Energy Choice Matters

November 6, 2009

PUCT's Nelson to Meet with Stakeholders on Contract Expiration, Billing Terms Proposals

Commissioner Donna Nelson will meet with stakeholders to address rules for both contract expiration notices and common billing terms under HB 1822 as the PUCT opted to defer a final vote on two Staff proposals for adoption until its Nov. 20 open meeting, at which time the Commission expects to make a decision. During yesterday's meeting, Commissioners discussed various concerns and challenges presented by HB 1822, the current market structure, and how such issues were addressed in the proposals for adoption (Matters, 11/2/09).

Among other things, Staff has proposed that REPs be required to list the exact end date for fixed priced contracts on residential and small commercial bills, with a prohibition on the imposition of termination fees once the REP sends out a notice of contract expiration. Nelson favors allowing REPs to estimate the end date on a bill due to the fluid nature of meter reading schedules.

Commissioner Kenneth Anderson expressed reservations about a termination fee prohibition that could extend up to 60 days prior to contract expiration, as would occur under Staff's proposal, noting that such a provision would essentially make a 12-month fixed product as 10-month product. At the same time, Anderson was also concerned about the use of estimated end dates, especially if there is no extended waiver period for termination fees, since customers may be assessed termination fees simply because the REP's estimate of their contract end date was inaccurate.

Anderson suggested a hybrid approach under which the REP could elect how to list the end date on their bills. If the REP opted to use an estimate, Anderson said that an extended termination fee

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PUCT to Open Rulemaking on REP Certificate Transfers, Anderson Posts Strawman

The PUCT will open a rulemaking to consider whether REPs are required to receive Commission approval before transferring, assigning, or selling their REP certificate, with Commissioner Kenneth Anderson offering a strawman proposal to start the process.

As only reported in *Matters*, Anderson announced his intention to seek such a rulemaking in early October, believing the Commission has authority to require pre-approval of certificate transfers (Only in Matters, 10/7/09).

Commissioner Donna Nelson supported investigating the issue, but said she had "mixed feelings," and expressed concern that a rule could result in the Commission exercising greater authority over REPs than the Commission exercises over regulated companies.

Chairman Barry Smitherman, who has in the past said that he does not believe PURA grants the Commission authority to regulate certificate transfers, also said that he has an open mind. In particular, Smitherman said that he had been less concerned about a requirement for REPs to seek pre-approval for certificate transfers, because the Commission retains the authority to revoke a REP certificate. However, Smitherman noted that the Commission, at least in the past few years, has not exercised that authority, except in cases where the REP has already ceased operations and transitioned customers to POLR.

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Superior Plus Confirms Plans to Enter U.S. Market

Superior Plus confirmed yesterday during an earnings call that it intends to extend its competitive energy marketing into the U.S., by cross-selling products to customers acquired through the purchase of certain assets of Griffith Energy Services (see exclusive story, Matters, 11/6/09).

Superior said that as part of creating synergies through its acquisition of Griffith's fuel marketing and HVAC/energy contracting businesses, it will take its experience of fixed price energy marketing from Canada and bring it to its new U.S. customers.

In particular, Superior said that it intends to cross-sell electricity to its new heating oil customers in the U.S.

The Griffith asset purchase includes customers in Pennsylvania (mainly Philadelphia area), Connecticut, and Rhode Island.

Executives also said that they don't expect much growth in Canadian mass market electricity migration under the current subsidized default rates. Superior has stopped marketing to residential electric customers in Ontario due to the default rates and competitive climate. Superior's Canadian natural gas business is also expected to be sluggish until the gas curve flattens out.

San Francisco Community Choice Aggregation Issues RFP for Supplies

The San Francisco Public Utilities Commission and San Francisco's community choice aggregator, CleanPowerSF, issued yesterday an RFP to supply the municipal, opt-out aggregation for a minimum term of five years, with a "strong preference" for a significantly longer-term contract.

The SFPUC anticipates that the total annual revenue from CleanPowerSF customers will be approximately $350 million per year. Excluding direct access and municipal load, the city's estimated coincident peak demand is approximately 850 MW.

The electric generation rates for the Clean PowerSF program should be competitive with current Pacific Gas & Electric generation rates for each rate class, and should provide for a long-term rate design intended to remain competitive with PG&E's rates, the RFP says. "Providing customers with stable electricity rates will not only benefit customers but will also likely increase customer retention rates, particularly among large energy users, which are more sensitive to price fluctuations," the RFP says.

The generation rates must provide for repayment to the city for its CleanPowerSF-related costs, including repayment of any revenue bonds. Rates must also include all community choice aggregation costs, including the Cost Responsibility Surcharge.

While community choice aggregators may impose exit fees on customers leaving the aggregation after its start, CleanPowerSF said that it may decide not to impose exit fees, and told bidders to devise alternative strategies, and minimize reliance on exit fees.

Bidders would be required to provide full requirements electric supply. Additionally, suppliers are "strongly encouraged" to submit proposals to meet the city's targeted renewable goal of at least 51% by 2017 with a combination of energy efficiency and RPS-compliant renewable resources. Bidders are "strongly encouraged" to meet these goals through construction of at least 360 MW of renewable energy generating facilities, including 31 MW of photovoltaics, 72 MW of local renewable distributed generation such as combined heat and power and fuel cells, and 150 MW of wind generation.

As the RFP is seeking supply, energy services, and generation development, the RFP welcomes joint ventures or partnerships among various firms in addition to bidders that are a single firm.

Suppliers will be paid for energy as funds are received from customers per the supplier's rate schedule. The city said that it intends to make "commercially reasonable" efforts to support collection of delinquent accounts, including initiating service transfer to PG&E. "In its proffered rates, Proposer shall incorporate its expected cost of non-payment from approximately 0.7% of customers (uncollectible accounts). Proposals should propose a mechanism for addressing any revenue shortfalls that may arise due to the number of uncollectible accounts differing from the number included in this forecast rate," the RFP says.

A pre-submittal conference is scheduled for November 12. RFP responses are due by noon December 29, 2009.

The RFP, Agreement No. CS-978R, is available at www.sfwater.org under Contracts & Bids --> Professional Service Projects

South Jersey Energy to Expand Pa. Presence, Enter New England Electric Markets

Competitive retail supplier South Jersey Energy is expanding its electric and natural gas footprint in Pennsylvania, and is also expanding into New England retail electric markets, Edward Graham, CEO of parent South Jersey Industries, revealed during an earnings call. Graham did not elaborate on specific markets.

South Jersey Energy is currently licensed as an electric supplier in Connecticut, but is not serving load. South Jersey Energy has also had a Massachusetts electric license since 2007, but it is unclear whether it is serving load at this time.

A 10-Q for SJI, which typically provides a breakdown of South Jersey Energy's performance, has not been filed yet. In a news release, SJI reported that, on a consolidated basis, its various Asset Management and Marketing businesses saw an economic loss of $1.2 million, versus economic earnings of $171,000 a year ago. The economic metric excludes the impacts of unrealized hedging gains/losses and realized gains/losses on inventory injection hedges.

SJI is currently investing in the Marcellus shale, and Graham noted that such supplies will complement South Jersey Energy's retail gas books in nearby markets.

Graham also addressed a question regarding the impact of the election of Republican Chris Christie as New Jersey governor on the Board of Public Utilities, noting "Certainly some changes have to happen at the President level. [BPU President] Jeanne Fox is Democratic and appointed by the governor so therefore, that seat would have to change. I'm not certain if Jeanne would stay and serve on the Commission but certainly a new President will have to take place." The President of the BPU serves on the Governor's cabinet.

CFO David Kindlick added, "The other thing that happens is the New Jersey Commission is always set up as three seats for the party in power and two for the other. So that one democratic seat would be moving over to the Republican side. I don't know which one that would be. I can tell you that right now Fred Butler is on an extension of his committed term so that could very well be the one that moves from the D side over to the R."

World Energy Cites Calif., Pa., Mich. for Growth

World Energy Solutions cited Pennsylvania, California and Michigan as its next areas for growth in retail supply brokering, coming on the heels of its expanded Ohio electric brokering, executives said during an earnings call.

World Energy reported record retail bookings in the third quarter, aided by a "land grab" of new opportunities in Ohio at the FirstEnergy utilities and Duke, and at PPL in Pennsylvania. World Energy said it has signed over 50 Ohio customers to an average term of over two years. As previously reported, World Energy has been cross-selling electricity procurement services to its Ohio natural gas book, acquired from EnergyGateway.

Executives said that 35% of California's peak demand should be open within six months under the limited return of direct access.

World Energy reported a narrowed net loss of $637,000 for the quarter, versus $1.2 million a year ago, from a decrease in the cost of revenue and operating expenses and, to a lesser extent, a 5% increase in revenue.

Revenue increased to $3.5 million from $3.3 million a year ago on new customers. Revenue from existing retail supply customers was down 4% year-over-year due to decreased volumes. Cost of revenue fell to $894,000 from $1.1 million a year ago.

Gross profit grew to $2.6 million from $2.2 million a year ago. Sales and marketing expenses were relatively flat at $2.3 million, while general and administrative expenses fell to $885,000 from $1.0 million a year ago.

Integrys Energy Services Wind-Down On Target for December 2010 Completion

Integrys Energy Group is on target to complete the wind down of Integrys Energy Services by December 2010, executives reported during an earnings call yesterday.

Aside from several previously reported divestitures, Integrys Energy Services said in its 10-Q that it has executed a novation agreement with a large financial institution whereby a number of physical and financial contracts were consolidated with a single counterparty in order to net collateral and credit support requirements.

Separately, Integrys Energy Services also reported that it has entered into a natural gas supply agreement with a third-party, whereby the third-party will be the primary supplier for its retail natural gas marketing business. The supply agreement will reduce Integrys Energy Group's collateral support requirements by approximately $75 million.

Neither the financial institution not the supply counterparty were disclosed.

Though it has significantly reduced its enrollment and renewal efforts, Integrys Energy Services continues to enter into new transactions with customers within certain defined parameters, in order to preserve value, but now includes higher collateral costs and other risks in pricing. The pricing strategy continues to reduce the flow of new business, reducing future liquidity requirements while improving the profitability of transactions that are executed.

As reported yesterday, Integrys Energy Services reported net income of $23.8 million for the third quarter of 2009, versus a net loss of $94.5 million a year ago.

Realized retail electric margins decreased $2.3 million, from $22.3 million in the third quarter of 2008 to $20.0 million in the third quarter of 2009. The decrease was driven by a $5.9 million decrease in the Illinois market, reflecting a 22% decrease in sales volumes due to reduced retention efforts and higher pricing.

This decrease was partially offset by a $3.3 million increase in the Texas market, reflecting the absence of year-ago costs related to Integrys Energy Services' inability to pass higher ERCOT congestion costs onto customers with fixed rate contracts. The 2009 quarter also benefited from the non-recurrence Hurricane Ike-related lost load.

Realized retail per-unit electric margins were $5.04/MWh, comparable to the year-ago margin of $5.05/MWh.

Realized retail natural gas margins were $4.9 million versus $100,000 a year ago. Per-unit margins were $0.11 per dekatherm, versus a not meaningful per-unit margin a year ago.

Integrys Energy Services' physical retail electric volumes were 4,000 GWh, versus 4,600 GWh a year ago. Physical retail natural gas sales volumes were 45.6 bcf, down from 71.1 bcf a year ago.

RRI Sees Higher Calif. Capacity Prices

RRI Energy reported lower adjusted EBITDA of $100 million for the third quarter of 2009, compared to $350 million a year ago, from lower power prices and its open position. RRI's loss from continuing operations before income taxes was $9 million, compared to income of $183 million for the third quarter of 2008.

Open energy gross margin fell to $58 million from $203 million a year ago. On a unit basis, open energy unit margin was $9.31/MWh, down from $27.65/MWh a year ago (see chart for margin by region).

RRI reported that as part of its previously announced modest hedging strategy, it added 10 Bcf of gas puts to its 2010 position and 2.2 TWh of power sales to its 2011 position. The hedging program is designed to provide a high degree of certainty of free cash flow break even, or better, if market conditions substantially worsen. Volumes from its PJM coal fleet are now 30% hedged for 2010 and 29% hedged for

RRI Open Energy Unit Margin ***($/MWh)***

	Q3 '09	Q3 '08
East Coal	$ 8.70	$ 33.41
East Gas	11.95	28.95
West	11.00	5.14
Other	—	19.27
Weighted average total	**$ 9.31**	**$ 27.65**

2011. The majority of RRI's output remains open to benefit from any recovery in the market.

A positive for RRI during the quarter was contracting higher capacity revenues for its California assets for 2012. RRI CEO Mark Jacobs said that the capacity prices are the highest RRI has seen in California in some seven years, due to the expected future supply/demand fundamentals. Jacobs also cited a draft California PUC decision, first reported by *Matters* (Matters, 11/4/09), which would require load serving entities to procure capacity for 80-100% of their requirements three-to-five years in advance as a "big step in the right direction," though RRI favors a centralized capacity market.

Expected capacity revenue from California assets in 2012 are projected to be $169 million, up significantly from expected capacity revenue of $105 million for 2010 and $95 million for 2011.

RRI reported that given the weakness in natural gas prices, it experienced some coal to gas switching in the third quarter. Its Hunterstown combined cycle gas plant had an additional 300,000 MWh of economic generation in the third quarter versus a year ago, while its mid-merit coal plants including Elrama, Titus, New Castle and Niles had about 400,000 MWh less economic generation.

RRI said it may mothball its Indian River plant at the end of 2009 when a PPA expires if it cannot identify a viable near-term PPA opportunity, and is evaluating various other options for the site as well (such as a sale, etc.). The depressed power market has prompted RRI to reduce its investment spending on projects and outages originally intended to increase availability, instead focusing on maintaining the 2008 availability levels since incremental generation has less value today.

As it did during its second quarter call, RRI said that the transition of FirstEnergy's American Transmission Systems Inc. footprint to PJM would provide upside, particularly regarding capacity revenue, as three RRI plants would move from MISO to PJM under the transition. If the transition is approved and FirstEnergy elects to complete the PJM integration, RRI would be left with only one asset in the Midwest ISO, a gas-fired plant in Illinois.

RRI said that its Illinois retail book, the only remaining vestige of its former retail marketing business, is still held for sale. Illinois retail revenues for the quarter were $11 million, versus $22 million a year ago.

Dynegy Lifted by Assignment of Power Sales Contract

Dynegy reported adjusted EBITDA for the third quarter of 2009 of $388 million, compared to $269 million for the third quarter of 2008, primarily related to the sale and assignment of a multi-year power sales contract, higher capacity and tolling revenues, and higher realized energy prices in the Midwest.

Dynegy's net loss for the quarter was $212 million versus net income of $605 million a year ago, driven by asset impairment charges and mark-to-market losses. GAAP results include mark-to-market losses of $128 million for the third quarter of 2009, compared to mark-to-market gains of $889 million for the third quarter of 2008.

Adjusted EBITDA for Dynegy's Midwest fleet increased to $264 million from $182 million a year ago despite 7% lower volumes due to the economy, mild summer weather, and increased off-peak wind generation. This was primarily due to the sale and assignment of a multi-year power sales contract that would have been in effect until 2011. Dynegy opted to monetize the contract because its volume requirements were variable and difficult to hedge. The overall decline in Midwest generation volumes was partially offset by increased volumes from Dynegy's natural gas combined cycle facilities. More specifically, the Midwest segment saw a 12% decrease in coal volumes, which was partially offset by a 15% increase in gas volume. Actual combined cycle volumes were up 35%, which was offset by reduced runtimes for its peakers.

Northeast adjusted EBITDA increased to $55 million from $42 million a year ago due to higher runtimes at Dynegy's combined cycle facilities and the net benefit of selling options for future periods. Production volumes in the Northeast increased overall by 20% as its combined cycle facilities benefited from coal to gas switching in the region

Adjusted EBITDA for Dynegy's West fleet

grew to $112 million from $83 million on increased tolling and capacity revenues

Dynegy CEO Bruce Williamson said during an earnings call that industry consolidation remains an attractive proposition for investors based on the significant synergies in cost savings that could be achieved through combinations, though M&A faces challenges.

PUCT Staff, Luminant File Settlement Regarding LaaRs Violations

PUCT Staff and Luminant have entered into a settlement regarding violations of Load Acting as a Resource (LaaR) deployment deadlines, and have asked the presiding officer to certify to the Commission an issue of law regarding the application of LaaR penalties.

Specifically, as part of the settlement, Staff and Luminant asked the presiding officer to certify the issue of: (1) whether an administrative penalty may be assessed on a per megawatt (MW) basis where each MW not timely deployed pursuant to a LaaR obligation following an ERCOT deployment instruction is a separate violation, or (2) whether an administrative penalty may only be assessed on the single wrongful act or inaction of failing to timely dispatch a LaaR obligation following an ERCOT deployment instruction.

The settlement stems from Luminant's failure to deploy any of its 46 MW of LaaRs during the February 26, 2008 frequency event (caused by the loss of wind generation and some non-intermittent generation) within 10 minutes of ERCOT's instruction. ERCOT Protocols § 6.10.5.4(1) requires that a QSE LaaR portfolio dispatch not less than 95% and not more than 150% of the responsive reserve service requested within ten minutes of ERCOT's deployment dispatch instruction. The failure was the second incident in which Luminant failed to timely deploy its LaaR obligations.

Luminant maintains that a single violation occurred for the entire failed deployment, for which the maximum penalty is $25,000, pursuant to PURA Section 15.023. Staff argues that a violation occurred for each MW of Luminant's LaaR obligation that it did not timely provide, and each violation is subject to a maximum penalty of up to $25,000. Staff recommends a total administrative penalty of $115,000 for all the violations, using a base penalty of $5,000 for each MW of Luminant's 46 MW LaaR obligation. The base penalty of $230,000 was reduced 50% to account for the specific facts of the case, mitigation efforts, and to recognize Luminant's subsequent compliance with its LaaR obligations for nearly two years to the present.

Under the settlement, the penalty amount would be determined by the ruling on the certified question, with the penalty either being $25,000 if Luminant's interpretation is supported, or $115,000 if Staff's position is supported.

Briefly:

AOBA Joins Request to Delay Maryland POR

The Apartment and Office Building Association of Metropolitan Washington, whose aggregator subsidiary has had a supply agreement with Pepco Energy Services, filed a request for rehearing of the Maryland PSC's letter orders modifying and approving the electric utilities' Purchase of Receivables compliance filings and implementation plans. AOBA reiterated the concerns raised by Pepco Energy Services, addressed at length in yesterday's issue, and is seeking a similar delay (Only in Matters, 11/6/09).

Energetix Seeks Pa. Electric License

Energetix applied for a Pennsylvania electric license as a generator/supplier of electric power and a broker/marketer, to serve all customer classes in all service areas. Energetix is also seeking a gas supply license (Only in Matters, 11/5/09).

AGR Group Receives Delaware Broker License

The Delaware PSC granted AGR Group an electric broker license.

DTE Energy Trading Wins CL&P Last Resort Supplies

Connecticut Light & Power reported that DTE Energy Trading won 100% of its Last Resort Service load for the three-month period beginning January 1, 2010.

UtiliTech Seeks Pa. Broker License
UtiliTech, Inc. applied for a Pennsylvania electric broker/consultant license to serve commercial customers over 25 kW, industrial customers, and governmental customers in all service areas. Though offering procurement services, UtiliTech's main focus is bill, rate and usage analysis and invoice scrubbing.

Exelon Seeks Amendment to Pa. Electric License
Exelon Energy applied to amend its Pennsylvania retail electric license to include the authority to operate as an aggregator in addition to a supplier of retail electricity.

PUCT Affirms Dismissal of Wind Generators' Reactive Power Complaint
The PUCT affirmed a decision by an ALJ to dismiss a complaint from wind generators regarding ERCOT's interpretation of reactive power requirements in the Protocols, as Commissioners agreed that adjudicating the controversy would be procedurally improper because parties have not engaged in ERCOT's dispute resolution process prior to bringing the complaint, as is required (see discussion in Matters, 10/20/09).

PUCT Approves Oncor Primary Substation Class, Applies Class Prospectively
The PUCT approved the creation of a Primary Substation Class at Oncor, but ruled that the class shall only be applicable on a prospective basis. REPs had opposed retroactive application of the class due to required cancels/re-bills (Only in Matters, 11/5/09).

First Choice Power Offering Renewable Product Without Premium
First Choice Power said that it is offering a 100% renewable product for the cost of a conventional plan. Through the end of the year, First Choice is offering the 12-month fixed Simply Better Advantage Green Plan at the same rate as its Simply Better Advantage 12 fixed price product. Customers enrolling online will receive a $25 Visa prepaid debit card if they remain customers in good standing for three complete billing cycles

FERC Disclaims Jurisdiction over CREZ Lines
As requested by several petitioners, FERC disclaimed jurisdiction over certain Competitive Renewable Energy Zone transmission lines in the Panhandle to be built by Cross Texas Transmission and Sharyland Utilities, agreeing that the lines do not implicate interstate commerce.

ERCOT Opens Nodal Systems to Market for Connectivity Tests
ERCOT said it has opened its nodal production environment to the market for connectivity testing in preparation for integrated market trials in early 2010. Sixteen companies - including software vendors representing multiple market participants - have been testing data transfers between their software systems and ERCOT's market management system since Oct. 28. ERCOT received more than 21,000 successful transactions during the first week of testing. ERCOT Chief Technology Officer Mike Cleary said there have been some technical issues, but these were not unexpected, and overall he is pleased with the early results. "This is the second major market-facing milestone we have completed on time in the last three months, keeping us on track to meet the nodal market's final deadline," Cleary said.

Following Final Order, OCC Files Another Appeal of AEP Security Plan
With PUCO issuing a final rehearing order on the AEP utilities' electric security plan on Wednesday (Only in Matters, 11/5/09), the Ohio Consumers' Counsel filed another appeal of the plan at the state supreme court, opposing the use of an annual revenue requirement and POLR charges (see Matters, 9/11/09).

End Date on Bills ... from 1
waiver period should be required to protect customers, since their end date is uncertain. However, if REPs choose to list an exact end date, the extended termination fee waiver period may not be required, Anderson noted.

Nelson will discuss the issue with stakeholders in the coming week, as well as other issues such as an effective date.

Anderson said that, based on discussions with vendors related to a similar telecom billing rule, a June 1, 2010 effective date for changes may be appropriate. Staff had recommended February 1, 2010, with REPs requesting March 1, 2010, though Nelson speculated that REPs only asked for a March date as a winnable compromise, rather than a March deadline reflecting sufficient time to implement the changes. Commissioners also discussed potentially allowing REPs to apply for a good cause waiver of the rules for a nominal period due to the time needed to upgrade legacy billing systems.

As noted yesterday, Nelson believes that the requirement for the end date to be listed on bills should only apply to residential customers. Anderson, however, is not convinced that HB 1822's requirement for such end dates is limited to residential customers.

Both Anderson and Nelson expressed a desire to address the issue of notice given to REPs prior to the effective date of any TDU rate change, noting frequent TDU rate changes which occur outside of rate cases for various recovery factors make things complicated for both REPs and customers, who may be on fixed rates and upset by the constant rate adjustments.

REP Certificates ... from 1

Under Anderson's strawman, a, "REP or the person seeking to effect a change in control of a REP shall obtain prior approval from the commission before any change in control of that REP occurs."

Under the strawman, a change in control of a REP includes, but is not limited to:

(i) A REP sells, assigns, or otherwise transfers its REP certificate to another person;

(ii) A REP, or the person who controls a REP, sells all or substantially all of its assets, including its REP certificate, to another person. Sale of all or substantially all of the assets means the sale, lease, exchange, or other disposition of all or substantially all of the property and assets, including without limitation customer agreements, of the REP that is not made in the ordinary course of business and without regard to whether the disposition is made with the goodwill of the business;

(iii) A transaction or series of transactions, whether or not the transaction involves the acquisition of the voting securities of a REP, that results in the acquirer obtaining control of the REP; or

(iv) A REP is a party to a merger or consolidation.

Per the strawman, before consummating a transaction that constitutes a change in control of a REP, the acquiring person, the surviving entity named in a plan of merger, or the person who will otherwise gain control of the REP certificate, shall apply for approval of the change in control on a form approved by the commission, verified by oath or affirmation, and signed by an executive officer of the applicant. The applicant must demonstrate its capability of complying with the REP certification requirements.

Except where good cause exists to extend the time for review, the Commission would be required to enter an order approving, rejecting, or approving with modifications, an application within 75 days of the filing of the application for approval of the change in control.