Energy Choice Matters

November 23, 2009

Texas Requirement to List Fixed Price End Date Will Apply to Small Commercial Bills

The requirement for REPs to list an end date on bills will extend to small commercial customers in addition to residential customers, the PUCT ordered in adopting revised rules regarding contract expiration notices (project 37214, Subst. R. 25.475) and common billing terms (project 37070, Subst. R. 25.479), in response to HB 1822.

The PUCT generally adopted proposed language and provisions filed Commissioner Donna Nelson (see exclusive story, Matters, 11/19/09), while making decisions on two major outstanding issues: applicability to small commercial customers, and effective date.

The Commission elected to apply the requirement to list the end date of a fixed price contract on bills to small commercial customers because most other consumer protection rules in Subchapter R apply to such customers under 50 kW.

As under Nelson's proposal, REPs will have the choice of two methods for calculating the end date of contracts for the purposes of listing it on the monthly bill, and for listing it on required contract expiration notices.

Under the first method of determining the end date, REPs will provide customers with a specific end date. REPs choosing to list a specific end date must only waive any termination fee for a period of 14 days prior to contract expiration, and not the entire length of time from when the REP sends a renewal notice, as in an earlier proposal. The notice, to be sent out 30 to 60 days prior to the

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PUCT Leans Towards Preventing Customers Engaged in Meter Tampering from Switching

The PUCT intends to vote for publication a Staff proposal to address meter tampering and service diversion at its December 17 open meeting, as Commissioners began to coalesce around certain elements of an approach to address misaligned incentives under the current rules.

While no formal action was taken at Friday's open meeting, Commissioners generally agreed that customer associated with meter tampering or service diversion should be prohibited from switching to another REP until all amounts due for backbilling have been paid off. TDUs would be required to flag such accounts in their systems and prevent switches from being executed under this plan. Should the PUCT adopt such a limit on switching, Chairman Barry Smitherman said that TDUs should be required to implement the flag process quickly, with no flexibility for prolonged implementation.

Commissioners also generally agreed that any backbilling should be limited to six months.

Smitherman and Commissioner Kenneth Anderson would require the REP to perform any backbilling, and would not reimburse the REP for any wires charges that are ultimately not paid by the customer, since reimbursing REPs could decrease their incentive to vigorously pursue collections.

Commissioner Donna Nelson expressed trepidation at requiring REPs to perform backbilling, rather than imposing the billing obligation on TDUs. Smitherman said that the customer belongs to the REP, not the TDU, but Nelson cited several examples where there is already TDU-customer

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Connecticut Light & Power Reports October Migration Data

Supplier Accounts as of 10/31/09	Oct. '09 Residential	Oct. '09 Business	Oct. '09 Total	% of Migrated Customers	Change vs. Sept. '09 Total
Clearview Electric	4,342	766	5,108	2.9%	993
ConEdison Solutions	4,006	1991	5,997	3.4%	873
Constellation NewEnergy	993	8811	9,804	5.5%	141
Direct Energy Business	110	1644	1,754	1.0%	53
Direct Energy Services	37,591	6644	44,235	25.0%	4,565
Discount Power	0	0	0		0
Dominion Retail	52,765	10866	63,631	35.9%	1,397
Energy Plus Holdings	2,410	67	2,477	1.4%	1,873
Gexa Energy	22	1143	1,165	0.7%	79
Glacial Energy	997	1932	2,929	1.7%	502
Hess Corporation	519	1870	2,389	1.3%	23
Intergrys Energy Services	35	3173	3,208	1.8%	60
Liberty Power Holdings	315	98	413	0.2%	44
MXenergy Electric	2,656	1826	4,482	2.5%	55
Pepco Energy Services	0	9	9	0.0%	1
Public Power & Utility	20,357	3958	24,315	13.7%	1,016
Rescom Energy	0	0	0		0
Sempra Energy Solutions	3	996	999	0.6%	21
South Jersey Energy Company	0	0	0		0
Suez Energy Resources NA	12	676	688	0.4%	7
Transcanada Power Marketing	26	2378	2,404	1.4%	36
Viridian Energy	1,078	92	1,170	0.7%	894
Whole Foods Market Group	0	2	2	0.0%	0
Total All Suppliers	**128,237**	**48,942**	**177,179**	100.0%	12,633

Aggregate Data

Customer Load - Suppliers and CL&P (MWh)

	Residential - SS		Business - SS		Business - LRS		Total CL&P	
	MWh	% of Class	MWh	% of Class	MWh	% of Class	MWh	% of Total
Suppliers	95,504	13.9%	357,504	67.0%	402,946	90.3%	855,954	51.3%
CL&P	593,686	86.1%	176,209	33.0%	43,381	9.7%	813,276	48.7%
Total	689,189		533,713		446,328		1,669,230	

Customer Count - Suppliers and CL&P

	Residential - SS		Business - SS		Business - LRS		Total	
	Customers	% of Class	Customers	% of Class	Customers	% of Class	Customers	% of Total
Suppliers	128,237	11.7%	48,074	40%	868	83.1%	177,179	14.6%
CL&P	969,019	88.3%	71,328	60%	176	16.9%	1,040,523	85.4%
Total	1,097,256		119,402		1,044		1,217,702	

SS = Standard Service; LRS = Last Resort Service ***Data as reported by CL&P***

PUCT Weighs Prohibiting Switching for Customers Who Default on Payment Plans

The PUCT, in a workshop held Friday, outlined the broad provisions of a potential comprehensive solution to customer disconnection protections and deferred payment plans, though specific details still need to decided (36131).

Chairman Barry Smitherman suggested that a comprehensive solution may include:

1. Summer disconnection protections for those customers who need it;
2. Deferred payment plan requirements which may extend beyond three months, and
3. The ability for REPs to keep customers who fail to pay a bill from switching to another REP.

On the final point, Commissioners have not reached consensus on whether any potential limit on switching should be applied only to customers who default on the terms of a deferred payment plan, or should be applied to any customer who fails to pay their bill.

Commissioner Kenneth Anderson said that, philosophically, he finds any limitation on switching distasteful, but is willing to entertain such a prohibition as part of a comprehensive set of customer protections, particularly if the customer has entered into an agreement to meet a deferred payment plan and did not fulfill it.

Nelson, who said the ability to limit customers from switching until their debt is paid off is necessary to keep rates for other customers down, suggested that the prohibition could initially be limited to customers defaulting on a deferred payment plan, with the potential expansion to all customers who fail to pay their bill

Anderson stressed that if a customer is forced to stay with their REP because of any outstanding debt, the customer must be served on a rate that is generally available in the market, and not a high, penal rate.

Smitherman said that the Commission will move with speed on the comprehensive solution, as Commissioners agreed that they want new protections to be in place before the summer of 2010.

With regards to critical care designations, CenterPoint Energy said that it will modify its critical care process and follow the procedures used by other TDUs. CenterPoint will now accept critical care applications from any customer for whom disconnection would cause a dangerous or life-threatening condition, rather than only customers with special in-house life-sustaining equipment, as the PUCT attempts to standardize and improve the process in the rulemaking.

Reliant Says It Can Surpass Historic C&I Levels in ERCOT

Reliant Energy can get back to its historic levels of commercial and industrial sales in ERCOT (about 36 TWh), and surpass that level in 2011 and beyond, Reliant President Jason Few said during an NRG Energy investor conference last week.

Reliant said that at 27% it has the largest share of ERCOT commercial and industrial volume, ahead of GDF Suez Energy Resources NA (14%), TXU Energy (12%), Direct Energy (8%) and Constellation NewEnergy (6%).

Among the opportunities Reliant can now pursue with NRG behind it are joint development projects with commercial and industrial customers, Few said.

Few also outlined Reliant's strategy to grow its residential book, which stands at 24% of the ERCOT market by meters. Reliant reported its competitors' residential market shares as: TXU at 35%, Direct at 13%, and Stream Energy at 6%.

Reliant plans on expanding the lifetime value of customers through smart meters and related innovations, which Few said can increase lifetime value by as much as 20%. Reliant is seeing higher retention rates among customers in its smart energy pilots. Few also cited non-energy supply products, specifically identifying in-home surge protection, as an opportunity to increase gross margin.

Few targeted 2% organic residential growth per year (1.5 TWh/year), and said that the new, non-energy supply sources of revenue could contribute \$6.5 million to \$65 million in annual gross margin potential in 2011 and beyond.

Reliant also listed opportunistic business acquisitions as among its residential strategies.

For 2010, Few said that retail pricing, efficiencies from matching NRG generation with load, and market dynamics will allow NRG to realize gross margins of $20/MWh, above its historic target of $15/MWh. Beyond 2010, Few sees margins in the $13-16/MWh range.

NEM Says Need for BGS Retail Margin Still Exists

The retail margin applied to New Jersey Basic Generation Service rates for customers above 750 kW should continue because the costs that the margin represents are ongoing costs which still must be reflected in rates, the National Energy Marketers Association said in comments to the BPU (EO09050351).

As only reported in *Matters*, the BPU has asked for comments on the potential elimination of the retail margin as proposed by the distribution utilities (Only in Matters, 11/13/09). The retail margin is designed to reflect administrative and similar non-supply costs of serving customers at retail (e.g. marketing, call center, backoffice/EDI, risk and portfolio management, working capital, etc.). It only applies to customers above 750 kW, regardless of whether they are on fixed or hourly BGS pricing.

The distribution companies have argued that the retail margin should be eliminated because its "incubating purpose" has been satisfied given the significant migration of load in the Commercial and Industrial Energy Pricing (CIEP) class.

However, as the retail margin reflects marketing and administrative costs to serve retail customers, such costs, "by their very nature, are on-going costs and should continue to be included in Basic Generation Service (BGS) pricing," NEM said. NEM noted that in New York, the Merchant Function Charge works similarly to provide consumers with a basis to compare utility default service and competitive market offerings, and has not been phased out despite robust migration.

NEM noted that while New Jersey has seen significant migration among larger customers, the mass market, which does not include a retail margin to reflect various administrative costs of serving customers, has seen very little shopping, suggesting, if anything, that the mass market could benefit from introduction of a retail margin to additional classes.

"NEM submits that merely entertaining the proposal to discontinue the Retail Margin injects a great deal of regulatory uncertainty into the competitive marketplace, that in turn impacts suppliers' decisions regarding competitive entry and long-term planning. The Retail Margin has been a longstanding element of the BGS market structure that market participants have factored into their decisions to become licensed and market to serve New Jersey consumers," NEM said.

AEP Agrees Mich. Suspension on Customer Participation in RTOs Should Exempt Current Contracts

Agreeing with a request for rehearing and clarification from EnerNOC, Indiana Michigan Power (AEP) said that the Michigan PSC's order temporarily restricting end-user participation in RTO markets pending a Commission investigation should be applied prospectively, and should not apply to existing contracts (U-16020, Matters, 9/30/09).

EnerNOC filed for rehearing of the Commission's order because it has existing demand response contracts with customers at Indiana Michigan Power. Upon information and belief, Indiana Michigan Power said that it understands that EnerNOC has a contract with a single customer (with two locations) receiving retail electric service from Indiana Michigan Power.

Although Indiana Michigan Power argued that its tariff prohibits the resale of electricity, and thus, "it can be concluded that Michigan retail customer participation [in RTOs] has already been restricted and that the existing EnerNOC contracts with Michigan retail customers violate I&M's tariff," Indiana Michigan Power nevertheless agreed that the PSC's temporary restriction on customer participation in RTOs should be applied prospectively. Indiana Michigan Power reserved its right to support restrictions on retail participation in RTOs as part of the ultimate outcome of the PSC's investigation.

While PSC Staff said that it was unaware of any Michigan retail customers who would be affected during the course of the Commission's suspension and investigation, it disagreed with EnerNOC's argument that the Commission intended to maintain the status quo, and not affect customers currently participating in RTO demand response programs. Nevertheless, Staff said that if Indiana Michigan Power is amicable to allowing the existing contracts to stand, "the Commission may choose to issue a new order clarifying that it is temporarily restricting Michigan retail customers from renewing or entering into new contracts to participate in any RTO's wholesale market."

"Staff submits that any Commission Order permitting existing contracts with RTOs should not be interpreted as an indication that the Commission lacks the authority to temporarily restrict contracts during the course of its investigation. Further, if the Commission decides to issue rules and regulations regarding the participation of Michigan retail customers into a RTO wholesale electric market, then the Commission has the authority to terminate or suspend any existing contracts," Staff said.

AReM Supports Interim Realignment of CAISO Market Usage-Forward Energy Charge

A California ISO proposal to apply the Market Usage-Forward Energy (MU-FE) charge based on the "greater of" supply or demand in the day-ahead schedules of market participants should be approved as an interim step towards greater alignment of the fee with cost causation, the Alliance for Retail Energy Markets said in comments at FERC (ER10-188).

CAISO made the proposal in seeking to extend the Grid Management Charge through December 31, 2010, of which the MU-FE charge is a component. Currently, the MU-FE charge is based on the net activity of a market participant, and the ISO believes that a gross approach, where demand and supply schedules are not netted against each other, would be a more appropriate approach based on cost causation.

However, the ISO is concerned that applying the charge to gross energy schedules would result in substantial cost impacts to certain market participants, and thus instead proposed that the MU-FE charge be based on the "greater of" a market participant's supply or demand in the day-ahead schedules. Incumbent LSEs which self-schedule generation to meet supply would be among the market participants seeing higher charges under a gross approach.

AReM, while favoring adoption of a gross approach in the long-run, supports the "greater of" compromise until the CAISO undertakes a new cost of service study and implements associated changes to the Grid Management Charge rate design. AReM said that the CAISO plans to conduct a new cost of service study in 2011 and implement such new rates in 2012. "The gross approach is preferable because it treats all market participants equally, regardless whether they represent loads, supply or a combination of the two," AReM said.

The California Department of Water Resources State Water Project protested both the compromise proposal and the gross approach, arguing that self-schedules do not use the market service, do not impact the market outcome, and do not benefit from the market.

However, the ISO explained that, "[a]ll energy that participants schedule uses the ISO grid and market systems and contributes to the administrative costs of the systems, regardless of whether the energy is bought and sold in the spot markets, or self-scheduled from a load-serving entity's own generation or a bilateral contract. The ISO incurs these costs both for schedules that are responsible for paying market congestion charges and for those that are exempt from market congestion charges (such as Existing Contract self-schedules). Under the ISO's new market structure implemented on April 1, 2009, all bids submitted to the ISO markets - including self-schedules as well as economic bids - must be included in the congestion management process performed by the ISO's optimization software. The fact that a party's bids may consist of balanced self-schedules does not lessen the need for the ISO market systems to manage the impacts of those bids in managing congestion, scheduling transmission service and clearing the markets."

Briefly:

Direct Energy to Announce Eastern Pa. Expansion Today, Likely to be PPL Residential Effort

Direct Energy will hold a news conference this morning at the Pennsylvania state capitol in Harrisburg to announce, "the expansion of its business into eastern Pennsylvania," and, "affirm[] the company's commitment to offer innovative and competitive electricity products to Pennsylvanians." Though Direct would not confirm additional details, an announcement of its intention to market to residential customers at PPL has been anticipated since the PUC began the process of ordering POR and several other enhancements to the PPL market. Attending the press conference will be Phil Tonge, President, Direct Energy Residential; State Rep. Joseph Preston, Majority Chairman of the Consumer Affairs Committee; and John Hanger, Secretary, Department of Environmental Protection.

Calif. PUC Approves Change to Base RPS Requirement on Current-Year Sales

The California PUC approved a modification in the calculation of the annual procurement target (APT) for compliance with the California RPS, such that for 2010 and any later years in which the annual procurement target for RPS compliance is 20% of retail sales, the calculation will be based on the current year's retail sales, rather than the prior year's retail sales as provided in D.06-10-019 and D.06-10-050. The change had been requested by retail suppliers (Only in Matters, 10/22/09)

TNMP Delays REP Meeting

Texas-New Mexico Power has postponed the date for its previously announced REP meeting, which was originally scheduled for December 2. A new date has not been set, but the meeting will likely be rescheduled for mid-2010.

ProLink Energy Brokerage Receives Texas Aggregation License

The PUCT granted ProLink Energy Brokerage a Texas aggregator certificate to serve residential, commercial and industrial customers (Only in Matters, 10/27/09).

PUCT Staff Issues Draft Interest Rate

PUCT Staff issued a draft order that would set the interest rate applicable to REP deposits at 0.34%, and the interest rate applicable to REP overbillings, and underbillings resulting from theft of service, at 0.61% for 2010.

PUCT Finds Occidental Power Marketing May Serve Oil Field Contested by Big Country Electric Cooperative

The PUCT found that REP Occidental Power Marketing may legally serve wells at the Cogdell oil field of its affiliate Occidental Permian Ltd., denying a complaint from Big Country Electric Cooperative, which had claimed to have the exclusive right to provide retail service to several wells in the field which were in an area singly certificated to Big Country (35690, Only in Matters, 10/13/09). The Commission found that the entire production facility, rather than individual oil wells, constitutes the consuming facility under law, and since most of the consuming facility is in an area dually certificated to Big Country and Oncor, the customer has the right to take retail service from a REP. Since the Commission concluded that the entire production facility was the consuming facility, the Commission did not adopt several findings of an ALJ with respect to Oncor's legacy right to serve the wells in the singly certificated area of Big Country (due to Oncor's provision of service to the area prior to the drawing of certificate boundaries in 1976), as such findings were unnecessary.

End Date on Bills ... *from 1*

residential contract expiration date, would be required to clearly state there is a 14-day waiver of termination fees, and must also include a description of the termination fees that will be charged before the waiver period begins.

Under this first option, a REP is permitted to keep charging the current contract rate until the next meter read on or after the listed end date, answering concerns that the meter read (and thus contract end date) could be delayed from what the REP lists on the bill due to the fluid nature of meter reading schedules.

As a second option, REPs may choose to estimate the contract end date by referencing the first meter read on or after a specific calendar date. Under this option, Nelson, during the open meeting, said that a distinction is made regarding the length of the termination fee waiver period, depending on whether the customer is residential or small commercial. If the customer is residential, REPs will be required to waive all termination fees once the customer receives their termination notice (sent 30-60 days before expiration), and provide notice of the waiver period in the renewal notice.

For small commercial customers, Nelson said that the termination fee waiver period still only applies for 14 days prior to expiration, regardless of when the expiration notice is sent. Nelson indicated that such a provision limiting the extended termination fee waiver period to residential customers was in her redlined language (as opposed to a change made at the open meeting), but it is unclear where the provision is contained in the redline draft filed on November 19 in both projects. Regardless, Nelson clearly stated that the termination fee waiver period for small commercial customers is to be 14 days, regardless of whether their end date is estimated, since such customers have more savvy in the electric market.

The Commission also ordered the REPs to implement the changes by April 1, 2010. Although REPs had asked for more time, Nelson and Chairman Barry Smitherman said that HB 1822 contemplates quick action, since it ordered the Commission to adopt rules implementing the legislation by December 1, 2009. Both Smitherman and Nelson also want the changes to be effective in time for the spring, so customers shopping for a new rate and REP prior to the summer season can benefit from the rule's provisions. Nelson noted that if the Commission ignored lawmakers' intention for quick implementation, future legislation could be very more prescriptive.

One additional change from Nelson's previously proposed language is that REPs will be required to use the term "base charge" for any charge assessed on a monthly basis without regard to the customer's demand or energy consumption (excluding TDU fees, taxes, etc.). Originally Nelson had proposed giving REPs the option of using base charge or "customer charge" for this fee, but Commissioners agreed that using only one term would facilitate comparisons of different Electricity Facts Labels.

Meter Tampering ... *from 1*

interaction (investigation of tampering, critical care designation, outage reporting, etc.). Nelson also noted that TDUs will be paid TDU charges regardless of whether the REP collects from the customer, noting that such payment misaligns incentives.

Nelson argued that not being required to back-bill customers would be a "big win" for TDUs, and said that TDUs should take that into account in proposing timelines for how quickly they could implement a flag system to prevent switches of accounts with tampered meters.