

Energy Choice

Matters

October 26, 2009

DPUC Draft Would Find Termination Fee Prohibition Only Applies to Referral Program

A draft Connecticut DPUC decision would find that a prohibition on termination fees contained in Connecticut General Statute § 16-244c(k)5 only relates to the electric supplier referral programs administered by the utilities, and not all electric contracts for mass market customers (Only in *Matters*, 4/30/09).

As only reported in *Matters*, Dominion Retail had sought a declaratory ruling from the DPUC regarding the statute, arguing that § 16-244c(k)5 prohibits the imposition of a termination fee on any customer eligible for Standard Service, not only customers purchasing electricity through the supplier referral program.

Connecticut General Statute § 16-244c(k)5, which establishes parameters of the supplier referral program, holds that, "Any customer that receives electric generation service from a participating electric supplier may return to standard service or may choose another participating electric supplier at any time, including during the qualifying electric offer, without the imposition of any additional charges."

In its draft, the DPUC would disagree with Dominion Retail's interpretation, finding that the subsection only applies to customers in the referral program.

"When Conn. Gen. Stat. §16-244c(k) is read as a whole, it is clear that every subpart of this section (k), including subpart (5), pertains to the Referral Program contemplated by the Legislature. To apply any provisions of §16-244c(k) to customers or electric suppliers outside the Referral

Continued P. 6

FERC Approves MISO RECB Cost Allocation Change on Interim Basis

FERC approved, on an interim basis only, the Midwest ISO's proposed changes to the cost allocation of Network Upgrades for generation interconnection projects meeting the Midwest ISO's Regional Expansion Criteria and Benefits (RECB) test, which will now essentially assign all or nearly all costs of such interconnection upgrades to generation developers, rather than assigning half of such costs to transmission owners as had been the case.

In a story first reported by *Matters*, (*Matters*, 7/10/09), MISO said that the change in cost allocation was required to prevent several transmission owners, notably Otter Tail Power Company and Montana-Dakota Utilities, from exiting MISO due to the mechanics of the former cost socialization methodology.

Prior to FERC's order, for facilities rated 345 kV and higher, twenty percent of the socialized share of interconnection RECB costs (i.e., the half not paid by generators) were allocated to all Midwest ISO pricing zones on a postage-stamp basis, and the remaining eighty percent was allocated among pricing zones using a Line Outage Distribution Factor (LODF) method. For facilities rated less than 345 kV, the entire socialized cost was allocated among pricing zones based on LODF. The LODF method causes the pricing zone where the new transmission facilities are located to experience the highest costs, with costs diminishing with distance from that zone. Generation

Continued P. 7

DPUC to Hold Another Technical Meeting on Supplier-EDC Billing Data Exchange

The Connecticut DPUC will hold a technical meeting on November 23 regarding data exchange issues between utilities and competitive electric suppliers raised by suppliers earlier this year in Docket 09-01-07 (Only in Matters, 2/24/09). Attendance is mandatory for the distribution companies and all electric suppliers that submitted comments in the docket, namely Constellation NewEnergy, Dominion Retail, the Retail Energy Supply Association, and TransCanada Power Marketing.

Staff attending on behalf of the utilities and the suppliers should be those who are familiar with the issues and technicalities presented in the comments, the Department said.

As only reported in *Matters*, the DPUC opened the docket after suppliers, in a separate docket regarding Connecticut Light and Power billing errors, reported that CL&P does not consistently provide accurate customer data to electric suppliers in a timely manner.

In comments earlier this year, Constellation NewEnergy recommended that the distribution companies be required to provide suppliers with billing data within three days of a meter read, while RESA suggested a period of three business days. RESA also noted some suppliers have reported delays of up to five months in receiving data from Connecticut Light and Power. CL&P also does not provide estimated usage for certain, larger rate classes, requiring suppliers to issue estimates. Customers on Rate 35 and above do not receive estimated meter reads if there is a problem in recording their actual read (about 9,500 customers).

Bid Monitor Finds Adequate Participation in Md. SOS Procurement

The Maryland PSC approved the results of an October 19 RFP for Type I and Type II SOS supplies after a procurement which saw greater bidder participation and did not prompt any concerns from the PSC's bid monitor. The procurement was for 100% of Type II supplies

for the three-month period beginning December 1, 2009, and for a portion of residential/Type I supplies for the period beginning June 1, 2010.

As only reported by *Matters*, sparse participation (including some blocks which only attracted a single bidder) in several RFPs in the fall of 2008 through the spring of 2009 led to concerns from the PSC's monitor at the time, the Liberty Consulting Group (Only in Matters, 4/27/09).

However, the October 2009 procurement saw at least four bidders contest each product, as Boston Pacific, which has since assumed monitoring duties for the PSC, said that participation levels were acceptable. Additionally, the Price Anomaly Threshold was not invoked during the procurement.

The October 2009 procurement saw eight winning suppliers from 13 bidders, versus nine winners from 14 suppliers a year ago.

Supply rates for Type II customers versus the current rates will increase on December 1, 2009, by the following amounts:

Allegheny Power

All Type II classes: 15%

Baltimore Gas & Electric:

G 16.10%

GS 21.55%

GL, P 14.75%

Delmarva

SGS-S 16.3%

LGS-S 16.2%

GSP 21.6%

Pepco

MGT II LV 15.8%

MGT II 3A 15.9%

Final retail rates will be subsequently filed by the utilities.

Supply rate impacts for residential and Type I customers are not known as the remaining power for the period beginning June 1, 2010, must still be purchased in the April procurement.

REPs Say Standard Letter of Credit Must Recognize Need to Update Amount Frequently

A proposed standard form irrevocable standby letter of credit to be used by REPs to meet PUCT financial certification requirements should be

modified to streamline the amendment process, the Alliance for Retail Markets, Reliant Energy, and TXU Energy (collectively, the REP Group) said in comments on the draft form (37035).

The REP Group noted that the amount covered under a letter of credit used to satisfy PUC SUBST. R. §25.107(f)(2)(B) could change monthly, or more often, since the amount secured by the letter of credit is supposed to be an amount sufficient to satisfy 100% of the REP's outstanding customer deposits and residential advance payments, which is a dynamic and frequently changing amount. "If the amendment process (at least with regard to the stated amount) is overly cumbersome, REPs will be forced to obtain letters of credit in excess of the amount necessary to meet the requirements of the rule (and, thereby, incur additional costs that will ultimately be borne by consumers) to account for the fact that increases to the amount of the letter of credit are likely, particularly (and paradoxically) at a time when the REP is gaining customers," the REP Group said.

The REP Group further urged the Commission to accept letters of credit (and guaranty agreements) that are "substantially compliant" with the approved forms. "REPs cannot guarantee with 100 percent certainty that every commercial bank will agree to employ a Commission-approved standardized letter of credit verbatim in every instance," the REP Group said, stating that minor or non-material modifications that do not change the overall utility and purpose of the form will likely increase the ability of REPs to obtain credit support from commercial banks.

The Texas Energy Association for Marketers argued that the Commission should especially allow REPs who posted an interim letter of credit while the standard form was being developed to continue using their interim letters of credit if they are "substantially compliant" with the requirements of PUC SUBST. R. §25.107(f)(4)(F). "It would be time consuming, administratively burdensome, and costly to require a new letter of credit mid-stream if the interim letter of credit satisfies all elements of (f)(4)(F)," TEAM said.

TEAM and the REP Group both argued that the standard letter of credit should explicitly

recognize that, by rule, the Commission may only draw on a REP's letter of credit after the REP fails to meet its financial obligations at ERCOT and its customers are transferred to Providers of Last Resort. Such condition precedent is not mentioned in the Commission's draft standard letter of credit.

Regarding the draft standard guaranty agreement, the REP Group and Luminant both said that the guaranty must be modified to recognize it is only intended to cover a discrete set of obligations -- either minimum financial access to capital under 25.107(f)(1)(A), or protection of customer deposits. As drafted, the guaranty covers, "the full and faithful payment of all obligations of REP that are required by the Commission's rules and orders, including, but not limited to, refund of customer deposits and residential advance payments, payment for services provided by the independent organization related to serving REP's customers, payment for services provided by a TDU, and payment of administrative penalties."

"[T]his provision could subject a guarantor to a potentially unlimited, or at least uncertain, amount of exposure," Luminant said in asking that guarantors be permitted to specify a dollar figure limit in the agreement. If the guaranty is being used to demonstrate access to capital, the amount should be \$500,000, Luminant said. If the guaranty is being used to demonstrate adequate protection of customer deposits, the amount should be based on the amount of customer deposits held by the REP in a given month (e.g., the month with the highest amount of deposits) in the preceding year, Luminant suggested.

Luminant also argued that the draft form guaranty agreement should provide for the agreement's termination on a date certain or upon adequate notice to the REP, such as five business days.

Exelon Generation Avg. Revenue for Non-affiliate Wholesale, Retail Electric Sales Down 20%

Exelon Generation, which includes Exelon's competitive generation and retail supply unit, posted higher third-quarter net income of \$657

million, versus \$635 million a year ago, primarily due to unrealized gains in 2009 and unrealized losses in 2008 related to nuclear decommissioning trust funds, and lower operating and maintenance expenses.

Lower operating revenues at Exelon Generation of \$2.4 billion versus \$3.1 billion a year ago were largely due to unfavorable portfolio and market conditions, decreased nuclear output as a result of more refueling outage days in 2009, higher nuclear fuel costs in 2009, and higher mark-to-market gains in 2008 compared to 2009 on economic hedging activities.

Average revenue from wholesale and retail electric sales at Exelon Generation (excluding sales to affiliates) was down 20% at \$52.99/MWh, from \$65.98/MWh a year ago.

Exelon Generation total revenue for wholesale and retail electric sales (excluding sales to affiliates) was down at \$1.5 billion from \$2.0 billion a year ago. Retail gas sales were down at \$32 million from \$85 million a year ago.

Discussing Generation's ratable hedging program, Exelon CFO Matthew Hilzinger reported that, in the Mid-Atlantic region, Generation is seeing slight reductions in load estimates on full requirement products resulting from switching in the commercial and industrial customer classes both in Pennsylvania, as some utilities begin to transition to market rates, and in New Jersey in the BGS auction.

Expected generation is 88-91% hedged for 2010 and 63-66% hedged for 2011.

Responding to rumors regarding an interest in a Calpine acquisition, Exelon CEO John Rowe said that while Exelon has looked at Calpine many times in the past, "[w]e've never been able to put together a plan for a transaction that would make any sense, because it would violate our guidelines about dilution." Rowe also said that he recognizes that, "most of our shareholders are very reluctant to see us get into another transaction."

Rowe also said that he is, "pleased," to see FirstEnergy petition to move its American Transmission Systems Inc. load into PJM, which Exelon believes will create further operating efficiencies within the PJM market.

"This illustrates that PJM remains the premier wholesale market in the Northeast," Rowe said.

CenterPoint Stresses Distinction Between Critical Care and "Ill and Disabled" Customers

CenterPoint Energy recommended that the PUCT empanel a special committee that includes medical physicians to consider the proper standards for, and other issues relating to, critical care customers, in comments in the Commission's review of customer disconnection protections.

In comments in Project 36131, CenterPoint provided an overview of its process for reviewing critical care requests. CenterPoint said that as a general rule it does not disconnect critical care customers for non-payment of electric bills, unless ordered to do so by legal authority.

CenterPoint urged the Commission to distinguish between critical care customers, whose status is currently determined by the TDU, and "ill and disabled" customers, whose status, CenterPoint said, lies with the REP.

"A 'critical care customer' designation involves a dangerous or life-threatening condition; the designation affects practices used by the distribution service provider in providing the delivery of electric services, such as disconnections, load shedding events, and notice of maintenance on the delivery system. The 'critical care' status should be based on different and more selective criteria than than [sic] 'ill or disabled' status, which designation is applicable to REPs in the provision of bill assistance programs and disconnection of service for non-payment," CenterPoint said, stating that it supports development of standard definitions for qualification as a "critical care" or an "ill and disabled" customer.

Texas-New Mexico Power also supports a standardized definition, provided that it does not expand the liability exposure and administrative burden of the TDU. TNMP reported that if it receives a disconnect order from a REP for a critical care customer, TNMP immediately rejects the disconnect order and sends a transaction to the REP, directing the REP to contact TNMP directly. TNMP also requires that an officer of the Company approve the disconnect order. Prior to the disconnection, TNMP sends a technician to the premise before the disconnection actually occurs to confirm that

the customer has been notified of the pending disconnect. TNMP also requires that the REP send an ambulance or sheriff to the premise prior to the disconnection. TNMP notifies Commission Staff of the pending disconnect order at the critical care customer's premise.

FERC Clarifies Scope of New England Capacity Import Hearings

In an order on rehearing and clarification, FERC clarified that the scope of its hearing into allegations of market manipulation by certain New York AC Interface capacity importers in New England shall include, "whether capacity importers' submission of energy supply offers at or near the \$1,000 per MWh price cap satisfy the three elements required to establish market manipulation."

"These three elements do not include effects of the alleged behavior on market prices or applicable remedies," FERC said in clarifying the hearing's scope (Matters, 9/24/09).

Additionally, FERC denied a rehearing request from Brookfield Energy Marketing, who had argued that FERC's action in allowing the Connecticut parties to pursue the complaint constituted a private action barred by the Federal Power Act.

However, FERC held that, in the proceeding, no litigant has brought a private action, nor has the Commission permitted a third party to prosecute such a private action. "Rather, the Commission has ordered an evidentiary hearing under sections 306 and 307 of the FPA because, among other things, there are disputed issues of material fact surrounding capacity importers' offers between January 2005 and January 2009 that cannot be resolved in the absence of an evidentiary hearing," the Commission said.

"Section 222(b) of the FPA, while barring 'private rights of action,' does not operate as a bar to a complainant alleging market manipulation in a complaint filed with the Commission and thereby bringing alleged market manipulation to the Commission's attention," FERC added.

Briefly:

DPUC Warns Suppliers Failing to File Bonding Information

The Connecticut DPUC sent out a final notice to competitive electric suppliers to provide evidence of their compliance with the bonding requirements to maintain their license (Only in Matters, 9/25/09). The DPUC notice said that it has still has not received requisite information from some suppliers, despite the original October 15 deadline for the submission of the information. Failure to file the bonding information by November 5, in the form required by the Department, "will result in the immediate initiation of formal proceedings by the Department to determine whether it will suspend or revoke your license in Connecticut as an Electric supplier or impose a prohibition your company from accepting new customers or impose a civil penalty on your company," the DPUC said.

Avalon Energy Seeks Md. Gas License

Avalon Energy Services applied for a Maryland natural gas broker/aggregator license to serve non-residential customers in all service areas. As only reported in *Matters*, the start-up recently received a Maryland electric broker license (Only in Matters, 7/13/09).

Reflective Energy Solutions Seeks Pa. License

Reflective Energy Solutions applied for a Pennsylvania electric broker license to serve all sizes of commercial, industrial and governmental customers in all service territories. As only reported in *Matters*, the start-up is seeking Ohio licenses as well (Only in Matters, 10/15/09).

Response Weak to EFH Exchange Offer

Noteholders had only tendered some \$351 million of Energy Future Holdings debt as of last Thursday out of a desired \$6 billion in an exchange offer, prompting EFH to reduce the maximum exchange amount to \$3 billion from \$4 billion, lift the early consent requirement, and extend the exchange deadline to November 10. EFH had originally sought to reduce its more than \$40 billion in debt by \$2 billion through the

exchange, which has been criticized by some bondholders as unfavorable, but the debt reduction, if the exchange is consummated, will now be less \$2 billion due to the changes.

Usource Reports Slight Drop in Revenue

Broker Usource reported revenues of \$1.0 million for the third quarter of 2009, versus \$1.1 million a year ago. Parent Unitil Corporation reported a net loss of \$600,000 for the third quarter of 2009, compared to earnings of \$1.5 million for the third quarter of 2008.

OCC Asks Court to Direct PUCO to Issue Final AEP Security Plan Order

The Ohio Consumers' Counsel asked the Supreme Court of Ohio to direct the Public Utilities Commission of Ohio to issue an order on rehearing regarding the electric security plan of Columbus Southern Power and Ohio Power, in order to allow appeals of the decision. OCC has appealed PUCO's decision to set the revenue requirement of the AEP companies on an annual basis, even though the security plan, and its rates, were not approved until March 2009. OCC considers such a revenue requirement to be retroactive ratemaking, and appealed the order to the Court (First in Matters, 9/11/09). However, the absence of a PUCO decision on rehearing allows PUCO and AEP to argue that the OCC's pending appeal is premature, OCC said.

NRG Texas Retail, LLC to Withdraw REP Certificate

NRG Texas Retail, LLC filed to withdraw its Texas REP certificate, as it has never served customers since receiving the certificate.

Conn. ... from 1

Program would be to expand the scope of the statute, contrary to the express design of the Referral Program," the draft states.

The Department noted that §16-244c(k)(5) uses the term "participating electric supplier" exclusively, which is defined as, "any electric supplier that is licensed by the department to provide electric services, pursuant to this subsection."

"Thus, the language of §16-244c(k)(5) only

prohibits the imposition of additional charges when a customer switches from, or to, specifically, a 'participating' electric supplier, and not just 'any' electric supplier. If the Legislature had intended this section to apply to any and all suppliers, it would have used the broader term 'electric suppliers,' as it did in other statutes, such as Conn. Gen. Stat. §16-245a (applying renewable energy portfolio standards to each 'electric supplier'), §16-245o(e) (requiring each 'electric supplier' to obtain customer consent before initiating generation service), and §16-245s (requiring each 'electric supplier' to verify a customer's switch by one of the means specified in the statute)," the draft notes.

Furthermore, the draft would find that §16-244c(k)(5) prohibits the imposition of additional charges only on customers who are receiving electric generation service under Standard Service or from a Participating Electric Supplier, and who choose another Participating Electric Supplier or Standard Service. "Thus, additional charges would not be prohibited under this statute if the customer switches from a Participating Electric Supplier to a non-Participating Electric Supplier during a qualifying electric offer," the draft holds.

Such prohibited "additional charges" under the statute shall include, but are not limited to, liquidated damages, actual damages, termination fees, penalties of any kind, and any fees associated with the cost for meter reads and billing record changes set forth in any other statutes. The draft disagrees with arguments that the statute only prohibits termination fees, and not liquidated or actual damages. "If the legislature had intended to prohibit only the imposition of termination fees or other similar penalties, it would have specifically stated that prohibition, as it has done in other statutory provisions. The provisions of §16-244c(k)(5) could easily be circumvented if charges such as liquidated or actual damages were allowed," the draft holds.

MISO ... from 1

developers have sought to interconnect thousands of megawatts of wind power in remote, low-load zones in the western parts of MISO. Although these low-load zones would not use much of the new generation, they would bear the bulk of the socialized interconnection costs under the old cost allocation approach.

Under the interim solution approved by FERC, for projects above 345 kV, interconnection costs will be paid 90% by developers (an increase from 50%), with only 10% of costs socialized system-wide on a postage stamp basis (rather than split between postage stamp and LODF). Interconnection projects under 345 kV will be paid for entirely by developers.

FERC conditioned its approval on MISO fulfilling its commitment to file superseding tariff revisions reflecting a cost allocation to be developed in Phase II of its stakeholder process on or before July 15, 2010. The Phase II stakeholder process will focus on the integration of location-constrained resources and will include a new category of cost sharing for transmission projects driven primarily by the need to integrate large quantities of remote generation resources.

FERC said that, subject to the above condition, the interim cost allocation methodology is a, "reasonable implementation of the flexibility allowed by Order No. 2003."

"As we explained in Order No. 2003, independent system operators, like Midwest ISO, have significant discretion to propose an appropriate cost allocation methodology for interconnection-related network upgrades, including providing interconnection customers with capacity rights made feasible by such projects," FERC said.

FERC denied requests to limit the interim cost methodology to only those zones experiencing large interconnection costs (such as Otter Tail and MDU), and applied the interim methodology to all zones except the ATC, ITC/METC, and ITC Midwest pricing zones, as requested by MISO and the other petitioners.

The Commission also accepted MISO's proposal to eliminate the current requirement that an interconnection customer must

demonstrate that the generator has been designated as a network resource or committed by contract of at least one year to supply capacity or energy to a network customer to be eligible for cost sharing.

Despite accepting the interim methodology, FERC agreed with protestors' arguments that additional, broad-ranging benefits can be associated with both the interconnecting generator and the network upgrades that are triggered by its interconnection.

"Accordingly, the Commission believes that cost allocation proposals for interconnection-related upgrades should pay attention to cost-causation principles and to identifying the full array of benefits to generators, load, and other entities in the region from enhanced transmission infrastructure," FERC said.

The Commission accepted the interim methodology effective July 10, 2009, and rejected requests that the interim proposal should not apply permanently to an agreement that is executed, or filed unexecuted, during the interim period.