Energy Choice Matters

January 25, 2010

ERCOT TDUs Urge Extended Back-Billing for Extraordinary Cases of Meter Tampering

TDUs in the ERCOT market should be allowed to back-bill REPs for uncollected charges due to meter tampering for a period in excess of six months in cases of extraordinary meter tampering, the Joint TDUs said in comments on a PUCT proposal for publication (37291). The Joint TDUs included the AEP companies, CenterPoint Energy, Texas-New Mexico Power, and Oncor.

As only reported in *Matters*, the proposal for publication would limit back-billing related to meter tampering to six months, and would allow REPs to place a switch-hold on such back-billed accounts (Only in Matters, 12/17/09). The TDUs argued that if the tampering has been done, "without breaking the meter seal or otherwise being visible to the naked eye without moving some part of either the TDU's equipment or the premise itself, this limitation on back-billing shall not apply."

The TDUs said that as such tampering cannot reasonably be detected by the TDU within six months, an extended period for back-billing is appropriate. Such extraordinary tampering cannot be detected by a billing algorithm or by advanced or other remotely read meters, the TDUs said.

The REP Coalition, however, countered that a standardized six-month back-billing period, "will better incent the TDU to closely monitor, discover, and investigate meter tampering, to the benefit of the State's competitive electric market as a whole." The Coalition included the Alliance for Retail Markets, CPL Retail, Reliant Energy, Texas Energy Association for Marketers, and WTU Retail.

"The duration of the period of theft, or the cleverness of the thief, should not have any bearing on the TDU's ability to seek recompense under the Commission's rules," the REPs said, noting the impact that longer back-billing would have on REPs since, as under ERCOT protocols and timelines, any energy back-billed beyond six months generally cannot be settled on the wholesale market.

Citing information reported by Gexa during a workshop, the REPs noted that 49 percent of the total kilowatt-hours (kWh) back-billed by CenterPoint Energy during a 19-month time frame was attributable to back-billing periods in excess of 24 months. Gexa reported that 69 percent of

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Retail Suppliers Protest ROE Declaratory Relief Sought by Tenaska Clean Coal Plant

A petition for a declaratory order from FERC regarding Christian County Generation LLC's (a joint venture of Tenaska and MDL Holding Co.) return on equity and capital structure is procedurally improper, premature, and seeks to prejudge state legislative action, competitive retail suppliers said in protests (EL10-27).

Citing FERC Order 697, Tenaska sought a declaratory order confirming the reasonableness of its proposed 11.5% ROE and hypothetical capital structure of 55% debt and 45% equity for its Taylorville Energy Center clean coal plant, which is being built under Illinois law which requires utilities (up to a cost cap) and alternative retail electric suppliers (with no cost cap) to purchase output from the plant on 30-year PPAs. Tenaska said that the declaratory order is required to facilitate receipt of a Department of Energy loan guarantee, and to provide certainty to investors.

However, the Retail Energy Supply Association argued that the "extraordinary relief" sought by Tenaska -- guaranteed upfront approval of a ROE and hypothetical capital structure -- is "simply not

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West Penn Power Reports Results of Fourth Default Service Procurement

West Penn Power (Allegheny) reported that its fourth solicitation for default service supplies for the post-2010 period resulted in an average weighted retail generation price of $62.27/MWh for residential customers.

For non-residential customers, the average weighted retail generation price from the procurement was $65.26/MWh. Included in the average weighted retail generation price are energy, capacity, Pennsylvania gross receipts taxes, line losses, renewable energy requirements, ancillary services and other provisions.

Due to its accelerated procurement, Allegheny now has contracts for 67% of the generation supply needed to serve its residential customers next year. The average residential generation price for all four procurements to date is $70.42/MWh.

Allegheny Power has now purchased nearly half of the generation supply needed for small commercial customers in 2011, with the four procurements to date producing an average price of $67.69/MWh.

In the fourth procurement, seven contracts were awarded in the auction, representing approximately 2.5 million megawatt-hours. Eight bidders participated in the procurement.

PUCT Staff Files Draft to Allow Twice Annual Interim Transmission Rate Updates

PUCT Staff filed a draft proposal for publication that would allow Transmission Service Providers to file for interim updates to their transmission rates twice annually, versus the once annual interim update permitted under current rules (37519, Only in Matters, 8/27/09).

As under the current rule, Distribution Service Providers would be permitted to expeditiously pass through to their customers (i.e., REPs) changes in wholesale transmission rates approved by the Commission, pursuant to Subst. R. §25.193 (relating to Distribution Service Provider Transmission Cost Recovery Factors, which is being addressed in project 37909).

Staff's draft would limit at six the number of times a utility may update its rates on an interim basis before being required to file a complete rate case, and would provide that the Commission shall consider in the utility's next complete rate case the effects of interim updates on regulatory lag and the utility's financial risk.

NextEra Energy Files Complaint Over Use of New Era Name by Texas Aggregator

NextEra Energy Power Marketing, LLC, which among other things is an Option 2 REP in Texas, filed a complaint at the PUCT against aggregator New Era Energy, requesting that the Commission require New Era Energy to amend its certificate to reflect the aggregator's new assumed name, Electric Rate Adjusters, or cancel the aggregation certificate. NextEra Energy requested the actions, "in order to avoid potential confusion among consumers given the similarity between the assumed name New Era Energy and the names of," various NextEra Energy subsidiaries (37911).

As only reported in *Matters*, New Era Energy, run by sole proprietor Bruce Ewing, sought certification in August and received certification in September (Only in Matters, 9/16/09).

NextEra Energy said that, upon learning of the aggregation application, it contacted Ewing and requested that Ewing adopt a different assumed name. NextEra Energy noted that, prior to his certification by the Commission, Ewing cancelled the assumed name New Era Energy with the Clerk of Montgomery County, Texas, and registered the new assumed name Electric Rate Adjusters. However, NextEra said that this information was not filed by Ewing with the Commission, and its certificate was granted with the trade name New Era Energy. NextEra said that it has requested that Ewing update the name on his certificate with the Commission, but no update has been made.

NextEra alleged that, "it appears that (i) Mr. Ewing, since at least as early as September 8, 2009, is operating as an aggregator under the assumed name Electric Rate Adjusters without having obtained Commission approval to

operate as an aggregator under such assumed name (a potential violation of PUC SUBST R. 25.111(e) and 25.111(i)(11)), and (ii) with regard to the change of assumed name from New Era Energy to Electric Rate Adjusters, Mr. Ewing has neither reported such name change to the Commission in the form of a required update to his application for registration prior to the Commission's approval of same (a potential violation of PUC SUBST R.25.111(h)(3)(A) and 25.111(j)(1)) nor at any time subsequently has reported the same to the Commission in the form of a required amendment to aggregator registration number 80301 (a potential violation of PUC SUBST R. 25.111(i)(3)). See also PUC SUBST R. 25.111(e)(1) and (f)(1)(A)."

Exelon Generation Earnings Lower on Market Conditions

Exelon's generation unit reported lower adjusted earnings for the fourth quarter of 2009 of $441 million, down from $530 million a year ago, on lower energy gross margins, largely from unfavorable portfolio and market conditions, decreased nuclear output from a higher number outage days, and higher nuclear fuel costs. Higher operating and maintenance costs, primarily from increased pension costs, also drove the lower quarterly results.

The adjusted metrics exclude mark-to-market impacts of economic hedging, costs associated with the retirement of certain units, non-recurring tax impacts, and similar items.

On a GAAP basis, Exelon's generation unit reported lower quarterly net income of $425 million compared with $553 million in the fourth quarter of 2008.

Generation's average realized margin on all electric sales, including sales to affiliates and excluding trading activity, was $38.36 per MWh in the fourth quarter of 2009 compared with $38.28 per MWh in the fourth quarter of 2008. Average margin from Generation's "market and retail" sales was $54.96/MWh, up from $54.18/MWh for the fourth quarter of 2008.

As of December 31, 2009, Generation is hedged at 91-94% for 2010, 69-72% for 2011, and 37-40% for 2012.

For the year 2009, Generation reported adjusted earnings of $2.09 billion, down from $2.29 billion a year ago, mainly due to unfavorable market conditions.

Exelon has not yet filed a 10-K.

NEM Names 2010-11 Leadership, New Member

The National Energy Marketers Association has named its 2010-2011 leadership team, including Steve Maslak (CEO, Gateway Energy Services) as Chair of the NEM Executive Committee. Doug Marcille (CEO, U.S. Gas & Electric) was named Vice Chair of the Executive Committee, and Kevin Kleinschmidt (President, Energy Plus Holdings LLC) was named 2nd Vice Chair of the Executive Committee. Policy chairs are listed below. NEM also announced that loyalty/retention firm New World Incentives has been elected to NEM's Executive Committee.

NEM National Energy Policy Chairs

Wholesale Electricity: Matthew Picardi (Vice President-Regulatory Affairs, Shell Energy N.A.), Chair, Ken Ziober (Senior Vice President, Spark Energy), Co-Chair

Wholesale Natural Gas: Kyle Hupfer (Vice President and General Counsel, Proliance Energy), Chair, Steve Sherman (Attorney for Proliance Energy), Co-Chair

Retail Natural Gas: Scott White (President, IGS Energy), Chair, Jonathan Morris (Vice President, Metromedia Energy), Joseph Waldman, (VP Operations, Gateway) Co-Chairs

Retail Electricity: Jeff Hendler (CCO, IDT Energy), Joanna Hamrick (General Counsel, Energy Plus Holdings), Co-Chairs

Consumer Advocacy and Policy Development: Chris Hendrix (Director of Markets & Compliance, Wal-Mart Stores), Chair

Smart Grid and Demand Response: Jeff Hendler (IDT Energy), Bob Blake (Vice President, Electric Operations and Regulatory Affairs, MXenergy), Co-Chairs

CFO Forum: Scott Thomas (CFO, Infinite Energy), Chair, Karen Costa (Natural Gas and Electric Controller, NOCO Energy Corp.), Co-Chair

Advanced Energy and Environmental Technology: Bill Mahoney (President and

CEO, South Carolina Research Authority) Chair

Consumer Bill of Rights and Marketer Code of Conduct: Greg Collins (President, Vectren Retail), Chair, Joanna Hamrick (Energy Plus Holdings), Co-Chair

Clearing, Credit and Financial Issues: John Flory (President, NECC), Chair

Consumer and New Member Outreach and Education: Chris Hendrix (Wal-Mart Stores), Doug Marcille (U.S. Gas & Electric), Co-Chairs

Briefly:

PUCT Staff Posts Draft New REP Annual Report Form

PUCT Staff filed in project 37053 a draft new REP annual report form required due to changes in Subst. R. 25.107. Staff also reported that it has begun preparations to allow on-line filing of the technical and managerial portion of the report, through the use of a company secure user-specific ID and password.

WGES Signs Delaware Chamber Members

The Delaware State Chamber of Commerce said that it has arranged for its members to execute three-year electric contracts with Washington Gas Energy Services, starting in February 2010, at a fixed price of $0.09539/kWh. The chamber said that the contracts were part of a larger buying group managed by Affinity Energy Management, which also included the Rehoboth-Dewey Chamber of Commerce and the Delaware Restaurant Association.

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residential customers back-billed for usage in excess of six months did not pay the back-billed amount, while the collection rate improved to 50% in cases where back-billing covered six months or less.

"Absent a reasonable limitation on the period of time upon which the back-billing can be based, a perverse financial incentive exists for the TDU to maximize the period of time it estimates that meter tampering has occurred ... [b]ecause it will collect the back-billed amount from the REP automatically, regardless of the length of the back-billing period or the amount of consumption upon which the back-billed amount is based," the REPs argued.

The TDUs further sought to modify the proposal for publication so that TDUs may back-bill REPs even if they are no longer the REP of record for the customer. Specifically, the TDUs argued that TDUs should be allowed to back-bill a prior REP of record for tampering, if the customer has switched to a new REP within the past 30 days. Under the proposed rule, the new REP of record cannot be back-billed for prior tampering.

The joint TDUs contended that such a provision is required to ensure that customers do not avoid back-billing by quickly switching to a new REP before the switch-hold takes effect. Customers who observe any TDU investigation could complete switches before the switch-hold is imposed, the TDUs said, especially as expedited switches become more common.

The TDUs said that REPs, and not TDUs as in the proposal, should send meter tampering notices to customers. "Since the TDUs will be providing the REP notice, within one business day, of each premise for which tampering has been determined, and since it is the REP that will be (a) actually charging the customer for any tampering charges and back-billing, and (b) in control of whether the switch-hold is released upon satisfactory payment of such charges, it seems more appropriate for the initial notice to be provided by the REP," the TDUs said.

The Joint TDUs and REP Coalition agreed on the following language regarding Move-Outs: "When the REP of record issues a move-out request for the flagged ESI ID, the REP of record's relationship with the ESI ID is terminated and the switch-hold shall be removed."

The REPs further noted that, unlike with a Move-Out, a disconnect for non-pay request does not terminate the REP-customer relationship. REPs suggested adding language to the rule providing that, "[t]he TDU shall cease billing all transmission and distribution charges to a premise upon the completion of a disconnection for non-payment for an ESI ID for which a switch-hold flag is present." Such a provision would allow a REP to avoid incurring wires charges for an account engaged in tampering without losing the leverage of a switch-hold, which would be lost if the REP

submitted a Move-Out to stop the imposition of wires charges.

The TDUs and REPs have also agreed generally on the specific processes, such as use of a MarkeTrak Issue, to implement the switch-hold, and to facilitate communication among the current REP, new REP, and TDU, in terms of verifying whether a Move-In is legitimate. Among other things, both groups agree that the current REP of record should be limited to a review period (REPs suggested 24 hours, TDUs suggested one business day) during which it may assess evidence presented by the new REP regarding the legitimacy of a Move-In, and make a determination of whether to accept or deny the Move-In. If the current REP of record does not submit a determination regarding the Move-In during this period, the switch-hold shall automatically be lifted, the TDUs and REPs said.

The REP Coalition further suggested including, in the Retail Market Guide, criteria to determine a legitimate Move-In request, which, when met, would require the REP of record to lift a switch-hold, unless the REP of record provided other evidence showing the Move-In to be illegitimate. The REPs suggested that the following criteria (in whole or in part) could be required to demonstrate that a Move-In associated an ESI ID flagged with a switch-hold is legitimate:

1. The name on the affidavit must be the same as:
   a) The name of the selected REP's applicant; and
   b) The name (or one of the names) on the documentation obtained by the selected REP from the applicant.
2. The name on the affidavit must be different than:
   a) The name of the current REP of record's customer of record for the ESI ID; and
   b) Any secondary name on the current REP of record's account for the ESI ID.
3. The date on the documentation obtained by the selected REP must be later than the date the switch-hold flag was placed on the ESI ID.
4. The address on the documentation obtained by the selected REP must match the address of the ESI ID's premise.

TXU Energy supported the interim, manual process proposed by the REPs and TDUs to govern the removal of a switch-hold, but stressed that, in the long term, the process must be automated via Texas SET to reduce potential human errors.

REPs and TDUs both agreed that the requirement that the TDU "warrant" at the time of a change in the REP of record that there is no evidence of meter tampering for the account is unworkable, since if would require the TDU to physically inspect each account prior to a switch. Oncor alone estimates that it completed roughly 1.6 million switch and Move-In requests in 2009.

Rep. Sylvester Turner, the Office Of Public Utility Counsel, and various consumer groups contended that the switch-hold provision is contrary to PURA, and that the Commission lacks authority to block a customer's choice of a REP. The switch-hold is neither expressly authorized by PURA, not can it be implied by the statute, the groups said.

PURA §17.004(a)(2) states, "All buyers of telecommunications and retail electric services are entitled to: choice of a telecommunications service provider, a retail electric provider, or an electric utility, where that choice is permitted by law, and to have that choice honored," Turner said.

PURA §39.101(b)(2) further holds that, "a customer is entitled to choose the customer's retail electric provider consistent with this chapter, to have that choice honored, and to assume that the customer's chosen provider will not be changed without the customer's informed consent," Turner added.

More broadly, Turner said that a switch-hold is contrary to PURA's goal of favoring market over regulatory solutions. "It must also be noted that from a policy standpoint any attempt to lock a customer to one REP because of outstanding debt would clearly be a regulatory solution and against the normal forces of competition. One would be pressed to produce examples of markets that prohibit competitive companies from offering their product or service to an indebted customer of a competitor. To establish such a command and control rule in the restructured electricity market would inhibit competition, prevent customer choice, and not would not be a normal force of competition," Turner said.

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available" for the generation project, as relief under Order 697 (and associated statute) are specifically reserved for transmission projects.

The Illinois Competitive Energy Association, Illinois Retail Merchants Association, and Illinois Manufacturers' Association likewise said that the proper vehicle for any determination of Tenaska's ROE is a Section 205 filing. However, ICEA said noted that Tenaska could not make a Section 205 filing at this time, as numerous elements of its cost-based rate are undetermined and subject to future action by the Illinois legislature. ICEA also said that, absent permission by FERC, Tenaska could not make a Section 205 filing until 120 days before the rate is expected to become effective, noting that, "the effective date of any future rate is completely speculative at this point."

The Illinois Commerce Commission called Tenaska's petition "premature" since the relief sought by Tenaska is contingent upon a number of variables that cannot be known at this time. "In order to provide a final assessment of the appropriate ROE and capital structure, the Commission would need to assess the terms of the yet to be developed sourcing agreements [between Tenaska and the retail suppliers/utilities] in their entirety and within the context of a complete section 205 proceeding, following and contingent upon the outcome of the upcoming Illinois proceedings on the same subject."

Retail suppliers also alleged that Tenaska is seeking to gain an advantage in future Illinois proceedings to determine its ROE by getting an advisory opinion from FERC. Illinois statute expressly leaves the ROE to future legislation that will examine the costs of the plant and whether the 30-year PPAs with retail suppliers should be executed.

ICEA called the petition an "end run" in which Tenaska seeks to have FERC insert itself into the ongoing legislative process in Illinois. Exelon cautioned that an advisory opinion from FERC could, "tip the scales" in the Illinois legislature's further deliberations on an appropriate ROE for the PPAs, and, "could present the State legislature with a fait accompli and short-circuit the legislature's stated intention to determine a fair rate for the State-mandated PPAs when it has more information."

RESA also cautioned that FERC action could preempt the ICC's statutory right to review the ROE. "[T]he impact of the rates, including the ROE and capital structure, is critical to RESA members active in Illinois markets and will impact the very survival of electric competition in Illinois," RESA said, noting that competitive suppliers will be forced to pay costs of the plant, including ROE, on 30-year PPAs, but that the utilities' obligation to purchase output from the plant will be subject to a cost cap, per the legislation.

The ICC stressed that any FERC order on Tenaska's ROE must explicitly state that FERC's action does not preclude Tenaska from accepting the Illinois legislature's or ICC's determination of ROE, as required by statute.