Energy Choice Matters

November 11, 2009

O&R Requests More Time for Report on Alternative Referral Program Cost Allocations

Orange and Rockland asked the New York PSC for an extension of its 60-day deadline to file a report on alternative ESCO Referral Program cost sharing mechanisms for single commodity ESCOs, stating that ESCOs have requested more time to review data compiled by O&R (07-E-0949).

As only reported in *Matters*, the PSC required O&R to consider alternative cost allocation for ESCOs only participating for a single commodity in the ESCO Referral Program, as part of the expansion of the Referral Program to new service customers (Only in Matters, 9/22/09). The National Energy Marketers Association had noted that single fuel ESCOs derive different benefits from the Referral Program, and had suggested an accommodation be made for such ESCOs in cost recovery.

O&R said that it met with ESCOs on October 22, 2009 to discuss, among other matters, potential cost sharing mechanisms with the ESCOs. During a follow-up teleconference on November 4, ESCOs requested that Orange and Rockland provide additional information including data regarding initiations for new service each year, i.e., how many new accounts are produced each year versus what is the actual growth in terms of new customers each year. The ESCOs also requested additional time before O&R reports to the Commission, so that they will be able to review the information to be provided by Orange and Rockland, and perhaps develop their own cost proposal.

In light of the ESCOs' request, O&R asked for a 60-day extension (until January 19, 2010) to submit the report on alternative cost allocation, so that it can receive additional ESCO feedback.

Mich. ALJ Recommends Maintaining Choice Incentive Mechanism at Detroit Edison

A Michigan ALJ has recommended maintaining the Electric Choice Incentive Mechanism at Detroit Edison, finding that volatility still exists in choice sales (U-15768).

The Choice Incentive Mechanism is meant to compensate Detroit Edison (or credit customers) for lost (gained) revenue related to variations in choice sales from a set baseline. During Detroit Edison's rate case, Constellation NewEnergy argued that with the 10% cap on choice sales, in addition to Detroit Edison's flat projections for choice volumes, the mechanism should be eliminated as unnecessary.

In a proposed decision released yesterday, the ALJ disagreed, finding that, "despite the imposition of the 10% cap, there continues to be revenue instability." Quoting the Commission's most recent Detroit Edison rate order (December 2008, U-15244), which also addressed calls for the end of the Choice Inventive Mechanism, the ALJ noted, "Detroit Edison is still exposed to volatility in the choice market."

"Because the Commission has recently spoken on this issue and there continues to be revenue instability, the Administrative Law Judge recommends that the Commission renew the Company's CIM," the proposed order finds.

It should be noted that just last week, as only reported by *Matters*, the Michigan PSC eliminated the Electric Choice Incentive Mechanism at Consumers Energy, in light of the choice cap as well as

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CenterPoint Says PUCT Should Consider Repealing Rules for Choice Pilots, Initiation

The PUCT should consider repealing several substantive rules regarding the initiation of retail competition and pilot programs, stating that their ongoing need is unclear, and that, even if additional areas are opened to choice, new rules would likely be sought to gain from the experience in the major ERCOT utilities (37230). CenterPoint's recommendations came in response to the Commission's periodic review of the provisions of its Chapter 25 rules.

Specifically, CenterPoint questioned the need for Subst. R. §§ 25.431 (Retail Competition Pilot Projects), 25.472(a) (Privacy of Customer Information - Mass Customer Lists), and 25.474(c) (Initial REP Selection Process).

In each case, CenterPoint said that it is questionable whether the rules relating to choice pilots or the initiation of competition continue to be needed. "Even if entities that are not currently open to retail competition ultimately have retail competition, it is probable that the current provisions ... will need to be amended due to the passage of time and experience gained by the Commission," CenterPoint said.

Subst. R. § 25.431 establishes the parameters under which an electric utility shall offer customer choice for 5.0% of the load in its Texas service area through the implementation of retail competition pilot projects. The rule also includes evaluation criteria for the pilot, and a determination of readiness for full customer choice to be introduced.

Subst. R. § 25.472(a) states that prior to the commencement of retail competition, an electric utility shall release a mass customer list to certificated REPs and registered aggregators that will be providing service to residential or small commercial customers, at no charge.

Subst. R. § 25.474(c) provides that the Commission may issue to customers an explanation of the REP selection process, a list of certified REPs, and a form that allows the customer to contact or select one or more of the listed REPs from which the customer desires to receive information or to be contacted. The rule also requires REPs serving price-to-beat customers to send such customers terms of service and related documents.

Certain areas not currently open to competition, such as Entergy and SWEPCO, are subject to special legislative provisions or benchmarks governing any future transition to competition. However, other utilities, notably Cap Rock which is partially in ERCOT and does not own substantial generation, is not governed by any unique legislative process for any potential transition to competition, and its potential transition to competition could ostensibly be governed by the instant rules, or any future rules developed by the Commission.

Several REPs asked the Commission to conduct a sunset review of § 25.489, Treatment of Premises with No Retail Electric Provider of Record. Filing the comments jointly were CPL Retail, WTU Retail, Reliant Energy, TXU Energy, the Alliance for Retail Markets, REPower, and the Texas Energy Association for Marketers.

Subst. R. § 25.489 establishes the process to identify premises that have no REP of record, and governs the notice to customers that they will be disconnected if they do not select a REP.

The REPs noted that, in the last periodic review of the Substantive Rules, the REP Coalition argued that a sunset review of the rule may be appropriate as the Move In, Move Out and safety net process are working effectively, which should render § 25.489 moot. At that time the Commission declined to delete the rule because transmission and distribution utilities were still finding instances in which the rule must be applied.

CenterPoint questioned the continuing need for § 25.490, which originally placed a moratorium on residential disconnections performed after the TDU received a Move-Out transaction, unless Commission Staff granted approval for disconnects after Move-Outs under § 25.490(d). To achieve such approval, the TDU was required to demonstrate that it has for three consecutive months or more processed 95% or greater of all Move-Ins and requests for reconnection of electric service no later than the scheduled date. If a TDU's success rate falls below 95% for two consecutive months or below 90% in any one month, the TDU is to immediately notify Commission Staff in writing, and Commission approval shall be automatically revoked.

CenterPoint said that if all of the transmission and distribution utilities in ERCOT have received approval from the Commission pursuant to § 25.490(d) to resume disconnections performed after a Move-Out, "then CenterPoint Energy believes the rule for a moratorium on disconnections on move-out request can be repealed."

Integrys Energy Services Sells 75 MW of Maine, New Brunswick Generation

Integrys Energy Services has signed an agreement to sell 75 MW of generation in northern Maine and New Brunswick, Canada to Algonquin Power & Utilities Corp.

Included in the transaction are the associated sales and Standard Offer service contracts in northern Maine. Integrys Energy Services' Standard Offer service and retail electric sales contracts in southern Maine are not included in the sale.

The assets to be sold in the transaction include 37 MW of hydroelectric generation (most of which is from the 35 MW Tinker plant), and five thermal (diesel/oil fired) generating stations. The hydro plants are under firm energy and capacity sale contracts continuing through February 2011. The thermal plants are utilized for installed reserve capacity, not continuous generation.

Algonquin said that Integrys' Maine-based energy marketing staff will be retained as part of the acquisition, and will manage existing offtake arrangements and undertake contract renewals. Algonquin's strategic energy marketing alliance with Emera Energy Services will also assist with marketing the power after 2011.

According to Algonquin, the average contracted energy price of the assets for 2010 is $52.65/MWh, with an average contracted capacity price for 2010 of $960/MW-month

The assets are owned by Integrys Energy Services' subsidiary WPS Power Development, which has a fleet of 329 MW.

Financial terms were not disclosed.

RRI Wary of LSE-determined Load Forecast Standard Deviation in MISO

RRI Energy protested a Midwest ISO filing to make various refinements to its Module E resource adequacy tariff, arguing that, among other things, MISO's proposal to allow LSEs to submit their own standard deviation for load forecasts may undermine accurate forecasting (Only in Matters, 10/22/09).

MISO proposed to reference in the tariff the Module E Capacity Tracking Tool (MECT) as the exclusive method of providing resource adequacy requirement information to the Midwest ISO, including, but not limited to, the standard deviation data that applies to forecasted Demand. Per the MISO proposal, each LSE may submit all available standard deviation documentation by CPNode supporting the LSE's calculation of its forecasted Demand through the MECT after the Resource Plan Deadline, in accordance with the Business Practice Manual (BPM). LSEs who submit standard deviation documentation as described by the tariff shall be able to report actual weather data, actual price data, or retail load shifts through the MECT following the end of each month, in accordance with the Business Practice Manual.

"The October 20 Filing fails to explain or justify why LSEs are given the opportunity to submit their own standard deviation," RRI protested. "Allowing LSEs to submit their own standard deviation ignores the crucial role that the standard deviation plays in determining the accuracy of the LSE's load forecast, and may undermine the Midwest ISO's ability to evaluate the accuracy of the LSE resource plans and to determine the sources of the inaccuracies so that the Midwest ISO and market participants have the basis to develop better forecasts in the future," RRI added.

RRI contended that MISO should either determine the appropriate standard deviation that it will use to evaluate LSEs' forecasts, or establish parameters for calculating a standard deviation to be used by all LSEs.

In the alternative, if FERC accepts the MISO proposal, RRI said that LSEs should be compelled to provide all supporting documentation used to determine the standard deviation. "As drafted, the October 20 Filing gives LSEs the option to submit standard deviation data to the Midwest ISO -- as evidenced by the use of the permissive term 'may' -- instead of requiring them to submit such data. Giving LSEs the option to submit supporting documentation is particularly problematic since, as explained in the BPM, the Midwest ISO will analyze this data to determine whether an LSE has provided an under-forecast of load," RRI said.

RRI also protested MISO's proposal to excuse Capacity Resources of less than 10 MW from reporting availability data based on Generation Verification Test Capability if they have not previously provided such data. "Once again, the October 20 Filing fails to include any explanation or reasoning for granting this preferential treatment to resources of less than 10 MW," RRI said, in noting that in PJM, for example, all generators participating in the energy and capacity markets are obliged to submit Generating Availability Data System (GADS) information.

RRI further protested the "unique" must offer requirement MISO seeks to apply to external resources that departs from the must offer requirement for Generation Resources located within the Midwest ISO boundaries. "This proposed must offer language states that External Resources must only be 'available to schedule Energy into the Midwest ISO Region if necessary in the Day-Ahead Energy Market.' In contrast, Capacity Resources (other than External Resources) must actually submit Self-Schedules or Offers for Energy, and Contingency Reserve if qualified, for each Hour of each day during the Operating Month, in the Day-Ahead Energy Market and all pre Day-Ahead and the first post Day-Ahead Reliability Assessment Commitment, except to the extent that the Capacity Resource is unavailable due to a full or partial forced or scheduled outage," RRI noted

"On its face, this difference in must offer requirements constitutes an undue preference for External Resources and unduly prejudices other Capacity Resources that must comply with the more onerous requirements or face penalties for non-compliance," RRI said.

Briefly:

Md. PSC Tolls Deadline for Long-Term Contract Proposals

The Maryland PSC tolled the deadline for submission of proposals to build generation using ratepayer-backed long-term contracts, or utility-owned generation, under Case 9214 until such time that the Commission issues a determination on Staff's request for clarification regarding the scope of such proposals (Matters, 9/30/09). The proposals had been due by December 16, 2009.

Direct Energy Business Names Mike Senff VP of North American Sales & Marketing

Direct Energy Business has appointed Mike Senff as Vice President of North American Sales and Marketing, charged with leading development of North American direct and indirect sales channels, sales operations, portfolio strategy and market intelligence, and marketing and communications. Senff was previously Vice President, Pricing and Structured Sales. A 15-year industry veteran, Senff had served as Director of Commodity Operations at FirstEnergy Solutions through 2004, and was previously at Enron Energy Services.

OnDemand Energy to Broker for Pennsylvania Newspaper Association

Broker OnDemand Energy Solutions said it has been selected to provide energy procurement consulting services to members of the Pennsylvania Newspaper Association. Members of the trade association will have access to OnDemand's aggregated buying pool

N. J. BPU Approves Expanded Funding for PSE&G Solar Loans

Public Service Electric and Gas received approval from the New Jersey BPU to expand its solar loan program for customer-owned generation by approximately $143 million, to finance the installation of an additional 51 megawatts of solar energy systems on homes, businesses and municipal buildings. Borrowers of the loan repay the loan with cash or with solar RECs. As part of the approval, the BPU set the solar REC floor price in the program for residential systems at $450, with the floor set at $410 for non-residential systems up to 150 kW, and $380 for systems larger than 150 kW up to 500 kW. The floor prices offered for solar RECs for new loan applications will be reduced by about 3-6 percent every six months. As done currently, PSE&G will sell the solar RECs it receives for loan repayment in an auction, and will credit the proceeds from the sale to customers through the Solar Pilot Recovery Charge. Electric customers will pay for the cost of the solar program through the RGGI Recovery Charge (RRC), which is included in the delivery portion of the bill.

PUCT Grants Withdrawal of MPower Retail Energy LP Certificate

The PUCT granted MPower Retail Energy LP's request to withdraw its REP certificate (Matters, 10/19/09). MPower had not been serving customers.

Detroit Edison ... from 1

a decoupling pilot adopted in that decision (Only in Matters, 11/4/09).

In the Detroit Edison proposed order, the ALJ also dismissed Detroit Edison's request for a revenue decoupling mechanism since, "the record does not include any analysis of the potential rate impacts [of decoupling] on all classes of customers, as required by Act 295."

If the Commission finds there is an adequate record, the ALJ agreed with Staff, the Association of Businesses Advocating Tariff Equity (ABATE), Kroger, and Energy Michigan, and recommended that any decoupling mechanism should be focused on adjustments to rates solely attributable to sales decreases due to the impact of the implementation of Commission-approved energy optimization (efficiency) programs. Detroit Edison's proposed decoupling mechanism relies on a comparison of actual sales levels to rate case projections, and would compensate Detroit Edison for reduced sales due to weather or economic factors in addition to efficiency efforts.

Finding that a decoupling mechanism is unsupported, the ALJ did not specifically address Energy Michigan's argument that any decoupling should distinguish between generation and distribution revenues.

The ALJ denied several requests from Constellation NewEnergy to remove tariffs related to discounts or special contracts used by Detroit Edison. Constellation had said that the Commission should discontinue any rebates or discounts not specifically authorized by statute as required by Act 286. Although Detroit Edison does not currently provide any rebates, credits and/or discounts on tariff rates other than the Standard Contract Rider No. 9, Constellation argued that any rebates or discounts that are not cost-based are unlawful, and said that the Commission should discontinue any that are not specifically required by Act 286.

Agreeing with Staff, the ALJ found that Constellation's requested relief is unnecessary since, pursuant to Act 286, rates will be at cost of service within the statutorily prescribed time period of five years. Act 286 does not require the immediate implementation of cost-based rates, but rather provides for a gradual process of realigning rates and phasing out subsidies over the next five years, the ALJ said.

Constellation also opposed the continued use of special contracts. Detroit Edison has only used its authority to enter into special contracts one time during the last five years, for an extension of an agreement with the Great Atlantic and Pacific Tea Company. Constellation contended that given this experience and the requirements of Act 286, along with the 10% choice cap in Section 10a(1), there simply is no regulatory need to continue the availability of off-tariff arrangements to customers.

The ALJ declined to grant Constellation's request, noting that in the Commission's December 2008 rate order, the Commission said that it was is not persuaded that special contracts for electric service are no longer useful, or that the Legislature intended to eliminate them. "Special contracts, which are reviewed carefully by the Commission, continue to serve an important purpose by allowing the utility to offer non-tariffed terms and conditions of service in cases where it is warranted," the ALJ quoted from the earlier decision.