

Energy Choice Matters

October 13, 2009

Settlement Reached in Michigan Gas Choice Tariff Investigation

Michigan alternative gas suppliers would not be allowed to make customers pay a termination fee before executing a requested drop to bundled service, under a settlement among PSC Staff, the LDCs, and several retail suppliers. The settlement concerns the Commission's investigation into several provisions of the LDCs' choice tariffs, including residential customer protections and solicitation requirements, which was an outgrowth of the Commission's investigation into Universal Energy's marketing practices (U-15929, Matters, 4/17/09).

Proposed tariff language was not available yesterday, but the settlement's preamble did cite the prohibition on blocking returns to system service.

The stipulation was signed by PSC Staff, Michigan Consolidated Gas Company, Consumers Energy, Michigan Gas Utilities, SEMCO Energy Gas Company, the National Energy Marketers Association, Constellation NewEnergy-Gas Division, MXenergy, Universal Energy (now owned by Just Energy), Interstate Gas Supply, and several other retail suppliers.

The LDCs have agreed to voluntarily file several tariff changes under the settlement, if approved by the Commission. Accordingly, as part of the stipulation, MichCon would withdraw its motion to dismiss the Commission's investigation into the choice tariffs. MichCon had argued that the Commission lacked authority to order the utilities to implement any tariff changes, as the Michigan Supreme Court has held that MCL 460.6 does not grant the Commission authority to order utilities to implement retail gas choice programs (Only in Matters, 6/3/09). The statute only requires that any retail supplier be licensed by the Commission, and the LDCs' choice programs and associated tariffs

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Schwarzenegger Signs SB 695 Expanding Eligible Direct Access Load

Calif. Gov. Arnold Schwarzenegger has signed SB 695, which, among other things, allows additional customers to be served on direct access, subject to a load cap (Matters, 4/27/09).

Since direct access was suspended, only customers on competitive supply on September 20, 2001, have been eligible to shop for electricity. SB 695 removes that restriction for non-residential customers, and allows non-residential customers to acquire electric service from competitive providers subject to a cap specific to each utility service area.

The maximum allowable annual limit of kilowatt-hours served competitively shall be established by the PUC equal to the maximum total kilowatt-hours supplied by competitive providers in a utility service area during any sequential 12-month period between April 1, 1998, and the effective date of SB 695. The PUC shall phase-in the cap over a period of no less than three years and no more than five years, starting on the sooner of the bill's effective date, or July 1, 2010. The Commission shall review, and if required modify, rules for direct access service, but the review shall not delay the start of the phase-in schedule.

The bill otherwise continues the suspension of direct access until the legislature, by statute, repeals the suspension or otherwise authorizes direct transactions.

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Proposed Decision Finds Oxy REP May Serve Oil Fields in Co-op's Territory

Occidental Permian Ltd.'s Cogdell oil fields in Kent County, Texas, are legally served by Oncor and entitled to customer choice, an ALJ would find in a proposal for decision released yesterday (35690, Matters, 6/12/08).

Occidental Permian is served on a customer-owned distribution system that is connected via a delivery point with Oncor. It receives retail electric supply for the fields, known as the Cogdell Unit, from affiliated Option 2 REP Occidental Power Marketing.

However, part of the Unit is located within the area singly-certificated to Big Country Electric Cooperative. As such, Big Country Electric Cooperative filed a complaint at the PUCT alleging that the service Occidental Permian receives is in violation of the cooperative's exclusive right to provide service in its certified area.

However, after reviewing the establishment of CCNs and boundaries after PURA was enacted in 1975, the ALJ concluded that there is "no doubt" that Oncor's predecessor, Texas Electric Service Company (TESCO), was granted a CCN in 1976 to continue providing service to the entire Cogdell unit, including that portion extending into Big Country Electric Cooperative's service area, consistent with the grandfather provisions of PURA75.

Moreover, when Big Country Electric Cooperative's predecessor (Midwest Electric Cooperative) filed for a CCN in 1976, it expressly "acknowledge[d] and concede[d] the right of such one or more other public utilities to continue furnishing service to the premises already being served and to any additional premises which may be served by one or more of them by the date of the filing of this Application." TESCO had begun serving the Cogdell Unit in the 1950s, and expanded service to the Unit with a new substation in 1971, prior to Midwest's CCN.

"Because TESCO was certificated to provide retail utility service to the Cogdell Unit where the consuming facilities are located, Oncor is certificated to provide distribution service to the area because Oncor is the lawful successor-in-

interest to TESCO. Oncor now possesses the CCN and grandfather rights," the ALJ said.

Since Oncor is certificated to provide service to the Cogdell Unit, the Cogdell Unit became entitled to customer choice, the ALJ added.

The ALJ also said that Oncor's service to the Cogdell Unit is consistent with the PUCT's findings in its *Lamb County* order (Docket No. 24229). While in its *Cotton Gin* and *King Ranch* decisions the Commission held that a utility could not lawfully provide retail service to a consuming facility located in another utility's service area through the extension of customer-owned lines, *Lamb County* made clear that those decisions do not apply in cases where the service was already being provided to customers before the certification proceedings, and where a utility was granted a CCN to continue providing service to preexisting customers, as is the case with Oncor in the instant proceeding, the ALJ noted.

AEP Texas Urges Review of Competitive Services Under § 25.343

AEP Texas encouraged the PUCT to evaluate the availability of the "competitive energy services" identified in PUC Subst. R. § 25.341 to determine if any changes to provision of competitive energy services under PUC Subst. R. § 25.343 are warranted to reflect current market conditions, AEP Texas said in comments on the Commission's periodic review of Subchapters K-O of the Substantive Rules.

AEP Texas noted that Subst. R. § 25.343(h) requires the Commission to evaluate the degree of competition for the competitive energy services described in § 25.341 to determine if the services are widely available in areas throughout Texas. Under § 25.343, such competitive services may not generally be provided by utilities, and cover a host of energy management and efficiency services, including:

- The provision of energy efficiency services, the control of dispatchable load management services, and other load-management services;
- Controls and other energy management systems, environmental control systems, and related services;

- Performance contracting (commercial, institutional, and industrial);
- Customer-premise metering equipment and related services other than as required for the measurement of electric energy necessary for the rendering of a monthly electric bill;
- The provision of information relating to customer usage other than as required for the rendering of a monthly electric bill, including communications services related to any energy service not essential for the retail sale of electricity;
- Hedging and risk management services;
- Customer- or facility-specific energy efficiency, energy conservation, power quality, and reliability equipment and related diagnostic services;
- The provision of anything of value other than tariffed services to trade groups, builders, developers, financial institutions, architects and engineers, landlords, and other persons involved in making decisions relating to investments in energy-consuming equipment or buildings on behalf of the ultimate retail electricity customer;
- Home and property security services;
- Non-roadway, outdoor security lighting (with certain exceptions);
- Building or facility design and related engineering services, including building shell construction, renovation or improvement, or analysis and design of energy-related industrial processes;
- Propane and other energy-based services;
- Retail marketing, selling, demonstration, and merchant activities.

The reviews are required every two years, or as otherwise determined by the Commission.

"AEP Texas encourages the Commission to evaluate the availability of the competitive energy services identified in 25.341 and to review the provisions of 25.343 to determine whether any changes are warranted to reflect current market conditions identified in the results of the Commission's evaluation of the availability of competitive energy services."

AEP did not comment on its view on the availability of such competitive services throughout Texas or current market conditions. Due to the limitations in Subst. R. § 25.343 and other rules, the TDUs' efficiency programs

provide funds to independent contractors to meet statutory goals. While the programs are open to REPs, involvement has been limited for a variety of reasons (see Itron report Matters, 12/16/08).

AEP SWEPCO also asked that the Commission clarify that P.U.C. Subst. R. §§ 25.341 and 25.343 are inapplicable to SWEPCO since SB 547, enacted this year, exempts SWEPCO from all provisions of PURA Chapter 39 except Section 39.904 (renewable energy goals) and Section 39.905 (energy efficiency goals) until such time that SWEPCO and the Southwest Power Pool can support customer choice. Subst. R. §§ 25.341 and 25.343 were adopted pursuant to Chapter 39 of PURA, SWEPCO noted.

SWEPCO also said that the Commission should consider amending or repealing Subst. R. § 25.422 which relates to the transition to competition for certain areas within the Southwest Power Pool, due to SB 547. The rule, as written, only applies to SWEPCO and the former portion of AEP Texas North that was in SPP (which later became part of the SWEPCO service area). The rule does not apply to Southwestern Public Service, which is also in SPP.

FERC Strikes Brookings Line Cost Allocation from Interconnection Agreement

FERC ordered the Midwest ISO to remove any reference to cost responsibility for the Brookings County-Twin Cities 345 kV transmission line in approving an unexecuted Amended and Restated Generator Interconnection Agreement among the Midwest ISO, Northern States Power Company (NSP), as transmission owner, and Community Wind North, as interconnection customer (ER09-1581).

The interconnection proceeding drew wider stakeholder attention than is typical because the interconnection agreement would have reallocated all of the approximately \$700 million in costs associated with the Brookings County-Twin Cities 345 kV transmission line and related transmission substation upgrades onto Community Wind and 18 other interconnection customers.

Under the Midwest ISO's tariff, interconnection customers may only be required to fund the costs of network upgrades that are necessary for their interconnection. The Midwest ISO's tariff uses the "but for" standard for the purpose of allocating the cost of network upgrades. Under that standard, "generation developers are to be allocated the costs for transmission system upgrades that would not have been made but for the interconnection of the developers, minus the cost of any facilities that the ISO's regional plan dictates would have been necessary anyway for load growth and reliability purposes."

In its order, FERC noted that the Midwest ISO attempts to require Community Wind to share in the costs of the Brookings Line with other generator interconnection customers on the basis that an interconnection customer must fund the cost of all network upgrades needed to support that customer's in-service date. The Midwest ISO asserted, without supporting its conclusion, that the Brookings Line is, "required primarily for the delivery of new wind energy resources," FERC said.

Under the instant interconnection agreement, the Midwest ISO, "allocates the cost of the Brookings Line to Community Wind and 18 other Group 5 projects without the Midwest ISO providing any evidence that the Brookings Line would not have been built but for the interconnection of these generation projects," FERC found.

Accordingly, the Commission determined that, based on the information provided by the Midwest ISO, the allocation of the costs of the Brookings Line to Community Wind has not been shown to be just and reasonable, and must be rejected. MISO must remove such cost allocation language from the interconnection agreement.

The allocation was rejected without prejudice to the Midwest ISO re-filing a proposal to allocate the costs of the Brookings line with appropriate support, FERC said.

Pa. PUC Approves UGI PNG 1307(f) Settlement

The Pennsylvania PUC approved 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 (Only in Matters, 9/11/09).

The settlement commits 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.

PSE&G Seeking Proposals to Develop Utility-Owned Solar

PSE&G said it is soliciting proposals from developers and third-party-owned sites for the development of 5.1 megawatts of roof and ground-mounted solar systems to be owned by PSE&G, and that will provide rental income to property owners, as part of its recently approved Solar 4 All program that includes 80 megawatts (dc) of PSE&G-owned solar generation (Matters, 7/30/09).

The utility said that it will invest approximately \$515 million in the program over the next several years. The Solar 4 All program permits PSE&G to install, own and operate 10 megawatts of solar systems on any public or private third-party host site located in the utility's electric service territory.

PSE&G will own the system and its energy output as well as the associated environmental

attributes. An open season for such site proposals will remain open through December 11, 2009.

The instant solicitation is seeking projects covering the 2009-2010 and the 2010-2011 Energy Planning Periods. PSE&G is seeking a fixed price for the solar system from the developer and will compensate the selected third party host sites via lease payments for a term of 20 years unless a shorter term is required by law, as may be the case for municipalities.

Briefly:

FirstEnergy Solutions Names New Product/Business Development VP

FirstEnergy Corp. announced that Tony Banks, currently FirstEnergy Corp. vice president Business Development, has been named vice president, Product and Business Development, for FirstEnergy Solutions (FES). "With the newly created position to lead product and business development for FES, we also are enhancing our focus on long-term strategic planning in our competitive subsidiary," said Mark Clark, FirstEnergy Chief Financial Officer. Banks joined FirstEnergy in 2004 as director of Marketing for FirstEnergy Solutions, and was promoted to vice president of Sales and Marketing for FirstEnergy Solutions in 2005. He was promoted to his current position later in 2005. Among several other changes announced by FirstEnergy, Gary Benz, Associate General Counsel, has been promoted to director, Business Development, for FirstEnergy.

Publication Note:

If you were out of the office, *Matters* published an issue on October 12. Stories included:

- Md. Orders POR Discounts at BGE, Pepco, Delmarva; Accepts Proposed Start Dates
- Md. PSC Staff Issues Additional Questions for Long-Term Contract Proposals
- FERC Approves MISO Firm Redirect Reforms
- Texas ALJ Dismisses Wind Generators' Reactive Power Complaint
- UGI Energy Services Receives Illinois Gas License
- And more

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have been voluntary, MichCon noted.

The stipulation would also hold that regardless of the scope of the tariff changes, Just Energy, through its acquisition of Universal, would continue to be bound by the terms of the settlement with the Commission in Cases U-15509 and U-15577.

The tariff revisions would be prospective in nature and govern all alternative gas supplier contracts signed after the revised tariffs take effect.

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As part of SB 695, the PUC must ensure that competitive suppliers are subject to the same resource adequacy, RPS, and carbon requirements imposed on the state's three largest investor-owned utilities, notwithstanding any prior Commission decisions to the contrary.

SB 695 also requires that for generation procured by utilities in order to meet system or local area reliability needs for the benefit of all customers, the net capacity costs of those generation resources shall be allocated on a fully nonbypassable basis consistent with departing load provisions as determined by the Commission to the following groups: bundled service customers; direct access customers; and community choice aggregation customers.

The resource adequacy benefits of such generation shall be allocated to all customers who pay its net capacity costs. An energy auction shall not be required as a condition for applying this allocation, but is permissible.

Additionally, SB 695 requires the PUC to perform a just and reasonable review for any "modification" to a Department of Water Resources supply contract, and sets various other conditions governing the contracts. Modify is defined to mean any material change proposed in the terms of the contract, excluding administrative changes and changes that result in ratepayer savings not to exceed \$25 million.

The bill deletes the prohibition on increasing residential rates from the February 1, 2001 levels for usage up to 130% of baseline levels. The PUC is allowed under SB 695 to increase the rates charged to residential customers for

electricity usage up to 130% of the baseline quantities by the annual percentage change in the Consumer Price Index from the prior year plus 1%, but not less than 3% and not more than 5% per year.

SB 695 also prohibits the Commission from requiring or permitting a utility to implement default time-variant pricing for residential customers prior to January 1, 2013. Additionally, unless bill protection is offered, default time-variant pricing for residential customers may not be offered prior to January 1, 2014. Default real-time residential pricing without bill protection is prohibited until January 1, 2020.