Energy Choice Matters

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PUCT ALJ Asserts Jurisdiction in Just Energy Complaint, Citing Interpretation of TDSP Tariff

A PUCT ALJ denied a customer's motion to dismiss a request from Just Energy Texas for the Commission to assert primary jurisdiction over a complaint regarding pass-throughs for Unaccounted For Energy (UFE) charges and ERCOT charges, as the ALJ said that the case appears to fall within the Commission's primary jurisdiction since it will require the interpretation of the TDSP's tariff, and there is a benefit in having a uniform interpretation of the tariff (37891).

Taqueria El Zarape, Inc. (TEZ) has served Just Energy with two billing complaints in district court, alleging overcharges amounting to approximately $80. The crux of the complaint is that Just Energy's "utility charges" per its bill are in excess of the TDSP tariffed rates. However, Just Energy said that, per its contract, utility charges also include UFE and other ERCOT charges, which are the source of the higher charges.

TEZ argued that the Commission does not have primary jurisdiction over the dispute because the dispute is inherently judicial in nature, and amounts to a breach of contract claim.

Staff agreed that the Commission's exercise of primary jurisdiction in this case would not be warranted, "because a resolution of this docket will not entail the Commission's interpretation of any laws within its purview or its rules." Staff noted that the term "utility charge" in dispute is not a term defined by the Commission or PURA, and even if the an interpretation of PURA or the Commission's rules were somehow implicated in the dispute, "there would be no need for there to be uniformity in the interpretation of the term 'utility charges,'" as used in the unique terms of service agreement between Just Energy and TEZ for the period between March 27, 2007 and October 15, 2008. "The

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AReM Objects to SCE Alternate Proposal on Replacement RA Capacity

The Alliance for Retail Energy Markets urged the California PUC to disregard a late proposal from Southern California Edison regarding the obligation to replace RA capacity due to outages, but SCE's measure found general support among generators (R.09-10-032).

In Phase I of the PUC's rulemaking to refine the current resource adequacy (RA) construct, stakeholders have been debating removing the current load serving entity (LSE) obligation to replace RA capacity for units on scheduled outages. AReM supports removing the obligation from LSEs since electric service providers, "do not control the RA units or have any knowledge about when outages may be scheduled."

"The most logical approach, therefore, is to transfer this obligation to the RA seller and incorporate the obligation into the CAISO's tariff," AReM said.

"Both RA sellers and buyers agree that the obligation to replace RA capacity belongs with the seller, which has the knowledge and the technical expertise to manage this risk and provide replacement capacity when needed," AReM claimed, stating that "nearly all parties" agreed in a January workshop that the LSE replacement obligation should be removed from the Commission rules and transferred to the CAISO tariff.

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N.Y. Records Officer Denies FOIL Request for ESCO Data

Disclosure of New York ESCOs' number of residential customers and revenues, "would be likely to cause substantial competitive injury to ESCOs because of the higher prices [wholesale] energy suppliers would almost certainly demand as a result of the knowledge thereby gained," New York PSC Records Access Officer Steven Blow ruled in response to a Freedom of Information Law request for such data (Only in Matters, 3/5/10).

Review of Blow's determination may still be sought by filing a written appeal with the Commission Secretary.

Blow cited PSC precedent in response to past requests for customer data and similar data (such as physical volumes) in determining that the ESCO data qualifies for exemptions from public disclosure due to the likely substantial injury to the competitive position of ESCOs from releasing the data.

Blow said that the Commission could have ordered greater reporting of disaggregated ESCO data in its recent Uniform Business Practices order, but declined to do so. Furthermore, Blow noted that it has only been 17 months since the most recent FOIL request for ESCO data was denied by the Commission, and "there have been no significant changes in the ESCO market to support or warrant a change in how the requested information is treated under the law."

Aside from the harm ESCOs would face in future negotiations with wholesale suppliers, Blow noted that the disclosure would result in competitive injury because it would confirm ESCOs' positions to their retail competitors (and potential new entrants). Furthermore, the release of the customer data may harm ESCOs due to misconceptions that ESCOs with small customer counts or revenues are not financially sound or reliable, when, in fact, such small size may be a reflection of their business strategy of focusing on a single service area, or certain customer group, or their recent market entry, Blow said.

Duke Says Stipulation Does Not Make POR Discount Subject to PUCO Jurisdiction

Dominion Retail has not cited any legal support for its contention that Duke Energy Ohio's electric purchase of receivables discount rate is subject to PUCO jurisdiction due to a stipulation in Case No. 08-709-EL-AIR, Duke countered in reply comments (09-1026-EL-ATA).

Dominion Retail, agreeing with initial comments from Direct Energy, argued that PUCO has jurisdiction over Duke's discount rate because the rate, "is now a tariffed offering," due to the stipulation in Case No. 08-709-EL-AIR which required Duke to publish its discount rate formula in its tariff. As only reported by *Matters*, Duke is seeking to increase the electric discount rate (Only in Matters, 3/2/10).

"Dominion, however, ignores the fact that the Commission did not use its regulatory power to impose any requirement on Duke Energy Ohio to tariff its discount rate," Duke stressed. In Case No. 08-709-EL-AIR, "Duke Energy Ohio simply agreed to publish the discount rate as one part of a proposed stipulation that the Commission approved," Duke said. "The Commission never made a finding that Duke Energy Ohio's purchasing of [supplier] accounts receivable is a regulated service or that its discount rate is subject to a 'just and reasonable' regulatory analysis," Duke added.

Furthermore, Duke said that Dominion Retail has offered no legal authority to support its position that the mere fact that the discount rate is now published in Duke's tariff makes the formula subject to Commission oversight.

"Given the variety of options available to a [competitive] provider regarding billing and the purchasing of accounts receivable, Duke Energy Ohio's financing [supplier] accounts receivable is without doubt a 'competitive' service under Ohio law. Because financing [supplier] accounts receivable is a competitive service, this Commission is without jurisdiction to determine whether Duke Energy Ohio's discount rate is unjust or unreasonable," Duke said.

No Opposition to Conn. Broker Licensing Requirement

The part of a proposed Connecticut bill which would require the licensure of electric brokers drew no opposition during a hearing yesterday, though suppliers opposed the bill for removing education efforts related to customer choice (Only in Matters, 3/16/10).

As only reported in *Matters*, HB 5507 would require electric brokers to be licensed by the DPUC, and would end customer choice education efforts and the customer referral program (including associated utility consolidated billing).

While suppliers objected to the proposed end of the education and referral programs, no suppliers offered oral testimony during a hearing yesterday objecting to the licensing of brokers. Dominion Retail, along with the Connecticut Business and Industry Association, both voiced support for the broker licensing requirement. Dominion Retail also said it supports some additional protections applicable to door-to-door marketing.

Energy & Technology Co-Chair Vickie Nardello questioned why the referral and education programs are needed given the higher customer migration levels seen in Connecticut, calling for an end to the "subsidization" of retail suppliers.

Connecticut Light & Power asked that it be allowed to charge suppliers for issuing a consolidated bill, at a cost of approximately 70¢/bill.

Much of the proposed legislation, particularly calls for a state power authority which would use a managed portfolio and owned generation to meet default supply needs, is being offered as "rate relief." However, Chris Kallaher, Director of Government & Regulatory Affairs at Direct Energy, noted that the Last Resort Service rates in Connecticut are substantially lower than the Standard Service rate, and are even lower than comparable rates at Public Service of New Hampshire, which uses a managed portfolio. Kallaher noted that Standard Service rates are about 3¢/kWh higher than Last Resort Service rates because of the laddering process in Standard Service procurement, under which the bulk of current Standard Service power was bought in 2007 or 2008 when prices were much higher.

Kallaher called the various proposals for a managed portfolio a "rate hike in disguise," noting that in New Hampshire, where PSNH retains owned generation and actively manages a portfolio, PSNH procured a substantial amount of power at $93/MWh, only to be forced to sell such out-of-market power at loss (at a price of $43/MWh) because of reduced default service usage.

Calls for a state power authority, or similar division within the DPUC, were opposed by all sectors except consumer groups. The distribution utilities, which favor additional flexibility in their own procurement authority, opposed the additional bureaucracy of a state power authority.

Energy & Technology Co-Chair Sen. John Fonfara has prevented similar bills regarding restrictions on choice and a managed portfolio process from reaching the Senate floor in past years. Asked if he would grant the three bills (HB 5505, 5507 and 5508) a floor vote this session, Fonfara refused to offer such an endorsement.

Oncor Reports No Significant Discrepancies in Advanced Meter Side-by-Side Tests

Oncor reported that of the initial 24 advanced meters involved in its side-by-side tests, none were significantly different than the mechanical meters measuring the same usage. In six cases, the advanced meters did record higher consumption than the mechanical meter, but in each case, the difference was only 1 kWh for a week of usage. In four cases, the advanced meter recorded less consumption than the mechanical meter, by 1-2 kWh per week.

In its monthly advanced meter progress report, Oncor said that it has installed 768,356 advanced meters through the end of February.

CenterPoint Energy reported installing 247,370 advanced meters through the end of February. During the month of February, CenterPoint said that 248 meters were replaced as a result of meter failures identified in January 2010. Virtually all of these meter failures were

the result of the previously reported communications firmware issue that did not allow the meters to be read remotely. The affected meters were replaced, and register readings were retrieved manually. CenterPoint said that it has completed the process of correcting the problem through a firmware configuration change and has experienced no additional occurrences of this condition. There were no significant delays or deviations in the advanced meter deployment plan despite the problem.

CenterPoint also discovered a higher than normal number of occurrences of load profile saturation flags reported in the meters. Upon further investigation, it was determined that this condition impacted the register of electricity usage recorded by a certain number of meters. As of February 28, 2010, 5,239 meters have shown this condition. Of this number, less than 3,500 had any effect on the metered usage data provided to the market. Having identified the issue, CenterPoint is in the process of correcting it through the normal retract/rebill process. In addition, CenterPoint said that it has developed a mitigation plan to prevent recurrence of this condition and is actively executing this plan.

The AEP companies, who remain in the testing phase prior to commencing full advanced meter deployment, reported that they have not experienced any delays during the pilot stage of their deployment plan.

Briefly:

Select Energy Partners Seeks Md. Broker License

Select Energy Partners, LLC filed for a Maryland electric broker license to serve all customer classes in all service areas.

Energy Professionals, LLC Receives D.C. Broker License

The District of Columbia PSC granted Energy Professionals, LLC an electric broker license to serve all customer classes.

Public Power & Utility Submits New Pa. Name

Public Power & Utility of Pennsylvania, LLC has changed its legal name to Public Power, LLC, in response to the Pennsylvania PUC's order, as a condition of licensure, that Public Power & Utility revise its name. As only reported in *Matters*, the PUC was concerned that the use of the term "public" with the term "utility" in the name of a competitive supplier could lead customers to believe the entity was a public utility subject to PUC rate regulation (Only in Matters, 1/29/10).

Mass Energy Says Nstar Green Problems Can be Avoided with Competitive REC Options

Nstar's petition to reconcile its Nstar Green rates, and the attendant opposition to Nstar's approach, "exemplifies how the interests of everyone would be better served if NSTAR were required to allow competitive suppliers of RECs to market green power [to] customers ... in such a way that billing would be performed by NSTAR," Mass Energy said in comments to the Massachusetts DPU. Mass Energy noted that National Grid offers such an arrangement to competitive REC suppliers. "Even if the Department finds that NSTAR's filing is fully justified, customers should be given other choices - choices that they could express directly on their NSTAR bill," Mass Energy said, referencing its prior comments in Docket 08-52, Nstar's compliance plan to provide retail access to REC suppliers, which has been pending at the DPU for nearly two years.

Just Energy ... from 1

interpretation of 'utility charges' would affect only Just Energy and its customers that were bound by similar contracts during the time period in dispute and would appear to have no ramifications on a broader, industry-wide basis," Staff said.

However, the ALJ noted that the contract's definition of "utility charges" references the TDSP's tariff. Specifically, TEZ alleged that, "Just Energy's form contract defines the Utility Charges as including all transmission and distribution charges and other cost recovery charges and fees outlined in the TDSP's tariff, which the TDSP charges Just Energy for delivering electricity from the delivery point to the customer's facility."

The ALJ noted that the Commission has

jurisdiction over the case since PURA § 17.157(a) specifies that "[t]he commission may resolve disputes between a retail customer and a ... retail electric provider." As to primary jurisdiction, the ALJ cited two standards under which the Commission has found its primary jurisdiction should be asserted: (1) cases where the Commission's agency expertise is required to interpret rules or tariffs; or (2) cases where there would be a great benefit from uniform interpretation of rules of tariffs.

Since the contract's definition of "utility charges" references the TDSP's tariff, "interpreting the TDSP's tariff is essential to the meaning of Utility Charges," the ALJ concluded.

"In particular, the dispute requires construing whether charges in the tariff include Unaccounted For Energy charges and other ERCOT charges," the ALJ said.

"Accordingly, because of the benefit of uniform interpretation," that accompanies interpretation of the TDSP tariff and what charges are included therein, "this case appears to fall within the Commission's primary jurisdiction," the ALJ said, in denying TEZ's motion to dismiss or abate Just Energy's request for a declaratory ruling exercising primary jurisdiction.

Calif. ... from 1

After 5:00 pm on Friday, March 5, 2010, AReM said that SCE sent an alternative proposal to the service list in R.09-10-032 concerning replacement capacity. AReM said that the SCE proposal, "comes too late for proper consideration in Phase 1 of this proceeding [as] [t]he December 23, 2009 Scoping Memo required parties to submit proposals on Phase 1 topics by no later than January 11, 2010."

"The Commission's workshop process offers parties the opportunity to identify new ideas, which can lead parties to submit revised or alternative proposals during the course of the proceeding. However, SCE never submitted any such alternative, choosing to raise its concept orally in workshop discussions in only vague terms. Indeed, at the final workshop on February 25th, SCE's representative stated that the company would present an alternative for removing the LSE replacement obligation in a CAISO stakeholder conference call on February 26th," AReM said.

"Obviously, submitting a proposal days after the last workshop is improper procedurally and eliminates any concept of due process for the parties," AReM argued.

The SCE proposal would not transfer the obligation for replacement capacity to sellers, and would instead use the concept of a Planned Outage Adder to account for outages.

A Planned Outage Adder would be added to each LSE's RA requirement to account for the amount of planned outages that the CAISO has historically approved at the time of the monthly supply plan submittal. This adder would preclude the need to procure replacement capacity for outages.

SCE argued that its adder proposal is superior to the generator replacement mechanism because it reduces costs by allocating planned outage risk across all LSEs and eliminating the undue burden on generators, while also avoiding questions of whether CAISO backstop procurements would result in double charges.

SCE noted that the CAISO's generator replacement proposal places the obligation on the RA supplier (i.e., the scheduling coordinator [SC] for the resource providing RA capacity). "For a significant portion of the RA fleet, the IOUs - the very entities that that the Commission is attempting to eliminate the replacement obligation from - are the SC for these resources, and would still be directly responsible for replacement capacity under the CAISO's proposed tariff change," SCE said.

Mirant called the generator replacement proposal inefficient, arguing that it would lead to higher costs. Mirant contended that imposing an obligation on RA suppliers to find replacement capacity adds a significant challenge, because they will be required to begin participating in the purchase of RA for the limited periods that they expect to be on planned outages, which are likely to be the same periods other suppliers will be planning outages. Costs to manage such procurements will be passed on in future RA contracts, Mirant said.

San Diego Gas & Electric, however, questioned whether the backward-looking

mechanism in SCE's proposal can adequately meet the CAISO's need to preserve system reliability during future scheduled outages. "For instance, what happens if future scheduled outages differ significantly from the historical record? The future might look quite different from the past if once-through-cooling generators are eliminated or if RPS requirements are increased. Moreover, unusual events, like replacement of the steam generators at SONGS, could distort the historical record for several years. The net result of a material mismatch between the historical record and future requests to schedule maintenance outages might force the CAISO to cancel or postponed scheduled outages, thereby decreasing system reliability because of an increase in forced outages," SDG&E said.

SDG&E also asked whether the socialization of scheduled outage costs would produce material levels of cross subsidies among the various load-serving entities.

Customer Migration True-Ups

TURN and Sempra Energy Solutions submitted a revised proposal that would provide for the true-up of an LSE's RA obligation due to customer migration, based on a customer-specific Peak-to-Load Ratio and Local-to-Peak Ratio, similar to the interim process adopted for 2010 due to the expansion of direct access. However, Pacific Gas & Electric still faulted the TURN/Sempra Energy Solutions proposal for not including monthly true-ups of local RA obligations. PG&E also objected to the 5 MW threshold for triggering a revision to an LSE's obligation.