment. Finally, there does not appear to be a consistent way of treating demand resources, such as demand response and energy efficiency, in transmission planning activities," Staff noted, in prefacing a series of questions.

Briefly:

UGI Energy Services Receives Illinois Gas License

The Illinois Commerce Commission granted UGI Energy Services an alternative gas supplier license to serve all customer classes, including

residential customers, at Nicor Gas, North Shore Gas, and Peoples Gas (Only in Matters, 9/1/09).

PG&E Expects to File Three Contract Novations by Month-End

Pacific Gas & Electric expects to file for approval for novations of three Department of Water Resources supply contracts by the end of October, but there has been no material progress on several priority contracts which remain tied up in other litigation. PG&E reported that it expects to file a renegotiated contract with GWF Energy by mid-October, and two renegotiated contracts with Calpine by late October. However, no progress has been made on the priority Coral and Pacificorp contracts, which are wrapped up in FERC litigation. Southern California Edison and San Diego Gas & Electric did not report any material progress in their negotiations (as previously noted SCE has filed for novation of the Mountain View Power Partners contract), and the priority Sempra contract remains part of global settlement talks relating to the California energy crisis.

Castlebridge Seeks Md. Electric License

Castlebridge Energy Group applied for a Maryland electric supplier license to serve all classes of customers at the four investor-owned utilities, Choptank Electric Cooperative, and the Southern Maryland Electric Cooperative. Castlebridge is affiliated with current electric supplier BTU Energy. Principal Mark Schroeder was previously an owner at South River Consulting.

Texas Energy Transfer Power Files Amendment for Option 2 REP Certificate

Texas Energy Transfer Power applied for an amendment to the REP certificate of TexRep 4 to reflect new ownership under Energy Transfer, and to change the REP from an Option 1 REP to an Option 2 REP (Only in Matters, 10/2/09). All of the customers to be initially served by Texas Energy Transfer Power as an Option 2 REP would be affiliates under the Energy Transfer corporate umbrella.

N.Y. PSC Schedules RPS Technical Conference

The New York PSC will hold a technical

conference to explore the issues associated with the retail Renewable Portfolio Standard program on October 28. Issues to be discussed include benefits and costs of the program, program design and implementation, and an assessment of the potential for the development of additional renewable energy resources and associated costs.

NRC Approves EDF Investment in Constellation

The U.S. Nuclear Regulatory Commission has approved the investment structure and license transfer related to EDF's investment in Constellation Energy Nuclear Group, LLC.

ICC Approves Dismissal of Complaint Against Broker LBE

The Illinois Commerce Commission accepted a joint motion to dismiss a complaint without prejudice originally brought by end users Arlington Lanes and RLD Corporation against broker LBE, LTD under the state's ABC law (Only in Matters, 9/3/09). As only reported by *Matters*, Arlington and RLD had alleged that LBE did not disclose remuneration as required under the ABC law.

ICC Approves ComEd Waiver Related to Billing Definitions

The Illinois Commerce Commission granted Commonwealth Edison a waiver of certain billing rules to accommodate the future inclusion of retail electric supplier charges on ComEd delivery bills (Only in Matters, 9/7/09). Specifically, ComEd received a waiver of the requirement that it include with each bill definitions or explanations of any abbreviation and technical terms used on the bill, in order to make room for explanations of various supplier charges in the future without adding a page to the bill. Under ComEd's modifications, ComEd will end the use of the abbreviations ACT (Actual), EST (Estimate), MULT (Multiplier) and Tot (Total) on the reconfigured bills, using the full words instead. For the remaining definitions to be removed, ComEd will inform customers twice annually how to obtain such information in a separate brochure, and will provide the brochure to customers by mail annually, on its website, to new customers, and to any customer requesting

the information when calling the call center.

Southern Power Acquires Texas Biomass Plant

Southern Power, the wholesale generation arm of Southern Company, is acquiring Nacogdoches Power, LLC from American Renewables, LLC and will move ahead with construction of a planned 100-MW biomass power plant in Sacul, Texas. Groundbreaking is expected in the fall of 2009 and commercial operation is projected for the summer of 2012. The plant's output is committed through a 20-year power purchase agreement with Austin Energy. "This acquisition fits Southern Power's business strategy of growing the business in the wholesale market through acquiring generating assets and building new units - for which the output is significantly covered by long-term bilateral contracts," said Southern Power CEO Ronnie Bates. A purchase price was not disclosed, but Southern said that the total price of the acquisition plus construction will be between \$475 and \$500 million

Md. POR ... from 1

percentage based on historical data related to POR.

The PSC accepted each utility's proposed POR implementation date:

- BGE: April 1, 2010
- Pepco: April 1, 2010
- Delmarva: December 7, 2009

The Commission will not require the utilities to purchase any receivables retroactive to the date on which the POR billing system is implemented, and will not look favorably on any request for an extension of time to implement the POR billing system.

The Commission affirmed that the requirement for purchase of receivables relates only to the commodity charges, and said that the utility is not required to purchase non-commodity charges. The Commission reserved the right to re-visit this decision in the future.

The PSC ordered utilities to retain tariff language regarding supplier consolidated billing, although the Commission noted that the issues of purchase of receivables and the supplier's qualifications to provide a billing service have

not been determined. Should any supplier wish to use supplier consolidated billing, the Commission believes that the issues of purchase of receivables and the qualifications of the supplier to provide consolidated billing must be considered prior to the start of any supplier consolidated billing.

Md. Proposals ... from 1

4. A comparison to the proposal offered by CPV Maryland, including an explanation of why the proposed location of the facility is, or could be, preferable to that proposed by CPV;

5. Quantification of potential benefits for Maryland ratepayers and the Maryland electric grid, and

6. A discussion of how risks are allocated under the contract (which party bears energy and capacity market risks, construction risks, etc.).

Proposals are due December 1.