Energy Choice Matters

November 3, 2009

PUCT Staff Posts Proposal for Adoption to Require Specific End Date on Customer Bills

As tipped in the proposal for adoption relating to Subst. R. §25.475 (Only in Matters, 11/2/09), PUCT Staff filed a proposal for adoption regarding Subst. R. §25.479 that would require REPs to list the end of a fixed rate product on a residential and small commercial customer's bill, without the ability to use an estimate of the end date (37070).

Staff said that the use of estimates is no longer necessary because switches are no longer tied to the monthly scheduled meter read. Once a customer is enrolled, the REP will know the end date of the contract, Staff noted, and thus Staff would require REPs to list the exact end date, rather than month or billing cycle, on "each" billing statement.

Although Staff agreed that HB 1822 does not compel the Commission to require the end date to be listed on small commercial bills, Staff found compelling policy reasons to apply the requirement to small commercial bills, noting that the Commission has such discretion. Small commercial customers are frequently exposed to early termination fees because they do not have information about the termination dates of their contracts, Staff said, finding that an accurate expiration date on the bill would reduce or eliminate termination fees and help eliminate time-consuming disputes between REPs and customers over such fees. In addition, an expiration date would give customers better information to shop for another contract or REP at the end of the contract term, Staff said.

The end date requirement would not be mandated for any customer above 50 kW if that customer has agreed to waive various customer protections in Subchapter R. Staff declined to remove the

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FERC Accepts Use of Handy-Whitman Index for RPM Cost of New Entry

FERC conditionally accepted PJM's proposal to institute a new automated process to set the Cost of New Entry in the Reliability Pricing Model, based on the Handy-Whitman Index of Public Utility Construction Costs (Matters, 9/2/09).

Under PJM's process for setting CONE, every Delivery Year, for each CONE Area, PJM will adjust the CONE used in the Base Residual Auction in the prior Delivery Year by the most recent twelve-month rate of change in the applicable Handy-Whitman Index, determined at the time that the CONE must be posted for that Delivery Year's Base Residual Auction.

"Because CONE values can be expected to be determined based upon a known and unbiased formula, market participants will gain a higher degree of certainty regarding forecasted CONE values. In turn, this should facilitate capacity market stability that will foster the locational construction of new resources and promote conditions conducive to long-term contracts for capacity resources," FERC said.

However, FERC said that PJM has not adequately explained the specific Handy-Whitman index which will be used; specifically, PJM's tariff sheets do not provide an explanation regarding the geographic location to be used, or the exact type of index, FERC said.

"The use of the Handy-Whitman Index is a formula rate and the tariff provision needs to describe

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BGE, Allegheny File Type II SOS Rates

Baltimore Gas & Electric and Allegheny Power filed Type II SOS rates for the three-month period beginning December 1.

BGE Type II SOS

Generation Market-Priced Service:	
Rate G	9.455¢/kWh
Rate GS	
Peak	12.166¢/kWh
Intermediate-Peak	8.514¢/kWh
Off-Peak	8.514¢/kWh
Rates GL, P	
Peak	12.028¢/kWh
Intermediate-Peak	8.499¢/kWh
Off-Peak	8.499¢/kWh

Allegheny Type II SOS

Schedule C	
Energy Charge	
First 350 kWh	12.432¢/kWh
Second 350 kWh	12.208¢/kWh
Over 700 kWh	4.783¢/kWh
Schedule G	
Capacity Charge	
All kW in excess of 7.5 measured as set forth under "Determination of Capacity"	$7.86/kW
Energy Charge	
First 700 kWh	10.325¢/kWh
Over 700 kWh	4.781¢/kWh
Schedule C-A	
Energy Charge^	
First 350 kWh	13.765¢/kWh
Second 350 kWh	11.975¢/kWh
Over 700 kWh	6.308¢/kWh

^Rates not applicable to certain schools/churches

Schedule PH	
Capacity Charge	
First 500 kW	$14.81/kW
Over 500 kW	$14.43/kW
Energy Charge	
First 100,000 kWh	3.323¢/kWh
All other kWh	3.011¢/kWh

ConEdison Solutions Reports Higher Net Income, Margins

ConEdison Solutions reported net income of $51 million for the third quarter of 2009, versus a net loss of $88 million a year ago. The 2009 quarter includes $27 million in mark-to-market gains, while the year-ago total included $87 million in mark-to-market losses.

Operating revenues were up at $452 million from $245 million a year ago. Electric retail revenues increased $3 million (1%) versus the year-ago period, due primarily to higher sales volume ($77 million), offset by lower per unit prices ($74 million). Gross margins increased "significantly," primarily due to the sale of higher margin contracts, lower costs, and higher volumes.

ConEdison Solutions sold approximately 9.5 million MWh over the nine-month period ending September 30, 2009, compared with sales of 8.2 million MWh in the first nine months of 2008.

ConEdison Energy reported a quarterly loss of $9 million versus earnings of $3 million a year ago. The 2009 quarter includes an $11 million mark-to-market loss, while the 2008 quarter included a $1 million mark-to-market gain. Electric wholesale revenues decreased $145 million in the three months ended September 30, 2009 as compared with the 2008 period, due primarily to lower sales volumes ($138 million) and lower unit prices ($7 million).

Mich. PSC Approves Consumers RDM, Eliminates Choice Incentive Mechanism

Consumers Energy will be allowed to adopt a pilot electric decoupling mechanism under a rate order issued by the Michigan PSC yesterday (Only in Matters, 9/3/09).

The decoupling mechanism will be contingent on Consumers exceeding statutory benchmarks for energy optimization programs and other factors.

According to the Commission's order, the pilot decoupling mechanism, "shall be symmetrical and shall reconcile non-fuel/non-purchase power revenue."

Furthermore, the Commission directed that the application of the decoupling mechanism upon specific customer groups, customer classes, or a combination thereof, will be determined in the reconciliation proceeding. Throughout the case Energy Michigan has argued that retail access customers should not subject to any decoupling charges/credits related to generation service, which Staff and Consumers agreed with in rebuttal testimony.

Additionally, due to the adoption of the decoupling mechanism, and the cap on electric choice sales, the Commission ordered that the Electric Choice Incentive Mechanism shall terminate on November 30, 2009, calling the mechanism meant to compensate Consumers for lost revenue from choice (or credit excess revenue to customers) unnecessary in light of the aforementioned changes. Consumers shall file its final Choice Incentive Mechanism reconciliation by April 1, 2010.

As it has consistently done in several recent rate cases, the Commission denied Consumers' application to impose a charge on distribution rates for non-residential retail access customers to pay for the current residential rate subsidy. Retail access distribution charges shall continue to be cost-based, without any charge for the recovery of the residential subsidy, the PSC ordered.

The Commission also adopted the proposed decision's recommendation for a 14-day residential rescission period, though the Commission noted there are currently no residential customers shopping at Consumers, which has reached the 10% choice cap. The Commission found that three days (the current period) or five days (Energy Michigan's alternative) is not enough time to allow a residential customer to cancel a competitive supply contract.

Under the Commission's order, competitive suppliers will be required to provide residential marketing materials and contracts for Staff review before marketing begins.

The Commission also approved various other uncontested aspects of the case related to retail access fully detailed in our Sept. 3 story. Among them is that competitive suppliers will be allowed to return customers to bundled service if suppliers have a "properly executed agency agreement" with the customer which gives the supplier authority to make the decision regarding the return to bundled service. For customers for whom the supplier does not have a letter of agency, Consumers will develop acceptable forms of notice that would be accepted as meeting the tariff's standard for the customer initiation of a drop to bundled service. Prompting this new language was Consumers' interpretation of its current tariff, as Consumers believed that the tariff only allowed the customer (and not the supplier) to execute a return to bundled service, which led to customers remaining with their competitive supplier past contract expiration if the customer did not notify the utility of their desire to return to bundled service.

Also approved were tariff provisions specifying that the load profiles used by retail suppliers in developing the schedule for their load shall be the rate class profiles approved by the Commission and used by Consumers in its planning and cost of service analysis. The Commission also accepted modifications to the section of the Retail Open Access tariff governing the billing of retailer charges by Consumers, in order to align the tariff with comparable service at Detroit Edison.

Fitchburg Gas & Electric Supply Hedging Results in Above-Market Costs of $4.6 Million

Finding Fitchburg Gas and Electric's gas hedging strategies to be both unauthorized and imprudent, the Massachusetts DPU ordered the Unitil subsidiary to refund to customers a total of $4.6 million, plus interest, for above-market gas supply costs paid during the winter of 2007/08 and 2008/09. As only reported by *Matters*, the DPU had opened an investigation into Unitil's procurement practices to determine whether Unitil was engaging in unauthorized hedging (Only in Matters, 3/16/09).

The DPU said that Unitil's unapproved hedging strategy resulted in above market costs of $377,000 for the winter of 2007/08 and $4.3 million for the winter of 2008/09 versus first-of -the-month pricing.

Unitil purchased about two-thirds of its gas requirements for the peak periods of 2007/2008 and 2008/2009, including volumes purchased for storage, pursuant to a program that aimed to mitigate price volatility through the use of price-locks. Unitil argued that it did not need approval for such a program since it did not make use of financial derivatives such as swaps, futures, or options.

However, the DPU said that Unitil's program, "went well beyond traditional gas procurement (that is, the purchase of physical gas for storage)," and thus required approval per DTE Order 01-100-A. Among other things, the DPU noted that Unitil was not locking in prices only during the off-peak period, consistent with storage, but was also locking in prices during the peak period. Additionally, Unitil was not purchasing physical gas and storing it in advance to meet customer requirements during the peak period, but was locking in prices for physical delivery at a later date several months into the future.

Aside from the lack of Department approval, the DPU found the hedging program to be imprudent because it was speculative and did not hedge over an appropriate length of time. The DPU found that, "the Company inappropriately engaged in speculative purchasing practices in an attempt to obtain below-market prices," despite the DPU's prior direction that LDCs are not permitted to engage in purchasing practices that attempt to obtain prices below published averages, because such behavior may lead to speculative pricing strategies that result in overall higher risk. Specifically, in once instance, Unitil's purchases were made based on a comparison of current versus historic prices, weather forecasts, the Energy Information Administration outlook, and NYMEX index, rather than a pre-defined purchasing schedule

"In order to maintain an objective of price stability, purchases made pursuant to risk-management programs must be made systematically, based on a pre-determined schedule that is followed regardless of changes in market prices," the DPU reiterated. By locking in prices based on projections that prices will increase, Unitil attempted to "beat the market," which is, "precisely the type of activity that the Department has directed LDCs not to engage in," the DPU noted.

Unitil's 2007/2008 purchases were made over a nine week period, while the 2008/09 purchases were made over a seven month period, both short of the minimum 12-month period required by the Department for prudent hedging designed to limit volatility, the DPU concluded.

Dayton Power Files Fuel Riders to Take Effect Jan. 1, 2010

Dayton Power and Light petitioned PUCO to establish a bypassable fuel rider consistent with its electric security plan. As proposed, the fuel rider for the two-month period beginning January 1, 2010 would be as follows:

Voltage	Fuel Rider
Substation & High Voltage	\$0.0239719/kWh
Primary	\$0.0242458/kWh
Secondary & Residential	\$0.0249501/kWh

Consistent with the electric security plan, Dayton will remove 1.97¢/kWh from base generation rates to reflect the base fuel charge currently in rates.

Nicor Competitive Units Report Higher Operating Income

Operating income from Nicor's other energy ventures segment (which includes wholesale and retail marketing) increased to \$3.7 million in the third quarter of 2009, from \$600,000 a year ago.

Nicor's retail energy-related products and services business contributed \$2.2 million to the increase, on a \$2.3 million decrease in operating expenses. The lower operating costs were primarily attributable to lower average cost per utility-bill management contract, partially offset by higher average contract volumes. The retail products and services unit saw a \$2 million increase in operating revenues year-over-year, from higher average contract volumes, partially offset by lower average revenue per utility-bill management contract, attributable primarily to product mix.

Nicor Enerchange (a wholesale marketer) contributed \$1.3 million to the improved consolidated competitive earnings, from favorable results in the company's risk management activities associated with hedging the product risks of the utility-bill management contracts offered by Nicor's energy-related products and services business, and favorable costing of physical sales activity, partially offset by unfavorable changes in valuations of derivative instruments used to hedge purchases and sales of natural gas inventory.

Briefly:

RBS Confirms Sale of Stake in RBS-Sempra JV

The Royal Bank of Scotland confirmed early Tuesday that it intends to sell its stake in the RBS-Sempra Commodities joint venture to comply with European Commission state aid requirements. Under a restructuring plan that remains subject to approval by the EU College of Commissioners, RBS has four years to complete the sale. In a statement issued Monday prior to the RBS announcement, Sempra said that it has been informed of the potential sale, and reported that its agreement with RBS requires that the bank maintain its ownership of the joint venture through April 2012. "We understand that any forthcoming divestiture order from the European Commission is expected to allow for an orderly transition, comply with our joint venture agreement and be executed in a manner that would maximize the value of the business," Sempra Energy CEO Donald Felsinger said. The joint venture agreement gives Sempra Energy certain rights with respect to any new owner of RBS' share of the joint venture and also the right to reacquire RBS' share, Sempra said.

Gateway Energy Services Seeks Pa. Gas License

Gateway Energy Services applied for a Pennsylvania natural gas supply license to serve residential and all sizes of commercial customers at PECO Gas, Columbia Gas, Dominion Peoples, UGI Utilities, Equitable Gas, National Fuel Gas, and Philadelphia Gas Works. Gateway said that it would focus on residential and small and mid-sized commercial customers, offering variable, indexed and 1-2 year fixed products. As only reported in *Matters*, Gateway is currently seeking a Pennsylvania electric license as well (Only in Matters, 10/23/09).

Duke Energy Ohio Files to Increase Electric POR Discount Rate

Duke Energy Ohio petitioned PUCO to modify its electric tariff to increase the discount rate for accounts receivable purchased from competitive retail electric service providers to 2.02% from 1.87%, reflecting an increase in the Collection Experience Component, and a higher number for Days Sales Outstanding (DSO), which in turn increased the Carrying Cost Discount Factor. Marginally mitigating the higher DSO is a lower Daily Carry Charge from a lower Annual Base Carrying Cost.

Additional Brokers Seek Illinois Licenses

The following brokers applied for Illinois ABC licenses:

Choice Energy Resources, Inc
Co-eXprise, Inc.
Energy Paradigm, LLC
Energy Purchasing Services, Inc.
Definitive Energy Group, Inc
Glenview Consulting Group, Inc.
Global Energy Enterprises, LLC
McDonnell Energy, LLC
Nordic Energy & Consulting Inc.
Nordic Energy Services LLC
Rock River Energy Services
Satori Energy Solutions, LLC
Save Wave Energy, LLC
Select Energy Partners, LLC
Power2Switch LLC
Prospect Resources, Inc.
Utility Management Group, Inc.

Reliant Energy Names Tom Gros SVP of Sales

Reliant Energy named Tom Gros as Senior Vice President of Sales. Gros was most recently Managing Director of Strategic Solutions for Tradition Energy. Before joining Tradition, Gros was Acting CEO of PriceLock, a start-up offering motor fuel risk management programs.

PUCT Opens Dockets on Advanced Meter Disconnection Protections, Critical Care Designations

The PUCT opened project 37624 for a rulemaking proceeding to amend customer protection rules relating to disconnection and reconnection of service for customers with advanced meters. The PUCT opened project 37622 for a rulemaking proceeding to amend customer protection rules relating to the designation of critical care customers.

ISO-NE Announces Results of Third FCA

ISO New England's third Forward Capacity Auction reached the price floor of $2.95 per kW-month, with 5,061 MW of excess supply remaining, the ISO reported yesterday. More than 40,995 MW from new and existing demand- and supply-side resources competed during seven rounds on October 5 and 6, 2009, to supply the 31,965 MW needed for the 2012/13 delivery year. Following the auction, generation retained for reliability and eligible for out-of-market compensation included Dominion's Salem Harbor Units 3 and 4, the combined output of which totals approximately 580 MW. Existing generation accounted for 30,558 MW of the cleared total. Some 2,487 MW of new supply-side resources and 309 MW of new demand-side projects also cleared.

KeySpan New York LDCs Submit POR Compliance Filing

KeySpan New York and KeySpan Long Island have submitted compliance filings reflecting changes to their Billing Services Agreement to conform with the New York PSC's recent order governing their Purchase of Receivables programs (06-G-1185 et al.). Among other things, the modified Agreement clarifies that the security interest attached to the unbilled receivables pertains only to the charges associated with the amount of gas that has passed through the meter but that has not yet been billed (see discussion in Matters, 9/26/09). Also revised is the methodology for collecting the credit and collection expenses, as previously reported. Per the Commission's order, any refund due to ESCOs from over-collection of credit and collection expenses will be addressed in the LDCs' annual gas cost reconciliation filing.

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end date requirement from §25.479 (whose provisions may be waived by larger non-residential customers) and place it in a section of the Substantive Rules which cannot be waived by any customer, as was recommended by several load representatives. Additionally, as it did in project 37214, Staff rejected the Office of Public Utility Counsel's recommendation to increase the threshold for small commercial customers to 500 kW or more.

Regarding the proposed common billing terms in §25.479, Staff recommended that REPs not be required to send out a definition to customers via an annual bill insert due to the costs of such inserts. REPs would be required to post the common billing terms on their website, and send them to the customer free of charge upon request, through the means that the REP communicates with the customer.

REPs, under Staff's proposal for adoption, would be granted limited leeway in using approved abbreviations or slight, non-material changes to the rules' common terms (such as using fee instead of charge, using suffixes or hyphenations, etc.)

The common billing terms listed in §25.479 are not meant to limit REPs from using additional terms not specifically authorized in the rule on their bills, as Staff does not wish to stifle potential innovation. However, to the extent the REP bills for a charge defined in §25.479, it must use the Commission-approved term and may not use a different term for the same charge.

To the extent that a REP unbundles TDU delivery charges on the bill, the REP would be required to use the applicable terms in §25.479, and could not include any markup in the corresponding charge. Staff rejected a suggestion from the Steering Committee of Cities Served by Oncor to refine the definition of "monthly charge." Cities had argued that the proposed definition is vague and does not inform the customer what the charge entails. The proposed definition of monthly charge is, "any charge, other than a tax or other fee or a transmission and distribution service charge that is assessed on a monthly basis without regard to the customer's demand or energy consumption."

Staff recommended that the amendments to §25.479 should take effect February 1, 2010.

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the methodology being used in determining the CONE value. While the intricacies of the calculations do not need to be in the tariff, the tariff needs to adequately describe the data being employed under the formula in the tariff," FERC ruled. FERC directed PJM to revise its tariff to describe in more detail how it will use the Handy-Whitman Index, including the geographic locations of the specific indices to be employed, and the resource categories that PJM will use.

FERC rejected a recommendation from Rockland Electric to average the Handy-Whitman Index over a three-year period, to minimize volatility in CONE prices. "A three-year average would introduce a substantial time lag, since CONE values are used for setting VRR [Variable Resource Requirement] Curves in the three-year forward auctions and this will make the Index less useful and reliable," FERC said.

The Commission also directed PJM to justify its proposed four-year review of CONE values, sharing the concerns of several protestors. Under PJM's proposal, PJM would examine every four years the cleared and competitive uncleared new entry offers for the prior four auctions and compare these values with the updated CONE calculations. If a deviation of more than 10 percent exists between the two, PJM would be required to, "institute a process to change the CONE values for all CONE Areas through a Tariff filing with FERC, to be effective in time for the next Base Residual Auction."

However, FERC said that PJM, "has not identified what criteria will be used to determine what cleared and uncleared offers PJM will examine, whether and how offers from resources other than combustion turbines will be considered, and, perhaps most important, the criteria used to determine whether an uncleared offer is 'competitive.'" PJM has also not explained why the new four year review process is necessary in light of its existing tariff provision that already permits it to make a section 205 filing based on appropriate criteria, the Commission added. FERC directed PJM to file revised tariff sheets that better explain what offers will be considered in the analysis, and how PJM will determine "competitive offers."

FERC noted that PJM also has proposed, under the four-year review proposal, that it will make a section 205 filing in time for the next Base Residual Auction. "Although we recognize PJM's right to make a section 205 filing if it determines that the automatic adjustment based on the Handy-Whitman Index is inadequate, our concerns with having to process such a contested filing on a short turnaround, without hearing procedures, remain. The adoption of the improved automatic adjustment procedure should mitigate potential harm to the market of any delays resulting from the adoption of hearing procedures. Therefore, in the event PJM seeks to makes [sic] a section 205 filing under its existing process, it and the parties should understand that they run the risk that we may find that a suspension of such a filing, subject to the normal hearing procedures of the FPA and possibly subject to refunds, is necessary," FERC said.

The Commission approved without modification PJM's proposal to revise its "holdback" for the incremental auctions, such that 0.5% of capacity will be sought in each of the First and Second Incremental Auctions, and that 1.5% will be sought in the Third Incremental Auction (for a total 2.5% holdback).

FERC also conditionally accepted PJM's tariff sheets explaining the precise conditions that would trigger procurement or sale of capacity in the incremental auctions. The Commission generally disagreed with the Illinois Commerce Commission's protest, which argued that PJM's incremental auction is discriminatory because it would only buy capacity when it has procured less than the reliability requirement, but would not sell capacity when it has procured capacity greater than an updated reliability requirement. However, FERC did find that PJM has not provided a satisfactory justification for not including a sell-back provision under some circumstances.

For example, FERC noted that a generator may be willing to buy its capacity obligation back from PJM for an amount greater than what the excess capacity is worth to PJM, as reflected in the VRR curve (perhaps to avoid a costlier RPM penalty from a construction delay). FERC directed PJM to propose a sell-back option for such circumstances, or justify its exclusion of a sell-back option.

FERC said that PJM's proposal to make adjustments in the incremental auctions to reflect changes in the estimates of peak load that have occurred since the previous auctions are reasonable, but said that PJM has not justified its proposed price for the additional capacity. PJM proposed paying up to 1.5 times Net CONE in order to obtain additional capacity, but FERC noted that, if PJM had originally purchased the capacity needed to serve the now-increased peak load in the Base Residual Auction, that additional capacity would not be worth a price of 1.5 times Net CONE. FERC directed PJM to revise the price at which it is willing to purchase additional capacity in incremental auctions when the updated reliability requirement exceeds set thresholds, or justify its proposal to pay 1.5 times Net CONE.