

# Energy Choice

## Matters

January 11, 2010

### **PUCO Staff Calls Perpetual Nature of Proposed FirstEnergy Utilities' MRO Unacceptable**

The FirstEnergy Ohio utilities' proposal to procure and price default service supplies via a Market Rate Offer indefinitely, "is not acceptable," PUCO Staff said in a post-hearing brief (Only in Matters, 12/8/09, 11/26/09).

Once PUCO approves an MRO, it cannot compel an electric distribution company to return to an electric security plan. The MRO proposed by Ohio Edison, Toledo Edison and Cleveland Electric Illuminating would set up a perpetual three-year laddering of Standard Service Offer supplies, procured via descending clock auctions.

"No matter how good the structure of the MRO might appear to be today, circumstances change," Staff said. "Electricity markets are in an early stage of development and are subject to very great change and upheaval. This very case is illustrative with the move from Midwest ISO to PJM by the ATSI affiliate. It is simply necessary for the Commission to reexamine the wisdom and utility of whatever structure is approved from time to time with a view toward adjustment to changed conditions so that future MROs will function optimally," Staff added.

Noting that statute contemplates annual reports on the MRO process and its impact on rates, Staff said that, if PUCO elects to approve the MRO, it should condition approval on the filing of such reports, and the possibility that such ongoing review could result in periodic revisions to the competitive bidding plan under the MRO.

Despite a FERC order approving, subject to further compliance filings, ATSI's move from MISO

***Continued P. 5***

### **PUCT Staff, Intervenors Seek Public Disclosure of Testimony, Responses from Texas Utility Solutions**

PUCT Staff and other intervenors have requested that an ALJ deny confidential protection to testimony and documents filed by Texas Utility Solutions, LLC (TUS) in regards to its petition for a declaratory order of its eligibility as a transmission service customer (36701).

As only reported in *Matters*, TUS is seeking a determination that it may purchase from Oncor and CenterPoint Wholesale Transmission Service on a nondiscriminatory basis at rates and terms, including terms of access, that are comparable to the rates and terms of the utility's use of the system (Matters, 8/10/09).

TUS has sought confidential protection for the majority of its direct testimony, accompanying exhibits, and discovery responses. The materials include, "all of the testimony that is necessary to understand the purpose of TUS's request, how TUS proposes to implement its general business model, and the effect of granting TUS's request on the electric market," Staff said.

"In other words, TUS seeks to prevent disclosure of all facts that relate to what this case is about and the policy considerations that may affect the Commission's decision. If this information were treated as confidential, the hearing would essentially be a closed hearing and it would be impossible to understand what the Commission ruled in this case from the public version of the Commission's order in the proceeding. Moreover, the information at issue - TUS's general business model and the

***Continued P. 6***

## Several Wind Generators Doubt CenterPoint's Standing to Intervene in Appeal of PRR 830.

Horizon Wind Energy LLC, Sweetwater Wind, Silver Star I Power Partners LLC, and Buffalo Gap Wind Farm LLC objected to the intervention of CenterPoint Energy in the consolidated appeal of ERCOT Protocol Revision Request 830 by several wind generators, arguing that not only has CenterPoint failed to demonstrate standing to intervene, but that they doubt CenterPoint could meet such a standard (37817, First in Matters, 12/23/09).

PRR 830 essentially codifies ERCOT's prior interpretation that generators must supply the same amount of reactive power regardless of the unit's actual output, rather than supplying a level of reactive power which varies with the generator's output.

Although CenterPoint said in its motion to intervene that it has a justiciable interest, Horizon et. al. argued that CenterPoint, "has failed to state what interest is involved or how the outcome of this proceeding may impact that interest." Indeed, CenterPoint did not describe its interest in its motion.

More boldly, however, Horizon et. al., "question whether CenterPoint can establish a justiciable interest in this proceeding."

"Although CenterPoint is a transmission provider in ERCOT, there is no showing that any of the affected wind developers are connected to CenterPoint's transmission facilities," Horizon et. al. argued. "The wind generation units at issue are located in West Texas, far from CenterPoint's transmission facilities near Houston," Horizon said.

However, this argument is flawed for two reasons. First, although some of the appealing wind generators are seeking only relief from PRR 830's provisions for existing generation, Horizon's specific complaint is seeking to overturn PRR 830 in its entirety, meaning neither current nor future generators would be subject to its terms. Of relevance is that by overturning PRR 830, the term "affected wind generators" -- which Horizon says are not located in CenterPoint's service area -- loses all contemporary meaning, since there could be future wind development in CenterPoint's

service area, which would be subject to the requirements of PRR 830 but for the repeal due to Horizon's complaint. While such wind development may not be likely at CenterPoint (absent a technological breakthrough making its service area more viable for wind, or perhaps offshore development interconnecting to CenterPoint's coastal facilities), the potential for CenterPoint to be impacted by the repeal of PRR 830, as any transmission owner in ERCOT would, appears present.

Moreover, while in its objection to CenterPoint's intervention Horizon tries to describe the question raised in the complaint as limited to "affected wind developers" in West Texas, Horizon's own complaint belies this argument, and gives rise to CenterPoint's standing. Specifically, Horizon notes in its original complaint that, "due to the wording of the PRR, it is also applicable to conventional generation resources that began operation after September 1, 1999." Presumably, there is conventional generation which commenced operation after September 1, 1999 connected to CenterPoint's transmission facilities, although these facilities may not be "affected" by PRR 830 in so much as the PRR does not raise a costly compliance issue for them as it does for intermittent resources. But as Horizon notes, the PRR is nonetheless applicable to these generators.

## NYISO Petitions FERC for Ruling on Continuation of TCCs due to Poletti Retirement

The New York ISO petitioned FERC for a declaratory order on whether 600 MW of grandfathered Transmission Congestion Contracts (TCCs) held by the New York Power Authority related to the Charles Poletti Power Plant should be terminated due to the plant's pending replacement with a new facility at the same location.

Under the grandfathered agreements, the TCCs terminate upon the earlier of i) December 1, 2017; ii) the termination of NYPA's obligation to serve Southeast New York government loads, or iii) the sale or retirement of both of the Indian Point No. 3 Nuclear Power Plant and the

Charles Poletti Power Plant.

Per an agreement with the New York State Board on Electric Generation Siting and the Environment, NYPA intends to cease operation of the 825-MW NYPA-owned Poletti unit on January 31, 2010, in connection with its application and plans to construct a new 500-MW plant in the same physical site.

"The question is whether the closure of the original Poletti unit constitutes a 'retirement' within the meaning of the grandfathered agreements notwithstanding the continued operation of the new 500 MW unit that will have essentially replaced it," NYISO said.

"The answer to this question is of particular financial significance to those government [Southeast New York] load in the New York City area that are served by NYPA and that benefit from the congestion relief provided by these Grandfathered TCCs," NYISO added. The value of the grandfathered TCCs to the total cost of supplying power to these loads (which include the City of New York, Port Authority of New York & New Jersey, and Metropolitan Transportation Authority) is in excess of \$40 million annually.

NYPA does not believe that the cessation of operations at the original Poletti unit and replacement with a new unit at the same site should be interpreted as terminating the TCCs. But for the pursuit of a construction permit for the new unit, operations at the original Poletti unit would not cease, NYPA said.

"It appears to the NYISO that the closure of the original Poletti unit may not trigger the termination of NYPA's Grandfathered TCCs particularly since its closure is directly linked to construction of the new 500 MW unit which will continue to operate well into the future ... Nonetheless, the answer to the question is not entirely clear, and the NYISO seeks resolution of this issue in order to administer its TCC market appropriately."

NYISO asked for a ruling on the grandfathered TCCs' status from FERC no later than June 1, 2010, the start of the autumn Centralized TCC Auction process.

Additionally, given the disruption to the market that would occur if NYISO, starting January 31, 2010, treated the grandfathered TCCs as expired, but FERC later rules that the TCCs may continue, NYISO does not intend to

treat the TCCs as terminated until a ruling from FERC. NYISO asked for the appropriate waiver to continue grandfathered treatment of the TCCs in the interim period between January 31, 2010 and the date of any FERC order, should FERC later rule that the TCCs should have been terminated January 31, 2010.

## **N.Y. PSC Refrains from Defined RPS Procurement Schedule due to Gaming Concerns**

In a written order on revisions to the state's RPS program, the New York PSC said that it did not adopt a defined timeline for future solicitations due to concerns about gaming by potential bidders. The PSC voted on changes to the RPS program in December, when it affirmed the centralized procurement model, but did not publish a written order with specific findings until last Friday (03-E-0188, Only in Matters, 12/17/09).

The Commission agreed that greater predictability has value to generation developers, but said that it is concerned that, "a rigid approach is more likely to encourage gaming by potential bidders and as such might not provide the best tradeoff between MWh and ratepayer costs." The Commission did not elaborate on these concerns.

With such findings, the Commission said that NYSERDA should be authorized to conduct no less than one solicitation per calendar year. "This approach provides greater predictability but also allows NYSERDA to conduct, after consultation with Staff, as many solicitations per calendar year as are deemed necessary to obtain attributes in the most cost effective manner consistent with our target, cost estimates and collection schedule," the PSC explained.

In denying the aforementioned move to an LSE-based compliance model, which is favored by several generators, the Commission said that it sees "no basis" for revising its previous conclusion that the central procurement model creates efficiencies, and is the most cost-effective approach.

"The Main Tier has, generally, been effectively administered, although certain

improvements are possible. Along those lines, we will require that Staff - and not NYSERDA - conduct the next evaluation of the program. Having consultants employed by NYSERDA evaluate its administration of the program could raise questions regarding the independence of the review; questions we prefer to avoid," the Commission held.

The Commission found that the reasons supporting retention of the existing vintage date for RPS resources (January 1, 2003) currently outweigh the reason for changing it. However, the Commission did direct NYSERDA to clarify its economic development bid evaluation criterion to require that operating projects get no points for non-incremental economic development. "In these ways we maximize the number of MWh available for the program while showing continued preference for new projects. We intend to reexamine our vintage policies as part of our evaluation of the success of the [upcoming fifth Main Tier] \$200 million solicitation," the PSC said.

Although the Commission recognized several reasonable concerns regarding the use of hedges in awarding RPS contracts, "it is also important to consider the potential value to ratepayers of limiting exposure to the dual effects of rising commodity prices in the face of fixed payments for renewable attributes." In that vein, Staff was directed to explore uses of hedging and alternative contractual arrangements to facilitate financing and protect customers from upward swings of energy prices, with a report due in three months.

The written order also contained Commissioner Robert Curry's dissent, for reasons of cost effectiveness and the link between RPS and other state programs. "[T]he RPS as proposed is too costly to New York ratepayers and the Commission has not taken sufficient time to adequately and completely debate the issues embedded in the expansion of the existing program," Curry said.

The Commission justified the instant \$200 million Main Tier solicitation as required before a comprehensive review and possible integration of RPS, energy efficiency portfolio standards, and other programs, in order to take advantage of expiring tax incentives. Curry countered that, given the manner in which the

Main Tier procurements have historically been processed (the results of the \$95 million procurement bid in early November have as of January 1, 2010 yet to be announced), "it is unlikely that developers seeking to invest in New York will be disadvantaged by an in-depth reconsideration of a large number of important issues, as contemplated by the RPS Order requiring the 2009 Review."

"The Order proposes to wait until 2013 to review these programs simultaneously; they can and should be evaluated now. At a time when the Commission is asking utilities to consider austerity in their rate submissions and when the impact of the changes in Public Service Law Section 18-a that increases costs collected on customer bills is still being digested, it is the responsibility of the Commission to do all in its power to achieve the most cost-efficient programs for its ratepayers," Curry argued.

Curry noted that the Commission will have authorized the spending of almost \$300 million before considering whether there should be changes to the definition of "renewable" to include waste-to-energy, solar thermal, and storage technologies (like pumped storage) that enable more effective utilization of wind generation. Observing that, overall, the order allows the collection of \$2 billion over 15 years for RPS, Curry concluded that, "to date, RPS costs have exceeded original projections, MWh targets have not been met, and the program's administration remains unchanged."

"With this history, it is difficult to see how the expansion of the RPS will achieve the results desired," Curry said.

## ***Briefly:***

### **Hannaford Supermarkets to Self-Supply Retail Electricity**

Hannaford Bros. Co., operator of more than 150 supermarkets in New England and New York, intends to self supply its stores with retail electricity in Maine and Massachusetts, subsidiary Hannaford Energy, LLC said in a FERC filing for market-based rate authorization. Hannaford Energy has been formed specifically to act as the wholesale purchaser of energy for retail sale solely to Hannaford Bros; Hannaford Energy will sell electricity to no other retail end

user. In its FERC market based rate application, Hannaford Energy said that it is applying in both Maine and Massachusetts for licenses to operate as a competitive retail supplier of electricity. Though Hannaford also has grocery stores in upstate New York and New Hampshire, its FERC application made no explicit mention of any intent to seek retail electric licenses in those states.

### **O'Malley's Energy Advisor Joining Beowulf Energy**

Michael Enright, Maryland Gov. Martin O'Malley's former chief of staff and most recently energy advisor, is leaving the administration to become the managing director of Beowulf Energy, a generation developer with an office in Easton, Maryland.

### **Better Cost Control Receives Conn. Aggregation License**

The Connecticut DPUC granted Better Cost Control, LLC an electric aggregator certificate to serve commercial and industrial customers (Only in Matters, 11/24/09).

### **Platinum Advertising II Seeks Pa. License**

Customer acquisition specialist Platinum Advertising II LLC applied for a Pennsylvania electric supply license as a broker/marketer serving all customer classes in the PPL territory.

### **Alternative Energy Source Receives Ohio Gas License**

The Public Utility Commission of Ohio granted HB Hayes & Associates LLC (dba Alternative Energy Source) a natural gas aggregator/broker license.

### **Good Energy Seeks Ohio Broker License**

Good Energy, L.P. submitted an application for an Ohio electric broker/aggregator license to serve all customer classes in all service areas. Good Energy currently brokers in 11 states, including Illinois, Texas and several states in the Northeast. It most recently was awarded a Pennsylvania electric broker license.

### **American PowerNet to Relinquish Michigan License**

American PowerNet Management, LP has

requested to withdraw is Michigan retail electric license, stating that it has never served customers in Michigan.

### **Pepco Companies, BGE File to Abate MAPP Proceeding**

Pepco, Delmarva and Baltimore Gas & Electric have asked the Maryland PSC to suspend until June 2010 the procedural schedule in the CPCN proceeding for the Mid-Atlantic Power Pathway (MAPP), due to the delay in construction of the AEP-Allegheny Potomac-Appalachian Transmission Highline (PATH), because PJM studies regarding the need for MAPP were based on PATH commencing service by 2014 (Case 9179). The PATH sponsors have recently informed Virginia regulators that, based on updated load forecasts, the PATH line does not appear to be needed in 2014. Pepco said that, given the change to PATH, it and PJM will need to reevaluate the load studies used in the MAPP project.

### **NextEra Offering Verified Emission Reductions**

NextEra Energy Resources said that it has expanded its product offering through the creation of U.S. wind carbon offset credits - verified emission reductions (VERs). The verified emission reductions will be sourced from NextEra's Capricorn Ridge Wind Energy Center located in West Texas. NextEra plans to sell the verified emission reductions from the Capricorn Ridge project into the voluntary carbon credit market.

### ***FirstEnergy ... from 1***

to PJM, Staff still has concerns about approving the MRO while the integration process has not been finalized. "There is nothing that indicates any benefit to either ATSI or the state-regulated utilities arising because of this move [to PJM]," Staff said. "On a particularly troubling note, it does not appear that the operating companies ever even examined what the costs that might be imposed on them could be before endorsing the re-alignment," citing a line of questioning from the hearing. "This utter lack of even the most cursory consideration from the perspective of the regulated companies is very troubling,"

Staff added

Minimally, ATSI's FERC compliance filing should be approved and rehearing applications resolved before PUCO should even consider acting to approve a competitive bidding plan for default service, Staff said.

Staff also eased on its opposition to nonbypassable Rider GCR, which will recover, among other things, the difference between the FirstEnergy utilities' costs of wholesale power, and the revenue collected from customers on optional time-based rates (raising the possibility that shopping customers may subsidize such rates). Staff reiterated that Rider GCR, "is not the correct place for such recovery to occur," but said that recovery through Rider GCR, "is ... necessary in the short run, and Staff sees no current alternative."

Other than some new positions by Staff, post-hearing briefs mainly repeated arguments made in direct testimony or various motions, covered extensively in our 12/8/09, 11/26/09 and 10/29/09 stories.

The Ohio Consumers' Counsel continues to advocate for a managed portfolio, including the use of long-term contracts. The Ohio Energy Group again called for rate mitigation for industrials, asking that the average rate increase beginning June 2011 resulting from the MRO for customers on Rate GT not exceed a percentage in excess of one and one-half times the system average increase for all rate schedules. OEG also joined Nucor in further asking that any increase in GT rates be capped at 5%.

## **TUS ... from 1**

effect of granting its request on the market -- is not the kind of information that is viewed as confidential in the ERCOT market; how transmission costs/rates are calculated and who pays whom such rates are in no way confidential or secret, but are determined by Commission rules and contested proceedings," Staff added.

Staff argued that the confidential testimony and responses do not contain any trade secrets, privileged customer-specific information, contract terms that are specified in the contract as confidential, price forecasts, market sensitive marketing plans, or other commercially sensitive

financial information normally considered confidential.

Staff notes that TUS has not made any showing or argument to demonstrate how specific items of the designated materials are specifically covered by exemptions to public disclosure, as Staff observed that the Public Information Act is to be liberally construed in favor of granting a request for information.

Should the requested confidential protections be accepted, Staff said that most of the Commission's decision in this matter will need to be issued on a confidential basis.

Joining Staff's motion were CenterPoint Energy, Oncor, Occidental Power Marketing, and Texas Industrial Energy Consumers.