Energy Choice Matters
March 16, 2010

Staff Favors Changes in Nicor Gas Operating Agreement to Prevent Affiliate Subsidization

Illinois Commerce Commission Staff have recommended several changes to the Nicor Gas operating agreement (OA), which governs the utility's relationship with its affiliates, to prevent the current subsidization of non-regulated entities and prevent abuses of market power (09-0301).

Currently, Nicor Gas is required to charge affiliates either the "prevailing price" for the services it provides affiliates, or, if no prevailing price exists, its fully distributed cost. However, Staff called the definition of prevailing price in the operating agreement overly restrictive because it defines a prevailing price as existing only when Nicor makes the service provided to its affiliate available to the general public via tariff or other ICC-approved mechanism.

Under this definition, Staff noted that, even if a market price exists for the service provided by Nicor Gas (i.e., a third party provides the service to the general public but Nicor Gas does not provide the service to the general public), the market price is not considered by Nicor Gas in determining the appropriate rate to charge its affiliates, since Nicor Gas does not provide the service to the general public. "Such a restriction subsidizes the affiliates in that the affiliates receive services at Nicor Gas' fully distributed cost rather than [the] higher market rate that the affiliates' competitors pay to third party providers," Staff said.

Currently, Nicor Gas provides affiliate Nicor Services (which markets a Gas Line Comfort Guard warranty product) with call center services at the fully distributed cost rather than a prevailing price.

Staff recommended that the operating agreement be revised so that Nicor Gas must be paid by its affiliates the higher of cost or market, eliminating the restrictions associated with prevailing price.

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REPs Recommend Cap on TDU Efficiency Spending of $1/MWh

In order to minimize the bill impact on customers, residential and commercial energy efficiency measures funded by Texas distribution utilities should be capped at $1/MWh, the REP Coalition said in response to a PUCT proposal for publication which would raise the utilities' energy efficiency goal to the larger of either 50% of the electric utility's annual growth in demand, or 1.0% of the electric utility's peak load, by program year 2014 (37623).

The REP Coalition noted that current P.U.C. SUBST. R. 25.181 would allow utilities to recover up to approximately $115 million for energy efficiency program costs and accrued bonuses based on the transmission and distribution service providers' filed 2010 budgets. However, the proposed rule would permit utilities to recover almost $407 million for energy efficiency program costs and bonuses in 2014, the REPs said.

To minimize the burden on customers, the REP Coalition recommended the use of a $1/MWh cost cap for residential and commercial customers to keep the level of cost recovery in check while still allowing utilities to recover sufficient funds to operate energy efficiency programs. A $1/MWh cost cap for residential and commercial customers would reduce, by roughly half, the projected cost impact on consumers that would otherwise occur under the proposed rule for the year 2014, the REP

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Conn. Bills Would Cap Residential Termination Fees, Extend Rescission Period

The Connecticut legislature's joint Energy and Technology Committee is holding a hearing today on three bills that the Retail Energy Supply Association said would eviscerate electric customer choice.

HB 5505 would establish a state power authority to conduct default service procurements, enter into long-term contracts, and own and operate power plants. Additionally, the bill would require the distribution companies to transition from a full requirements approach to buying power to the use of a managed portfolio.

Furthermore, HB 5505 would cap residential termination fees charged by electric suppliers at $100, or twice the estimated bill for energy services for an average month. HB 5505 would also extend the current three-day rescission period applicable only to customers eligible for Standard Service to customers of all sizes.

HB 5505 would also impose a two-year switching restriction, or a utility-imposed exit fee, on customers who elect to participate in the competitive electric supplier referral program. An assessment would also be levied only on sales of competitive electric suppliers (and not default service sales) to fund customer education programs.

HB 5507 would require the licensing of brokers, and would remove the requirement that customer choice be included in education efforts.

HB 5508 would create a Division of Electricity Policy and Procurement to operate electric power plants and provide financial assistance to encourage the development of generation.

"Collectively, these proposals strive to remove customer choice for residents and businesses of this state," said RESA President Jay Kooper.

Noting that ISO New England does not foresee the need for new generation resources through 2018, Kooper said that, "the costs for all of these proposals, the risks of which can total into the billions of dollars, will be borne by Connecticut taxpayers and ratepayers at a time of deep economic recession when they can least afford these costs."

REPs Suggest Harmonizing Timing of TCOS, TCRF Changes

The PUCT should adopt changes to its rules governing interim updates to the transmission cost of service (TCOS) such that any new transmission rates align with the March 1 and September 1 transmission cost recovery factor (TCRF) filing effective dates, the REP Coalition said in comments on a PUCT proposal for publication that would allow twice annual TCOS updates (37519, Only in Mattes, 1/25/10).

The REP Coalition does not oppose increasing from one to two the number of times a Transmission Service Provider may file for an interim update to its rates as proposed in the amended rule, as the Coalition noted that changes to the rule will not directly affect the prices charged by REPs and paid by consumers. However, the REP Coalition noted that the existing rule provides that distribution service providers may expeditiously pass through to their customers any changes in wholesale transmission rates through the TCRF, in accordance with P.U.C. SUBST. R. 25.193, and that the Commission is reviewing the frequency of TCRF changes in Project No. 37909.

"The REP Coalition believes it would be beneficial for the Commission to prescribe a schedule for providers of transmission services who are eligible to file a request for an update of transmission rates under subsection (h)(1) so that any rate changes are effective on January 15 and July 15. This will help align new rates with the March 1st and September 1st transmission cost recovery factor (TCRF) filing effective dates," the REP Coalition said.

The AEP Companies stressed that it is "necessary" to consider "enhancements" to the TCRF mechanism in concert with changes to the TCOS mechanism. Absent changes, the regulatory lag experienced by Distribution Service Providers would be compounded by more frequent Interim TCOS filings that could be made at any time during a calendar year, the AEP Companies said.

Several Transmission Service Providers, while generally supportive of Staff's proposal to increase the amount of interim TCOS adjustments that can be made annually, faulted the proposal for not materially accelerating the approval process for interim TCOS filings. Both Oncor and Sharyland noted that approval could take some 60 days, which Sharyland said would negate the intent of the rule which seeks to streamline the approval process by allowing the presiding officer, and not the Commission, to approve interim TCOS filings.

Various load interests, including the Texas Industrial Energy Consumers, the Office of Public Utility Counsel, and cities retaining first jurisdiction over TDUs, opposed the expanded interim TCOS authority, arguing that Transmission Service Providers have not shown a need for such updates, and that the changes would reduce regulatory lag with no corresponding reduction in the return granted to utilities.

Briefly:

MXenergy Reports Electric Customer Counts by State

MXenergy, in an addendum to its Maryland application for an electric supply license (Only in Matters, 3/4/10), provided its electric customer count as follows:

Connecticut:	20,999
New York:	30,243
Pennsylvania:	27,672
Massachusetts:	12,081
Texas:	12,359

Green Mountain Energy Launches New Texas Ad Campaign

Green Mountain Energy has launched a new Texas ad campaign called "For Everyone" featuring eight actual Green Mountain customers from the Dallas and Houston metroplex areas, as well as the smaller community of Eagle Pass, Texas. The integrated advertising campaign consists of television, radio, billboard, and web ads in both English and Spanish with customers identifying the variety of reasons they elected Green Mountain. "We've learned from our customers that clean energy no longer appeals to a niche segment of the market," said Paul Markovich, senior vice president of Residential Services for Green Mountain. Fifteen-second TV spots will air in Houston, Corpus Christi and the Rio Grande Valley, while radio spots will air in those three areas as well as Dallas.

Ameren to Organize Illinois Utilities into Single Entity

Ameren said yesterday that it will reorganize its three Illinois electric and gas utilities -- AmerenCIPS, AmerenCILCO and AmerenIP -- into a single public utility that would do business as "Ameren Illinois." The Ameren Illinois utilities intend to complete the reorganization by Oct. 1, 2010. The reorganization would not affect current rates that customers pay or levels of service. "Because electric and certain gas customers can shop for energy in the competitive market, our sole focus is to efficiently deliver energy safely, reliably and cost-effectively," said Scott Cisel, CEO of Ameren's Illinois utilities.

Nicor ... *from 1*

Customer Solicitation

Staff further recommended that the operating agreement be modified to preclude Nicor Gas from soliciting customers on behalf of its affiliates. Currently, Nicor Gas solicits customers for Nicor Services' Gas Line Comfort Guard (GLCG) warranty product through its call center pursuant to a sub-agreement under the operating agreement.

Staff alleged that GLCG is marketed, "based on a customer's fear of having his/her gas cut off and a false premise furthered both by Nicor Gas and its affiliate Nicor Services that GLCG is required to prevent shut-offs in gas supply when leaks exposed inside piping are discovered."

"Both Nicor Gas and Nicor Services provide misleading information to customers as to who actually provides this service, the current level of repair services that are available from Nicor Gas, and extent of the coverage or benefits under GLCG ... This misleading information is spread via all Nicor Gas and IBT call centers as well as through Nicor Inc.'s website," Staff alleged.

Staff further alleged that the scripts of Nicor Gas' call centers, "effectively pressure customers with threatening and manipulative claims after they indicated that they do not want to buy GLCG." Staff noted that the scripts inform customers that, "the utility is only legally responsible to make the situation safe or make repairs to its own facilities. What that means is that the property owner (such as yourself) may have to find and hire an independent contractor to come in, do an inspection, and then make those repairs. That can be expensive, and it could also mean days without any gas..."

However, Staff noted that Nicor Gas already provides one-call, on-the-spot repair services, apart from the services offered by its affiliate. "In reality, the only benefit incrementally provided by GLCG is ... that there will be no additional charge for certain repairs up to $600 per incident," Staff said.

Nicor Gas achieved a 19.6% solicitation success rate for GLCG from soliciting customers who are moving residences who called the Nicor Gas call center from July 2008 to June 2009. "This success rate compares to a success rate of 2% that Nicor Services claims for solicitation by mail," Staff noted.

"Lacking the customer solicitation provided by Nicor Gas, competitors of Nicor Services would find it much more difficult than Nicor Services to market to potential customers. This puts these competitors at a cost disadvantage relative to Nicor Services and reduces the market forces on this market. In addition to giving Nicor Services access to the prime group of potential customers, Nicor Gas has provided explicit endorsement of Nicor Services' products. There is an implicit endorsement when the customer calls Nicor Gas to set up utility service and the customer service representative attempts to sell these products. However, the endorsement becomes explicit when most of these solicitations fail to identify the transition between Nicor Gas and Nicor Services," Staff added.

"Because Nicor Gas has taken advantage of its status as a monopoly provider of utility service and extended that market power unjustly to its affiliate, which has allowed its holding company to reap profits through that affiliate, it should be precluded from any customer solicitation on behalf of any affiliate," Staff recommended.

Staff estimated that Nicor Services had more than 440,000 of Nicor Gas' customers taking GLCG in 2009, or more than 20% of all Nicor Gas customers. During 2009, Staff estimated that less than 2% of all GLCG customers received covered repairs. The average cost of those covered repairs was less than $76, Staff said. Staff estimated that Nicor Services had net income of more than $16.5 million from GLCG in 2009 and repair costs of less than $600,000.

"Nicor Services is able to charge such a high markup because Nicor Gas has created and maintained market power for Nicor Services' products," Staff argued.

If the Commission allows Nicor Gas to continue soliciting customers for affiliates, Staff recommended that Nicor Gas' operating agreement be modified to require that any Nicor Gas service, excluding corporate support, that supports any affiliate product that is offered to Nicor Gas customers be provided to non-affiliates on a non-discriminatory basis. "This recommendation would allow other sellers to market a GLCG-type product," Staff said.

Nicor Website

Staff also cited several concerns with Nicor Gas' website, which Staff said does not clearly delineate when customers shift between the Nicor Gas site and affiliate webpages, all of which are hosted at Nicor Inc.'s website. Staff noted that many affiliates, including affiliates offering commodity supply, are linked on the Nicor Inc. site which also hosts the utility website, and Staff said that the disclaimers on the bottom of the page regarding the unregulated companies, "are insufficient protection for customers using Nicor Inc.'s website."

"The information provided by Nicor Inc. through its website is misleading as to which services are provided by the regulated utility, Nicor Gas, and which services are provided by an affiliate. They are downplaying the nature of the relationship between the affiliate and Nicor Gas by displaying this information in fine print at the bottom of the page," Staff said.

Nicor Inc., Staff added, is unwilling to provide potential competitors access to its website for solicitation. Staff noted that Progressive Energy Group had asked to use the website to solicit customers for warranty products and services in the same manner as Nicor Services does, but Nicor "flatly refused," Staff said. Staff thus recommended that Nicor Gas' operating agreement be revised to preclude website hosting of Nicor Gas by any affiliate.

Dominion Retail argued that Nicor Gas

should post links to non-affiliated marketers on its website that will enable customers to conveniently go to the marketer's website and review its products and services.

Billing System

Staff further cited the "discriminatory" pricing of billing services to competitors seeking to offer a warranty service. Nicor Gas has two billing systems, one for commodity supply which is open to competitive suppliers, and a second billing system for Nicor Services' warranty products, which was designed to be used by only one provider. Staff noted that Progressive Energy Group sought to use the warranty product billing system made available to Nicor Services, but was informed by Nicor Gas that such service would cost $0.25 per bill (plus a set-up fee), while Nicor Services was only charged $0.112 per bill. Staff argued that the billing service must be available to competitors at the same price.

Dominion Retail cited concerns with the "Fixed Bill" product offered by Nicor affiliates, under which Nicor Gas supplies system gas to the customer but the customer's bill is fixed even if the customer's gas usage varies. Dominion Retail said that Nicor Gas should provide such a capability in a non-discriminatory manner so that other marketers can offer such fixed billed products if they choose. "This would entail billing a customer on behalf of a marketer and providing the gas to the customer from Nicor's system supply, just as it is done for its affiliate," Dominion Retail said.

Dominion Retail noted that since, under the fixed bill product, the customer is receiving system gas supply, the customer may be terminated by Nicor Gas for non-payment, unlike if the customer were receiving competitive supply. Dominion Retail argued that Nicor Gas should implement a purchase of receivables program for non-affiliates that is similar to the one it has essentially created for its affiliate under the fixed bill program.

Efficiency ... *from 1*

Coalition said.

The cost cap would also ensure that REPs and their customers, "have transparency and rate certainty concerning the costs of these energy efficiency programs," the REP Coalition added. "It may be that with this cost cap some utilities may be challenged to meet the more aggressive energy and demand reduction goals established by rule. The cost cap will not, however, preclude utilities from meeting the statutory goal," the REP Coalition noted, citing the current cost cap in §25.181 which is below $1/MWh but nevertheless has provided utilities with adequate funding to not only meet, but also far exceed, their energy efficiency goals.

"Importantly, the REPs receive the brunt of customer dissatisfaction and frustration from any increases in retail bills, whether such increases are due to increases in regulated utility rates or other wholesale costs," the REP Coalition said.

"Knowledge and certainty about the level of TDSP non-bypassable charges is critical to REPs. While REPs understand that the EECRF [energy efficiency cost recovery factor] will change based on the level of energy efficiency expenditures, recovery of accrued performance bonuses, and changing sizes of the EECRF billing determinants each year, it is also helpful for them to understand the extent to which those changes will occur so communications with customers are productive and meaningful. Under the proposed rule, there is no way to predict the magnitude of future EECRFs with any certainty. At best, REPs can only predict that EECRFs will increase each year as utility spending increases and larger performance bonuses can be achieved," the REP Coalition added in arguing for greater transparency and cost caps.

The REP Coalition also "adamantly" opposed the implementation of a lost revenue adjustment mechanism and an increase in the level of bonuses for electric utilities exceeding statutory energy efficiency goals. "If an electric utility is allowed to recover those [lost revenue] amounts through its EECRF, a customer will in effect pay transmission and distribution delivery charges for a level of service not actually provided by the electric utility. These 'phantom' charges would be in addition to the electric utility's expenditures in administering and implementing the energy efficiency programs also borne by customers through base rates and/or the EECRF," the REP Coalition said.

"Nothing in PURA § 39.905 authorizes the inflation of the electric utility's rates in this manner," the REP Coalition contended.

The REP Coalition also sought greater certainty in the funds available to REPs to participate in implementing the energy efficiency programs, which cannot be performed by the utilities themselves.

"Historically, REPs have participated in the energy efficiency programs only to a limited extent, in part because the amount of funding that could be accessed by any one provider was so limited as to make the statewide delivery of programs not economically feasible. The REP Coalition would like to see the Commission ... [specify] that a certain amount of the budget will be set aside for REP delivery of programs and [provide] that long-term funding may be made available to provide for the delivery of multi-year REP programs," the REP Coalition said.

Specifically, the REP Coalition recommended a set-aside of 25% of the utility's budget in areas subject to customer choice, although no individual REP would be able to request more than a third of the aggregated amount, unless funds remain available as of April 1 of the preceding program year. To the extent that demand for REP set-aside funds exceeds program funds available, the utility would be required to allocate REP set-aside funds in a non-discriminatory method to the requesting REPs, the REP Coalition suggested.

"In addition, the REP Coalition believes that more certainty of funding availability would allow for REPs to deliver larger scale programs that are prohibitive today due to substantial startup costs and no assurances that they are sustainable year over year. In order to make the investments necessary, which can be substantial, REPs request [that] set-aside funding ... include a provision for long-term funding for multi-year programs."

Additionally, the REP Coalition argued that the energy efficiency rule should clearly specify that time-of-use prices, home-area network devices such as in home displays, premise energy/load management equipment and other retail offerings facilitated by advanced meters are eligible for funding through energy efficiency programs if the reductions in demand and energy consumption can be quantified and verified using reasonable methods in accordance with the measurement and verification provisions in the rule.