Energy Choice Matters

October 16, 2009

PUCT Requests That TDUs Implement Uniform Interim Meter Tampering Policy, Oncor Says

The PUCT has requested that all TDUs adopt a uniform interim solution to meter tampering, Oncor said yesterday in a market notice.

In response, Oncor announced that effective October 12, it will limit back-billing resulting from tampering to a period of not more than 12 months, rather than nine months as originally announced. As in the past, Oncor will limit back-billing to the current REP of Record, or the previous REP only if the current REP of Record has been the customer's REP of Record for less than 30 days. The interim limit of back-billing will apply to meter tampering only, and will not apply to service by-pass (service diversion).

Oncor defines service by-pass or diversion as a hidden, more difficult to detect incidence of theft of electric service requiring in-depth investigation. Examples of this include, but are not limited to, hazardous situations such as the tapping of the utility electric service line ahead of the meter; jumpers in the meter base; and wiring through the back of the meter base intended to allow electric service to partially or completely bypass the meter register.

Oncor's interim tampering policy will remain in effect until the new rule in Project No. 37291 goes into effect or for a period of six months, whichever comes first (Only in Matters, 10/7/09).

CenterPoint Energy also announced that, following discussions with PUCT Chairman Barry Smitherman's office, it is amending its interim meter tampering policy to limit back-billing to 12 months as well, rather than 18 months as originally announced. Back-billing will still be limited to the current REP of Record, or the previous REP if the current REP of Record has been the REP for less than 30 days

CenterPoint's interim meter tampering policy was first reported by *Matters*, (Only in Matters, 10/9/09).

N.Y. Adopts O&R Gas JP Moving Competitive Credit/Collections Charge to POR Discount

The New York PSC approved a joint proposal to establish a new gas rate plan at Orange & Rockland that will, among other things, recover credit and collections-related charges for competitive service through the Purchase of Receivables discount, rather than a separate Merchant Function Charge (MFC).

Signatories included O&R, PSC Staff, and the Small Customer Marketer Coalition, among others (Only in Matters, 7/1/09).

As only reported in *Matters*, the separate MFC applicable to SC6 customers whose marketers participate in O&R's POR program shall be eliminated effective November 1, 2009. Credit and collections-related costs, previously recovered from SC6 customers through an MFC, will be recovered from marketers through the POR discount, similar to O&R's electric rate design. The MFCs for SC1 and SC2 sales customers will retain the credit and collections component.

The transition adjustment for competitive services (TACS) will continue as an equal cents per Ccf charge applicable to SC1, SC2 and SC6 customers. However, the TACS component to recover the

Continued P. 6

DPUC Staff Recommends Turris Broker Fees Be Held in Escrow Absent Security

The Connecticut DPUC's Prosecutorial Staff are "alarmed" by level of expected reimbursement amounts that will be due to certain customers aggregated by Turris Associates and supplied by Constellation NewEnergy, who were charged an aggregation fee that was $0.000335/kWh higher than what was included in contracts, requesting that Constellation hold the aggregation fees due to Turris in escrow absent a bond or other security (Only in Matters, 6/4/09).

The case originated when customers in the Connecticut Consortium buying pool were charged a 1 mill/kWh broker fee, when customers were only informed of a 0.665 mill fee. Turris initially told the DPUC that the remaining 0.335 mills was commission for its partner Arum Associates, and claimed that Arum had the responsibility, and had failed, to disclose the extra commission to customers. Arum disputed that claim, and said it believed the that total commission was to be 0.665 mills, alleging that Turris secured the higher 1 mill fee from Constellation without informing Arum or the Consortium.

As only reported in *Matters*, Turris and Constellation have reached an informal agreement on how to provide restitution to customers, through reduced rates going forward, and a direct payment of any outstanding refunds at the end of the customer's contract.

New contracts with lower rates were issued to 99 customers according to Staff. Of these, 51 contracts were returned by customers, allowing for the reduction in the rate. However, 48 contracts were not returned, meaning that the customers' prior overbillings are not being offset by lower rates.

Even for customers who have received a new lower rate, Constellation believes that based on expected consumption, most of the overbillings will not be paid down to zero by the date of contract expiration, which is December 31, 2009 for 45 of the 51 contracts. As of October 1, 2009, customers in this group are collectively owed $261,000.

For those customers who did not return the adjusted contract and therefore are not paying lower rates, the current amount owed for overpayment as of October 1, 2009 is $158,000.

Turris has told the Prosecutorial Staff that Constellation has escrowed approximately $45,000 of commissions for customer refunds. Further, Turris has informed Staff that its principal, Raymond Sanzone, is in the process of taking steps to obtain, "funding through personal property to ensure that Turris has enough funds to cover any commissions not covered by the payback agreements," Staff said.

However, Staff reported to the Department that, upon reviewing the outstanding overbillings due to customers, "both Constellation and Prosecutorial are alarmed by the level of expected reimbursement amounts when most of the contracts expire."

While Turris and Constellation have entered into an informal agreement to refund customers, Staff said that, "in the absence of a bond or some other measure to provide certainty to that intent, additional assurances are likely necessary in order to achieve a proper resolution for all concerned."

Prosecutorial recommended that in the absence of either 1) an agreement between Constellation and Turris regarding financial responsibility, or 2) appropriate surety or bond by Turris for projected reimbursements, the Department should authorize Constellation to withhold and escrow all commission payments it receives from customers aggregated by Turris and affected by the overbilling.

"These amounts should be held by Constellation for the benefit of Turris as security for the potential repayment amount caused by the incorrect overcharges of aggregator fees. To the extent that the withheld and escrowed amount is greater than overpayments, such amount would be returned to Turris," Staff said.

FERC Denies to Adopt Blanket Rule Requiring Pass-Through of Discounts to AMAs

Pipelines are not required to extend to asset manager replacement shippers the same discounts provided to primary firm shippers, FERC ruled in an order on several compliance filings related to Order 712. The Commission was not convinced that an asset manager will necessarily be similarly situated to the releasing shipper in every situation, and thus declined to impose a blanket requirement for the pass-through of any such discounts. Rather, pipelines will be required to pass-through discounts on a case-by-case basis (RP09-70 et. al.).

After FERC issued Order 712 which relaxed the prohibition on tying capacity releases to extraneous conditions and eliminated the bidding requirements for capacity releases meant to implement Asset Management Arrangements (AMAs), several parties sought clarification on whether the asset manager should receive the same discounted or negotiated usage or fuel charges that the pipeline provided to the primary firm shipper.

Several LDCs and shippers argued that such discounts should at least flow to the asset manager replacement shippers and retail choice marketers, since such replacement shippers are similarly situated to the releasing shipper, and are essentially stepping into the releasing shipper's shoes.

However, FERC was not convinced that an asset manager is necessarily similarly situated to the releasing shipper in every circumstance. "As we found in Order No. 712, asset managers have resources and market knowledge not necessarily available to the releasing shippers, and therefore AMAs should result in an overall increase in the use of interstate pipeline capacity ... Accordingly, it seems reasonable that there may be circumstances in which the pipeline could conclude that the asset manager will use the capacity in a different manner than the releasing shipper used the capacity or in a different manner than the pipeline anticipated the releasing shipper would use the capacity," FERC said.

For example, in a situation where the pipeline gave the releasing shipper a discounted or negotiated usage/fuel charge not limited to particular points, the asset manager would likely make greater use of secondary points than the pipeline anticipated the releasing shipper would. In the same way, if an asset manager replacement shipper is not using the capacity to fulfill its obligation under the AMA and is using points other than those where the pipeline granted the releasing shipper point-specific discounts, then the asset manager may not be similarly situated to the releasing shipper. In addition, there may be instances where an asset manager obtains released capacity in a manner that it can aggregate it with other released capacity and thus could potentially expand the rights on the released capacity from what was originally provided to the releasing shipper, FERC said.

A blanket requirement for a pass-through of discounts is thus not appropriate, FERC concluded.

Instead, the Commission will direct pipelines to decide on a case-by-case basis whether to give the asset manager the same discounted or negotiated usage or fuel rate, using the Commission's existing selective discounting policy to judge whether the asset manager replacement shipper is similarly situated to the releasing shipper. If the asset manager is so similarly situated, the pipeline must pass-through the discounted or negotiated rate to the asset manager.

FERC said that in cases where the pipeline has given the releasing shipper a discount at its delivery point and the asset manager uses the released capacity to provide deliveries to the releasing shipper at that point, the asset manager really is stepping into the shoes of the releasing shipper, and should be provided with the discount. Likewise, in the situation where an asset manager replacement shipper may not be using the capacity to fulfill its delivery/purchase obligation under an AMA but uses the same points at which the releasing shipper was granted a discounted or negotiated usage or fuel rate, it seems reasonable that the asset manager would be considered similarly situated to the releasing shipper and entitled to the same rates, FERC said.

N.Y. PSC Approves ConEd Demand Response Pilots

The New York PSC approved a series of demand response pilots at Consolidated Edison yesterday. A final order was not published yesterday to determine what, if any, changes to the program were required in response to stakeholder comments.

According to a PSC press release, the pilots include:

- A 200 MW Commercial System Relief Program for large commercial or industrial customers that can curtail load or bring emergency generation to reduce demand by a minimum of 50 kW on an individual customer basis, or 100 kW through aggregations. Customers able to curtail load when called upon will receive a capacity reserve payment, but will be penalized for non-performance.
- A 3.8 MW Critical Peak Rebate Program pilot for all customer classes. Participants who reduce their usage by at least 1 kW and up to 24 kW will receive a monthly payment of $1/kW-hr for reductions made during events. Participants who reduce 25 kW or more will receive an end of year payment of $1.50/kW-hr for reductions during events.
- A 5 MW Network Relief Program targeted at specific networks in need of system relief. Requests for proposals and an open enrollment process will be used for relief in certain hours, in specific networks, over a specific number of years, in an attempt to defer the need to build additional transmission and distribution infrastructure in particular networks.
- A Residential Smart Appliance Program for residential customers that allows ConEd to control a participating customer's electric appliances (if equipped with curtail-able technology) through the use of open communication devices. Customers will have the ability to override the company's control of their appliances when events are called. The program is aimed at reducing load by 240 kW. Customers will receive a $200 rebate for each Smart Appliance or Home Area Network and may receive additional payments of $10-$25 based on their response to tests and actual events.

Several competitive providers raised concerns about the pilots as originally proposed.

For example, Constellation NewEnergy noted that ConEd's demand response program would directly compete with market offerings from alternative providers through the NYISO markets, but would be supported by nonbypassable distribution charges. The fixed payments under ConEd's program also obfuscate price signals and subject all customers to potential stranded costs, Constellation noted.

Briefly:

Champion Energy Receives Pa. License, Signs Consilient Restaurants

The Pennsylvania PUC granted Champion Energy Services an electric supplier license to serve commercial customers over 25 kW, industrial customers, and governmental customers, in all service areas (Only in Matters, 8/12/09). Champion also announced that it has signed Dallas-based Consilient Restaurants, LP to a 30-month electric supply contract beginning in November 2009, which includes a 10% renewable component. Additionally, Champion is offering supply to Consilient's Texas employees through an affinity program. Champion serves 350,000 residential customer equivalents in Texas and Illinois, with a peak load near 1,000 MW. Champion also said it is "slated" to enter the Pennsylvania and Ohio markets, confirming that it intends to follow its recently awarded licenses with market entry. As only reported by *Matters*, Champion received its Ohio license earlier this month (Matters, 10/6/09).

Ontario Energy Board Announces New Generation Rates

The Ontario Energy Board announced electricity prices under the Regulated Price Plan for the six-month period beginning November 1, 2009, with the rate set at 5.8¢/kWh up to 1,000 kWh each month, and 6.7¢/kWh for usage above 1,000 kWh. New RPP time-of-use prices are as follows:

- On-peak: 9.3 ¢/kWh
- Mid-peak: 8.0 ¢/kWh
- Off-peak: 4.4 ¢/kWh

N.Y. PSC Affirms Extension of NYSEG/RG&E NBC Mitigation to ESCO Customers

The New York PSC affirmed a One Commissioner Order issued in September by Commissioner Maureen Harris which required NYSEG and Rochester Gas & Electric to mitigate the impact of higher electric nonbypassable charges on all customers, not only customers on the utility's fixed price option (Only in Matters, 9/29/09). As only reported in *Matters*, Harris, in ruling on a complaint from a customer on competitive supply, said that ESCO customers, and customers on the variable utility rate, should receive mitigation as well, since those customers also funded the Asset Sale Gain Account whose surplus is being used to mitigate the higher nonbypassable charges. The expanded mitigation was effective October 2, 2009.

North Shore Energy Consulting Receives Ohio License

North Shore Energy Consulting received an electric broker/aggregator license to serve commercial, mercantile and industrial customers at the three FirstEnergy utilities and Duke Energy (Only in Matters, 9/16/09).

Calif. PUC Denies AReM Request in Approving SDG&E-Celerity Contract

The California PUC approved a contract between San Diego Gas & Electric and Celerity Distributed Generation for distributed generation from several diesel back-up generators. The Commission approved 3-2 an alternate decision offered by Commissioner John Bohn which approved the contract and denied a petition from the Alliance for Retail Energy Markets, which had asked that SDG&E be directed to sell any excess local resource adequacy capacity to other load serving entities. The Commission found such a request to be outside the scope of the proceeding.

Md. PSC Requests Comments on Information to be Included in Long-Term Contract Proposals

The Maryland PSC invited stakeholders to comment on any additional elements which should be required in the requested proposals for long-term supply contracts or utility-owned generation, in addition to criteria listed by Staff late last week. As only reported in *Matters*, Staff listed six criteria that proposals for ratepayer-backed contracts or generation should include, in addition to information listed in the Commission's order initiating the request for such proposals (Only in Matters, 10/12/09).

PUCO Approves Eramet Reasonable Arrangement

The Public Utilities Commission of Ohio approved a reasonable arrangement between Eramet Marietta, Inc. and Columbus Southern Power under which Eramet will receive electric supply through 2018 at rates subsidized through nonbypassable charges. The arrangement will set a rate of $0.04224 per kilowatt hour from the effective date of the arrangement through Dec. 31, 2011. From Jan. 1, 2012 through Dec. 31, 2018, Eramet's rate will be calculated as a percentage discount off the applicable tariff rate. The percentage discount will descend each year until it reaches zero on Jan. 1, 2019. In approving the arrangement, the Commission found that AEP-Ohio should credit any Provider Of Last Resort charges paid by Eramet to AEP-Ohio's economic development rider, reducing the subsidy borne by ratepayers, since Eramet will not shop during the term of the arrangement.

PUCO Further Refines Efficiency, Alternative Energy Portfolio Rules

The Public Utilities Commission of Ohio issued changes to its codes applicable to the energy efficiency requirement imposed on utilities by SB 221, including some changes to rules governing the alternative energy portfolio standard. Of greatest note to the retail market is that PUCO clarified that an efficiency or demand reduction measure undertaken by a mercantile customer may count towards both the utility's efficiency and demand reduction goals, but cannot simultaneously count toward the utility's advanced energy portfolio standard compliance. In other words, the utility may not use efficiency savings from its ratepayer-funded efficiency programs to also count toward RPS compliance. RPS compliance costs are bypassable, while the efficiency program costs are nonbypassable. As part of its finding, PUCO struck the words "fully aggregated" from the definition of a REC. PUCO adopted various other changes to the efficiency program rules, such as the treatment of interruptible loads, in Case No. 08-888-EL-ORD.

N.Y. PSC Adopts Uniform Methodology for Renewable Energy Deliverability Studies

The New York PSC has adopted a uniform

methodology for conducting generator energy deliverability studies by renewable developers, and will require each new applicant for a Certificate of Public Convenience and Necessity to provide such a study or seek an exemption from the requirement (09-E-0497). The methodology is to help ensure that transmission resources are available to accommodate renewable energy delivery and that renewable energy, where cost effective, is not subjected to unreasonable bottling in remote areas of the electric system, the Commission said. The Commission's decision allows developers to rely on any recent New York ISO or transmission owner study that would indicate that the project's output would be deliverable and would not displace existing renewable energy. Should there be deliverability problems identified in the study, the Commission could subsequently require the utilities to study the cost effectiveness, from a ratepayer perspective, of alleviating the bottleneck. For those projects that do not require a CPCN, the order does not impose any new study requirements.

PJM Affirms Need for TrAIL, PATH and MAPP in Latest RTEP

PJM's Board has authorized an additional $1.4 billion in electric transmission system additions and upgrades resulting from its Regional Transmission Expansion Planning process. The current regional plan reaffirms the need for several major transmission projects that the board had previously authorized to address reliability, including the Trans-Allegheny Interstate Line (TrAIL), Potomac-Appalachian Transmission Highline (PATH), and Mid Atlantic Power Pathway Project (MAPP).

O&R ... from 1

cost of enabling technologies will be eliminated, though a new component will be added to the TACS to recover credit and collections lost revenue associated with retail access.

The billing and payment processing charge will remain at its current level -- $1.02 per bill.

The balancing charge currently applicable to certain SC6 customers and the balancing component of the Gas Supply Charge applicable to SC1 and SC2 customers shall be eliminated. The recovery of balancing assets also shall be eliminated from the Winter Bundled Sales fees applicable to marketers under SC11. Commencing November 1, 2009, costs associated with balancing assets shall be recovered from all SC1, SC2 and SC6 customers through a common cents per Ccf component in the Monthly Gas Adjustment.

O&R will spend $75,000 on retail access related outreach and education. ESCOs shall be able to provide additional funding for retail access related outreach and education, and such ESCO funding shall be considered incremental and shall not be used to reduce the $75,000 allowance in base rates. Consistent with Commission order, O&R will not spend ratepayer funds on programs designed to promote ESCO service.