Energy Choice Matters
December 24, 2009

Calif. Draft Would Prohibit Utilities from Tying Efficiency Funds to City's CCA Decision

A draft California PUC resolution originally meant to address opt-out procedures for community choice aggregations (CCA) has added two provisions to prevent a utility from linking the award of energy efficiency funds to a city's decision not to pursue community choice aggregation, and to prevent utilities from refusing to sell power supplies to community choice aggregators when such off-system sales would be the most beneficial disposition of such power for bundled customers.

As only noted by *Matters*, the first draft resolution was designed to address concerns from community choice aggregators that Pacific Gas & Electric's website and marketing trifolds sent to potential community choice aggregation customers allowed customers to opt-out of the aggregation service prior to receiving notice of the aggregation's rate and terms, which occurs 60 days prior to automatic enrollment (Only in Matters, 9/17/09).

Subsequent to the first draft being issued, several community choice aggregators requested that the resolution clarify that it is improper for the utilities to link the receipt of ratepayer funded public program funds to a locality's decision not to pursue creation of a community choice aggregation program.

The community choice aggregators filed a letter dated June 30, 2009, sent by Joshua Townsend, PG&E Public Affairs Manager, to Michael Frank, City Manager of Novato. In this letter, PG&E outlined a proposed collaboration between PG&E and the city of Novato. Contained in this proposal

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Calif. ALJ Releases Updated Tradable REC Draft, Mostly Impacting Utility Compliance

A California ALJ released a revised proposed decision to implement tradable RECs as a means of California RPS implementation, with the changes mainly relating to utility RPS compliance, including distinguishing between bundled renewable energy contracts and REC-only contracts, and setting the cap on the use of tradable RECs, for the three large utilities only, at 40% (R. 06-02-012).

While the issue of whether a contract is bundled renewable energy, or RECs only, does not impact compliance for competitive electric service providers, it does matter for the utilities' RPS compliance, since the draft elects to limit the use of tradable RECs (TRECs) by the utilities.

A previous draft decision defined REC-only transactions by focusing on the structure of the contract. However, that approach was deemed complicated and awkward by several parties, and the large utilities noted that the prior draft's approach did not accurately track how electricity is actually bought and sold in the large and complex WECC market.

"Taken together, the comments suggest that a simpler, more direct method of delineating REC-only transactions would be better," the revised proposed decision finds.

"A sound way to simplify [the process] is to make the REC-only classification independent of the details of individual procurement contracts ... [because] it is unnecessarily complicated and uncertain to make the classification as REC-only or bundled depend on how the delivery requirement is met," the new draft says.

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Calif. 2011 RA Obligation Proceeding to Examine Local Load True-Up

The issue of potential true-ups of local resource adequacy obligations for California LSEs will be considered as part of the California PUC's 2011 proceeding to determine resource adequacy obligations, the Commission said in a scoping ruling (R. 09-10-032).

Currently, the PUC's resource adequacy program only provides local resource adequacy obligations for LSEs for a 12-month compliance period. The program does not require LSEs to true-up their obligations within the compliance year.

The scoping ruling notes that true-ups could be introduced for changes in load within the compliance year for any reason. In particular, the re-opening of direct access which is expected in 2010 makes it more likely that some LSEs will have significantly different levels of load throughout the compliance year. "Further, the result of not having a local true-up mechanism is that the local resource adequacy product loses its premium value after the year-ahead showing, creating financial risks for LSEs which lose customers and a possible competitive edge for new entrants," the ruling adds, finding that the issue should be addressed in Phase 1 of the 2011 obligations proceeding.

Additionally, other issues related to the expansion of direct access under SB 695 are considered within the scope of the proceeding, though parties have not yet raised any specific issues other than the observation that resource adequacy issues may arise as higher direct access caps are implemented.

Md. Imposes $4,600 Civil Penalty on America Approved.com for Unlicensed Brokering

The Maryland PSC imposed a civil penalty in the amount of $4,600 on America Approved.com (organized as Knights of the Roundtable, Inc.) for brokering electric customers without a license despite informing the Commission it was aware a license was required. The PSC also granted America Approved.com a license to broker non-residential electric customers at the four investor-owned utilities.

In a letter order, the Commission said that America Approved.com, "admitted that in late May of 2009, it became aware of the requirement that it [shall] have a license to provide electric broker services in Maryland."

"Thus, the Commission finds that in late May 2009, prior to any contract being signed by the Company for electric broker services, the Company knew, or should have known, that providing broker services in Maryland without a license violated the Maryland law," the letter order states.

The civil penalty reflects a forfeiture of the aggregate amount of all revenues received by America Approved.com as a result of services under contracts signed in Maryland before licensure (approximately $2,300), plus another $2,300 monetary penalty equal to such revenues (totaling the $4,600 fine).

Wind Generators Seek Rehearing of Dismissal of Complaint on ERCOT Protocol Interpretation

Horizon Wind Energy, Iberdrola Renewables, Duke Energy, and Sweetwater Wind filed for rehearing of the PUCT's dismissal of several wind generators' complaint (36482) regarding an November 2008 ERCOT Protocol interpretation regarding wind generation reactive power requirements, arguing that the Commission's order of dismissal did not consider the wind generators' plea for waiver of the alternative dispute resolution requirement.

The Commission dismissed the complaint for not following the procedural rules calling for alternative dispute resolution prior to filing a complaint (Only in Matters, 11/6/09).

However, the generators argued that they had asked for good cause waiver of this requirement, but the Commission did not cite this request in its order of dismissal. Although the wind generators did not seek a waiver of alternative dispute resolution initially, they sought such a waiver in a subsequent pleading, noting that there is no time limit in the procedural rules for when a waiver request must be filed, and that in past PUCT cases, such waiver

requests filed after an initial complaint have been accepted.

Substantively, the wind generators said that NextEra Energy Resources (in August) and Horizon (in November) have filed for alternative dispute resolution with ERCOT, but have not received responses. "Movants are concerned that the ADR process is apparently very low on ERCOT's list of priorities, resulting in an unreasonable delay in attempts to resolve the issue," the generators said, thus supporting a waiver of the requirement and action at the Commission level.

Furthermore, the wind generators said that since the ERCOT Board has endorsed the ERCOT Protocol interpretation regarding reactive power requirements in the then-current protocols, alternative dispute resolution would be pointless, as ERCOT Staff cannot amend an interpretation accepted by the Board.

The wind generators requested that docket 36482 be consolidated along with several complaints filed Tuesday regarding PRR 830, which codified ERCOT's protocol interpretation, into a single case (Only in Matters, 12/23/09).

In the disputed November 2008 Protocol interpretation, ERCOT said that reactive power requirements for generators, including wind resources, shall be available at all MW output levels. Wind generators argue that the then-current Protocols (prior to PRR 830) allowed reactive power requirements to vary with actual output from a unit.

Briefly:

DPL Energy Resources Seeks Illinois, Michigan Electric Licenses

DPL Energy Resources has applied for Michigan and Illinois alternative retail electric supplier licenses. DPL Resources said that it serves about 500 MW of load in Ohio. In its Michigan application, DPL Resources said that it has arranged for its affiliate, The Dayton Power & Light Company, to serve as its provider of full requirements power supply procurement and portfolio management services, and as its PJM and Midwest ISO transmission scheduling agent. DPL Energy Resources' Illinois application was not publicly available yesterday.

Algonquin Energy Services Receives Maine Supplier License

The Maine PUC granted Algonquin Energy Services a competitive electric provider and Standard Offer provider license to serve all customer classes at Maine Public Service, Eastern Maine Electric Cooperative, Houlton Water Company, and Van Buren Light & Power. Affiliate Algonquin Power & Utilities Corp. recently purchased the Northern Maine generation assets and Standard Offer service contracts of Integrys Energy Services (Only in Matters, 11/11/09). Another Algonquin affiliate this week submitted a CPCN application to the Maine PUC for a merchant transmission line to connect Northern Maine with the ISO New England system (more on the project in tomorrow's issue).

GSE Consulting Receives Ohio Electric License

The Public Utilities Commission of Ohio has granted GSE Consulting an electric broker/aggregator license to serve commercial, mercantile, and industrial customers in all service areas (Only in Matters, 11/17/09).

N.Y. PSC Invites Comments on EDI Document Changes to Implement Contest Period

The New York PSC invited stakeholder comment on a filing from Consolidated Edison which contained proposed changes to various EDI documents to implement the ESCO contest period as approved by the PSC in September (Only in Matters, 9/23/09 and 11/9/09). ConEd's filing included revisions to the TS 814 Drop Request & Response Implementation Guide; TS 814 Drop Business Processes; and Reinstatement Business Processes (98-M-0667).

Rendell Says Rate Relief Still a Goal

Pennsylvania Gov. Ed Rendell said in a year-end news conference that electric rate relief will remain a goal for 2010, even as nearly 100,000 residential customers have taken advantage of the competitive market at PPL in just the last quarter. Rendell specifically cited proposals to mitigate the rate increases due for the remaining utilities in 2011 by deferring the increase over a

number of years. Filed legislation would offer such mitigation on an opt-in, competitively neutral basis, with the only difference from the deferral plans approved by the PUC at PPL being the size of the increase and sunset date for mitigation. Rendell also said that lawmakers should look at stranded costs and whether any money can be wrought back from the restructuring settlements.

PaceControls Signs Agreement with BlueStar

PaceControls said that it has signed an agreement with BlueStar Energy Services under which BlueStar will deploy PaceControls' energy efficiency solutions throughout BlueStar's markets in the Midwest and Mid-Atlantic. The agreement will support BlueStar's efforts to offer turnkey, energy-saving programs for customer facilities, including replacing lighting and improving heating and cooling systems, and helping customers take advantage of energy rebates and tax incentives.

West Virginia Denies Sale of Dominion Hope Gas, May Impact Dominion Peoples Sale

The West Virginia PSC denied the application of SteelRiver Infrastructure Fund North America to acquire Hope Gas from Dominion Resources, in a sale that was to also include Dominion's Peoples Natural Gas LDC in Pennsylvania. The PSC cited a $7.2 million rate increase for Hope Gas included in the application as the reason for rejecting the sale, as the Commission did not finding adequate offsetting benefits. As only noted by *Matters*, prior to the West Virginia PSC's order, Peoples Natural Gas asked the Pennsylvania PUC for an extension regarding its requirement to file a decision on pursuing a POR program or updated cost of service study, since the sale of affiliate Hope Gas was still pending (Only in Matters, 12/23/09). In its original response to the Pennsylvania PUC SEARCH order, Peoples Natural Gas declined to elect a voluntary POR program due to uncertainty regarding its corporate ownership.

FERC Accepts New MISO Outage Scheduling Procedures

FERC generally accepted the Midwest ISO's revised procedures for requesting and scheduling outages of both nuclear and non-nuclear generation resources, dismissing concerns that the procedures give MISO undue discretion, or treat generation on a non-comparable basis versus transmission (ER10-128). The tariff revisions require non-nuclear generator operators to request planned outages two years in advance and nuclear generator operators to request planned outages three years in advance. While FERC accepted these timelines, the Commission noted that the proposal does not provide for a generator to reschedule or modify a planned outage. "[E]vents may necessitate modifications to a planned outage, and inflexibility in accommodating such modifications may result in unintended consequences, such as a forced outage, which would impair reliability in conflict with the rationale for the proposed tariff changes," FERC said. Thus, FERC directed the Midwest ISO to submit in a compliance filing, due in 30 days, proposed revisions to allow generator modifications to a previously submitted planned outage request.

CCAs ... *from 1*

were the following commitments made by PG&E:

- "We reiterate our commitment to Novato to provide, free of charge, a one-half time equivalent staff to support the City in the implementation of this Collaboration, AB 32, SB 375, AB 811 and other related programs and efforts."
- "PG&E will partner with the City and Novato residents and businesses to expand PG&E's existing Energy Efficiency programs with energy savings achieved through Mass Market, Target Market, and Third-Party channels. Through a PG&E point person, approved by the city, a task force will be created to help navigate through the utilization of existing opportunities and the creation of new programs."
- "If created, this LGP [Local Government Partnership] would provide Novato with additional resources to drive significant energy savings through energy efficiency."
- "We believe that our Collaboration Proposal provides a pathway for Novato to meet its

climate change objectives faster, cheaper and with better results without exposing itself, the City, our customers and taxpayers to the uncertainty and risk of a Community Choice Aggregation scheme."

In reply comments, TURN said that it was disturbed by the apparent use of energy efficiency funds in an attempt to "buy off" communities from supporting community choice aggregation program implementation. TURN reminded the PUC that at the time that the community choice aggregation program rules and tariffs were developed, all the utilities claimed that they did not intend to actively market against the formation of the aggregations. TURN stated that the intent of at least one utility (namely PG&E), "to oppose the formation of CCAs in their service territory by any and all available means ... suggests that there may be a need for this Commission to reopen R.03-10-003 to consider more specific rules and regulations to control such activity and ensure that fair competition is preserved."

PG&E denied that it has, or will, link or make conditional any local government's receipt of public goods charge funds on the local government's decision whether or not to participate in a community choice aggregation program.

Nevertheless, the draft resolution would find that, "[t]his letter raises the appearance that a utility is seeking to link the utility's provision of services to a decision by a local government not to participate in a CCA."

"We want to promote a level playing field in competition between the investor owned utilities and CCAs. Accordingly, we will take this opportunity to provide direction to the utilities," the draft states.

The draft would prohibit the utilities from providing or offering to provide any goods, services, or programs to a local government, or to the electricity customers within that jurisdiction, on the condition that the local government not participate in a community choice aggregation, or for the purpose of inducing the local government not to participate in a community choice aggregation. The restriction would apply regardless of whether the goods, services, or programs are funded by ratepayers or shareholders, and would also apply to any plan whereby the utility would pay someone to provide such goods, services or programs.

Several community choice aggregators submitted another letter from PG&E that the draft finds, "appears to conflict with our existing rules that require each utility to dispatch its resources on a least cost basis for the benefit of its bundled customers' electric procurement portfolio."

Specifically, the community choice aggregators filed a letter dated February 3, 2009 sent by Joshua Townsend of PG&E to the members of the Marin Energy Authority. In that letter, PG&E makes the following statement: "... as PG&E has made clear, we intend to continue to provide safe and reliable electric service at reasonable cost to our retail customer in Marin, and we do not intend to respond to requests to supply electricity to Marin Energy Authority or to participate in any way in supplying electricity to a Community Choice Aggregation program in Marin."

However, the draft would find that such a preemptive refusal to sell excess power to community choice aggregators may deprive bundled service customers of off-system sale benefits, as there is no way of determining in advance, without analysis of the specific facts, whether such a sale would benefit the utility's remaining bundled electric customers more than contemporary sale opportunities.

"Accordingly, and to promote a level playing field in competition between the utilities and CCAs, we reiterate here that utilities may not refuse to make economic sales of excess electricity to a CCA, or refuse in advance to deal with any CCA in selling electricity," the draft holds.

The draft maintains that customers shall not be able to opt-out of the community choice aggregation until the community choice aggregator provides the customer with the terms and conditions of service (60 days prior to service). However, the revised draft is less prescriptive in setting language and other requirements for utilities regarding the opt-out process, and no longer requires the utility to post the community choice aggregator's terms of service on the utility's website.

Calif. RPS ... from 1

"A transparent way to identify a REC-only transaction for RPS compliance purposes is to rely on direct, physical characteristics of the generation, rather than specifics of contract terms or delivery arrangements. The WECC transmission system is large and complex, but a generator's first point of interconnection with it is fixed ... [and] interconnection with the WECC provides a bright-line criterion that is easy to understand and administer," the draft concludes.

"As a general matter, transactions involving RPS-eligible facilities whose first point of interconnection with the WECC interconnected transmission system is not physically located within California and is also not a facility for which the first point of interconnection with the WECC lies in the California Independent System Operator (CAISO) or another California balancing authority area does not provide the benefits of physical delivery of renewable energy to California customers, but does provide the more general benefits of renewable generation that are characteristic of REC-only transactions," the draft holds.

In other words, a REC-only transaction for purposes of RPS compliance is one that either:

1. Expressly transfers only RECs, not energy; or

2. Transfers RECs and energy from an RPS-eligible generation facility for which the first point of interconnection with the WECC interconnected transmission system is not physically located within California and is also not a facility for which the first point of interconnection with the WECC interconnected transmission system lies in the CAISO or another California balancing authority area.

"To maximize the benefit of RPS-eligible generation to California customers," the draft would limit the use of tradable RECs by the large utilities for RPS compliance to meeting no more than 40% of the utilities' annual RPS procurement obligations -- significantly higher than the 5% limit in the earlier draft. To protect ratepayers from excessive payments for tradable RECs in the early stages of the market, the draft would impose a transitional price cap of $50/REC for RECs used for RPS compliance by all investor-owned utilities. The Commission would review both limits within the next two years.

The draft notes that the Commission has "different responsibilities" with respect to utilities, on the one hand, and competitive electric service providers (ESPs) and community choice aggregators (CCAs) on the other.

"This Commission does not set the rates of ESPs or CCAs and has no responsibility to ensure that their charges to their customers are just and reasonable. If an ESP or CCA chooses to take the price risk associated with using TRECs rather than fixed-price bundled contracts for RPS compliance, that is a business decision whose consequences are borne solely by the ESP or CCA and its customers. Therefore, the limitation on the use of TRECs to 40% of [the annual procurement target] will not now apply to ESPs or CCAs," the draft holds.

Otherwise the revised draft tracks the earlier proposed decision. The draft requires that tradable RECs must be committed to use for RPS compliance within three calendar years of the date the electricity associated with the tradable REC was generated. Once committed to RPS compliance, tradable RECs will be treated in substantially the same way as bundled energy purchases for reporting and compliance purposes.