Energy Choice Matters

March 26, 2010

PUCT Staff Draft Would Maintain Twice Annual TCRF Updates, Allow Deferrals

PUCT Staff have issued a draft proposal for publication which is intended to allow distribution service providers (DSPs) to recover transmission costs not recovered through base rates or the Transmission Cost Recovery Factor (TCRF), while still providing certainty for REPs in the amount of the TCRF that they will be required to pay (37909).

Currently, the TCRF may only be updated twice a year, which exposes the DSP to unrecovered costs if higher transmission costs are imposed on the DSP prior to a TCRF update. The potential for such unrecovered costs may increase as a result of proposals to allow twice annual interim increases in transmission rates (versus the current single annual interim change).

Staff's proposal would maintain the current twice annual TCRF update; however, it would permit a DSP to defer uncollected transmission charges for later recovery in its next TCRF application.

Specifically, as is currently the case, a DSP would only be allowed to update its TCRF twice per year: on March 1 and September 1. The proposed rule would add a mandate that such TCRF applications must be filed no later than January 15 for the March 1 update and no later than July 18 for the September 1 update.

To facilitate rate-certainty for retail electric providers, if the Commission approves a TCRF amount different from the amount requested by the DSP in its application, the Commission will order the DSP to temporarily implement the originally requested amount until its subsequent TCRF filing, at which time any difference between the Commission-approved final amount and the implemented amount

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PUCT Staff File Draft to Amend Subst. Rules to Allow for Nodal Market Guardrails at Start-up

PUCT Staff filed a draft proposal for publication that would amend the Substantive Rules in order to allow ERCOT stakeholders to develop certain market guardrails for the first 45 days of the nodal market (35392).

The proposed amendments will permit ERCOT to impose lower system-wide offer caps than those currently imposed by Subst. R. §25.505 during the first 45 days of the nodal market, and would also permit ERCOT to define all transmission network congestion constraints as non-competitive constraints during the first 45 days of the nodal market. The proposed amendments would not impose any actual market safeguards themselves, but merely revise the Substantive Rules to allow ERCOT, through the stakeholder process, to develop certain guardrails.

"The nodal market is a large and complex system involving new software to manage the electric system and wholesale market and the interaction of many business entities that participate in the market. Despite the extensive development and testing efforts by ERCOT and market participants to prepare their systems and personnel for the new marketplace, it is possible that transitional issues may arise during the startup period of the nodal market. The amendments will allow ERCOT to adopt temporary safeguards to mitigate potential pricing anomalies that may result from unexpected system or market behavior," Staff's preamble says.

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N.Y. PSC Defers ConEd/O&R Capacity Release at WACOC Until Nov. 1, 2010

The New York PSC adopted Consolidated Edison's and Orange & Rockland's tariff revisions to allow them to release upstream capacity to marketers at the companies' weighted average cost of capacity (WACOC) starting November 1, 2010, rather than November 1, 2009 as originally proposed by the LDCs (09-G-0567, 09-G-0568).

ConEd and O&R filed to change the capacity release pricing to the WACOC (referred to in O&R's tariff as the weighted average cost of transportation) in July 2009, prompted by FERC Order 712. Retail suppliers, while not objecting to the methodology, opposed the LDCs' originally filed start date of November 1, 2009 for WACOC pricing, arguing that it provided insufficient notice to marketers who had already entered into contracts with customers for the winter of 2009-10 based on the current capacity release methodology. Retail suppliers said that they risked incurring unrecoverable costs under a November 1, 2009 start date (Only in Matters, 9/28/09).

The Commission agreed that the suppliers had raised "valid" concerns, and ordered that the WACOC capacity release pricing shall take effect November 1, 2010.

The Commission did not opine on marketers' concerns regarding the LDCs' process for the capacity release filings -- which consisted of a conference call with interested parties followed by a regulatory filing and State Administrative Procedures Act notice, which marketers had called "informal" and inferior to a formal collaborative process.

Texas OPC Opposes Switch Hold for Deferred Payment Plans

The PUCT's existing deferred payment plan rules protect customers more than proposed changes to the rules as contained in a draft proposal for publication, the Office of Public Utility Counsel said in comments to the Commission (36131).

As only reported by *Matters*, the draft changes would, among other things, require that customers entering a deferred payment plan agree not to switch REPs until meeting their obligations under the plan (though the rule would contain no mechanism to implement the switch hold). The changes, as filed by Staff, would also expand the conditions under which certain vulnerable customers would be eligible for deferred payment plans, while narrowing the conditions under which non-vulnerable customers would be eligible for a deferred payment plan (see discussion in Matters, 3/3/10).

"[T]he Project has clearly veered from its original purpose, addressing a summer disconnection moratorium, and has been steered by the majority of the REP community to prevent customers that enroll in a deferred payment plan from switching to another REP," OPC contended.

"The Project was not established to reduce REPs' uncollectible charges, or to abridge the declared statutory right of 'each retail customer in this state' to 'customer choice' of his or her service provider, which the proposed switch-hold achieves," OPC added.

While implying that a switch hold was not contemplated in opening project 36131, Rep. Sylvester Turner's 2009 disconnection moratorium petition (which prompted the Commission to begin proceedings in 36131) provided that, "[p]etitioners concur with Chairman [Barry] Smitherman with the concerns that a necessary component of any deferred payment plan must have a 'commitment from the customer to pay off the deferred amount.' Therefore, to the extent the proposed rule does not address the issue we would encourage and support modification of the proposal to ensure its inclusion."

OPC continued that, "[n]ot only does the current proposal make customers who enter into deferred and levelized payment plans the captives of their REPs, but it imposes upon REPs, whose rates, operations and services are supposed to be largely unregulated under PURA, requirements that the Commission has no authority to mandate."

"Because of the adverse implications of the draft proposed rule on customers, OPUC is concerned about advising customers to enter into deferred and levelized payment plans if they are going to be subject to a switch-hold," OPC said.

OPC offered the following proposal as an alternative to the switch hold:

- Require that customers make a 50% payment of their outstanding balance in order to initiate a deferred payment plan (versus the current 25%)
- Restrict access to deferred payment plans to the summer months rather than year-round
- Restrict access to deferred payment plans to customers that are enrolled in social service programs such as: LITE-UP, Social Security Disability, LIHEAP or Weatherization Assistance Programs through Texas Department of Housing and Community Affairs.
- Require a customer to be with a particular REP for six months prior to being eligible for a deferred payment plan (versus the current three-month requirement)

"OPUC believes that these measures will minimize the amount of debt that a customer could leave the REP holding and also minimizes the risk of a customer leaving a REP with an outstanding balance under a deferred payment plan. An increase in the initial payment that a customer must make to begin a deferred payment plan to 50% of the outstanding balance will drastically reduce the balance that the customer owes to the REP. Reducing the number of customers and the time period that those customers may enter into a deferred payment plan also significantly reduces the REPs' exposure. Finally, requiring that a customer must have service with the REP for six months prior to being eligible for a deferred payment plan demonstrates a customer's loyalty to the REP and reduces the risk that the customer is a habitual switcher," OPC said.

In contrast, OPC argued that the proposed rule does not include any mechanism or supporting documentation to ensure that the switch hold will, in fact, reduce the REPs' bad debt or that the reduction in bad debt will provide any reduction in rates for end-use customers. "Ultimately, customers that game the system now will discover ways to game the system when the switch-hold is put into effect (they may just switch providers prior to enrolling in a deferred payment plan)," OPC said.

OPC also noted that until required Texas SET changes are completed, a switch hold would be administered manually, which OPC opposed based on the costs to implement the manual process by the TDUs. OPC also reiterated its prior arguments that a switch hold is not within the Commission's authority under PURA (see Matters, 1/25/10).

N.Y. PSC Approves ConEd Electric Rate Plan, JP Addresses Rate Ready Billing

The New York PSC yesterday approved a three-year electric rate plan for Consolidated Edison based on a joint proposal (09-E-0428).

Although the Commission has not published an order, the joint proposal called for ConEd to establish a collaborative proceeding to consider modifications to its rate ready utility consolidated billing model to permit electric ESCOs to offer and bill for products which reflect time-of-use, interval, and real-time pricing, as well as to offer multiple rate components, such as demand, on-peak, and off-peak usage (Only in Matters, 11/25/09).

Regarding the potential unbundling of transmission rates from delivery rates raised in ConEd's initial filing (Only in Matters, 10/23/09), the joint proposal holds that if the PSC does not initiate a generic proceeding to consider unbundling transmission and distribution rates before the end of Rate Year 1, nothing in the joint proposal shall be construed as (a) limiting ConEd's rights to pursue unbundling of its transmission and distribution rates to be effective no earlier than April 1, 2013, and (b) indicating that the signatory parties' agreement or acknowledgement that ConEd's transmission and distribution rates should be unbundled.

The joint proposal provides that if the New York ISO implements weekly billing during the term of the electric rate plan, and ConEd experiences an increase in working capital requirements from weekly billing, ConEd may recover the increase in working capital requirements through a tariff filing that would implement a change to the Merchant Function Charge to recover any incremental costs.

Monitoring Analytics Seeks Cease and Desist Order to Stop PJM Posting of Offer Data

Monitoring Analytics, PJM's market monitor, petitioned FERC to issue an order directing PJM to cease and desist from posting offer data from Reliability Pricing Model auctions in a form that substantially reveals the identity and offers of specific generation capacity units in PJM and may constitute commercially sensitive data of PJM Members protected under section 18.17 of the PJM Operating Agreement, until such time as the Commission can hear arguments and adjudicate issues raised by the new posting policy undertaken by PJM (ER09-1063).

The market monitor warned that the newly posted data provides an, "enhanced opportunity for anticompetitive behavior."

Monitoring Analytics also requested that the Commission issue an order directing that PJM not release any additional data for markets other than RPM under its revised Manual rule for data release until the Commission has had an opportunity to rule on the matter.

On March 22, PJM informed market participants that, as outlined in a new Manual, PJM had posted the aggregate supply curve data for the RTO and the MAAC, MAAC+APS, EMAAC and SWMAAC Locational Deliverability Areas (to the extent each LDA was binding in a given auction) for the RPM Base Residual Auctions conducted to date. The data is posted in Excel spreadsheet format, and appears on the RPM Auction User Information page under the Delivery Year to which it applies.

The posting includes a list of offer prices and MW, and the resource's location in RPM locational delivery areas. "A Market Participant can now compare the new data to the already posted list that identifies all units in PJM, their zone and their available ICAP, its own offer information, and other publicly available information about generating facilities located in PJM," Monitoring Analytics said.

"In the Market Monitor's judgment, a Market Participant could determine the offers by unit and owner of its major competitors for every PJM Base Residual Auction held to date by PJM. This means that PJM has effectively released offer data in an unmasked form, regardless of whether they intended to do so. For example, in the SWMAAC LDA, each of the two major participants can now determine the offer strategy of its competitor," Monitoring Analytics said.

"As a result of this data posting, the ability of Market Participants in PJM to exercise market power has increased. Because the relevance of the data associated with the market offer strategies of individual generating units may persist for many years, the damage already inflicted could be significant. To allow this posting to persist will compound and extend that damage. The release of additional data without due consideration could further aggravate the harm. Consequently, the Market Monitor requests that the Commission act expeditiously to grant this request," Monitoring Analytics said.

Oncor to Seek Cost Recovery Through AMS Surcharge of Independent Smart Meter Tests

Oncor said that it intends to seek cost recovery, through the advanced metering system surcharge, for the costs of the independent smart meter testing program being undertaken by Navigant on behalf of the PUCT.

Oncor notified stakeholders that it will not seek cost recovery for the up to 500 in-home monitors it intends to distribute free of charge.

Additionally, Oncor agreed that the in-home monitors shall be distributed in a manner such that no REP is treated preferentially, and that Oncor shall share aggregated usage information with REPs, with individual customer usage provided only if Oncor obtains clear, written consent from the end-use customer.

Briefly:

Bidding on Sempra North American Power/Gas Commodity Unit Opens Monday

Sempra will open bids on Monday for its North American power and gas commodities unit and will whittle the short list down to three to five bidders, Sempra CFO Mark Snell said during an analysts conference yesterday. Snell said that Sempra has seen robust interest in the marketing unit from about 20 bidders. Most are foreign and domestic trading companies rather than banks, noting that banks may face regulatory hurdles in acquiring a commodities business. Snell said that Sempra expects to receive a price higher than book value for the North American power and gas commodities unit. Book value is $1.6 billion, of which Sempra is allocated $800 million under the joint venture with RBS.

Verde Energy Receives Pa. Electric License

The Pennsylvania PUC granted Verde Energy USA Inc. an electric generation supplier license to serve all customer classes, including residential customers, at Allegheny Power, Duquesne Light, Met-Ed, Penelec, Penn Power, PECO, PPL, and UGI (Only in Matters, 1/7/10).

RBS Receives Pa. Electric License

The Pennsylvania PUC granted the Royal Bank of Scotland an electric generation supplier license to serve commercial customers over 25 kW, industrial customers, and governmental customers in all service areas (Only in Matters, 2/4/10).

Avalon Energy Services Receives Pa. Broker License

The Pennsylvania PUC granted Avalon Energy Services LLC an electric broker/marketer license to serve all sizes of non-residential customers in all service territories (Only in Matters, 1/7/10).

Platinum Advertising II Receives Pa. Broker License

The Pennsylvania PUC granted Platinum Advertising II LLC an electric broker/marketer license to serve all customer classes at PPL Electric.

Pa. PUC Approves Deferral of PPL Generation Reconciliation

The Pennsylvania PUC approved PPL Electric's petition to defer the required reconciliation of the Generation Supply Charge, which is otherwise required on April 1, until July 1, 2010 (M-2009-2145482). Generation rates will remain unchanged until July 1 under the order. Additionally, recovery of the January 2010 undercollection of generation costs shall be deferred until January 1, 2011, or such time as PPL has fully addressed its billing issues, the PUC said. As more fully detailed in our 3/15/10 story, PPL requested the deferral because many customer bills issued in January 2010 were prorated for usage which occurred in December 2009, prior to the implementation of the Generation Supply Charge, thereby reducing revenue versus what would normally occur. Additionally, several billing errors reduced PPL's confidence in the amount of the reconciliation.

Capital Energy Solutions Receives Md. Broker License

The Maryland PSC granted Capital Energy Solutions (organized as C & D Commercial Brokerage, Inc.) an electric broker license to serve commercial and industrial customers.

CQI Associates Receives Md. Broker License

The Maryland PSC granted CQI Associates a natural gas broker license to serve residential, commercial and industrial customers.

Early Bird Power Receives N.H. Aggregation License

The New Hampshire PUC has approved Early Bird Power's registration as an electric aggregator serving customers in all service areas.

Evolving Energy Systems Seeks Maine Broker License

Evolving Energy Systems LLC has applied for a Maine electric aggregator/broker license to serve all sizes of non-residential customers in all service areas.

Calif. PUC Sets Briefing Schedule on RPS Parity Between ESPs, Utilities

The California PUC has established a briefing schedule to allow parties to address the issue of whether any changes are required to the PUC's RPS rules to ensure that electric service providers are subject to the same requirements as the state's large investor-owned utilities (R. 08-08-009). SB 695, through Pub. Util. Code § 365.1(c)(1), requires that electric service providers be "subject to the same requirements" as applicable to the utilities for RPS, resource adequacy, and carbon. Electric service providers are currently subject to the same RPS percentages as utilities, but, being non-rate-regulated entities, are not required to seek approval for RPS plans or individual contracts, nor do they face a limit on the use of RECs as imposed on the utilities. Briefs are due April 19.

N.Y. PSC Rejects Entergy Nuclear Spin-off

The New York PSC rejected Entergy's application to spin off its six nuclear power plants to Enexus Energy, a new entity, citing Staff's concerns that Enexus would carry too much debt at $3 billion (08-E-0077). A written order was not published yesterday. Staff was particularly concerned about the potential for Enexus to fail, and the risks and costs imposed on customers resulting from the loss of such capacity in New York's energy portfolio, and liability for decommissioning costs under such a scenario.

Pa. PUC Grants Stay of Removal of Marginal Losses from Penelec/Met-Ed TSC

The Pennsylvania PUC has granted Penelec and Met-Ed a stay of the Commission's order which directed the utilities to file tariff supplements to end the collection of marginal transmission losses in the Transmission Service Charge (TSC), in light of an impending appeal to the state courts. As only reported by *Matters*, the Commission ordered the removal of marginal transmission losses from the TSC since such marginal losses are generation charges (M-2008-2036188, Only in Matters, 1/29/10). Although the Commission said that Met-Ed and Penelec had not met their burden for a stay as set forth in *Process Gas*, the PUC agreed with the Office of Consumer Advocate that the removal of marginal losses from TSC collections will have a significant downward impact on retail rates on June 1, 2010. This lowering may be followed by an increase on January 1, 2011, as the utilities' rate caps expire. Thus, removal of marginal losses for a portion of 2010 may further exacerbate the impact of the expiration of rate caps in 2011, the PUC noted. Marginal losses collected through 2010 shall be maintained in a separate account, and shall be used to offset the impact of the expiration of rate caps on January 1, 2011, the Commission said.

Glacial Energy Revamps Website

Glacial Energy has launched a new website, expanding information available to the customer, including an education section with energy saving tips dubbed "Glacial U."

ERCOT Implements New Wind Forecasting Tool

ERCOT has implemented what it termed a first-of-its-kind wind forecasting tool designed to help system operators prepare for large and sudden changes in wind production. The new tool specifically helps ERCOT plan for wind ramps through an alert that makes calculations six hours ahead to warn the system operators of the risk of large and rapid increases or decreases in wind output. The ramp forecast calculates the values of magnitude and duration, and estimates the probability of a large ramp event beginning in a particular interval.

N.Y. PSC Approves Downstate RPS Carve-Out

The New York PSC approved a $150 million carve-out to fund large-scale solar photovoltaic, anaerobic digester and fuel cell projects in and around the lower Hudson Valley and the New York City metropolitan area under its RPS program. A written order was not available yesterday (03-E-0188). Funds for the new downstate program will be directed at projects greater than 50 kW. "These projects will be more cost-effective and located where distributed generation can do the most good," the PSC said. The Commission also approved more than $279 million over a five-year period for customer-sited RPS programs as follows: solar photovoltaic ($144 million); anaerobic digesters ($70.5 million); fuel cells ($21.6 million); small wind ($18.1 million); and solar thermal hot water ($24.7 million). Solar thermal hot water is a new technology added under the PSC's decision. To ensure the investments are being made wisely, the Commission said that its decision includes an evaluation component of the customer-sited tier to assess the contribution of the applicable technologies toward the overall RPS goal. This evaluation will include a market evaluation for each technology as well as an impact evaluation to assess the accuracy of estimated energy generation based on actual production. These evaluations will help to inform the Commission on the overall success and cost-effectiveness of the program relative to other clean energy options as part of its 2013 RPS review.

Pa. PUC Approves Citizens'/Wellsboro Generation Rates

The Pennsylvania PUC approved the previously filed generation rates of Citizens' Electric Company and Wellsboro Electric Company (Only in Matters, 3/2/10). The Generation Supply Service Rate, effective April 1 for three months, is 9.0550¢/kWh at Citizens' and 8.6542¢/kWh at Wellsboro

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shall be trued-up and credited or charged, with associated carrying costs, to the DSP's ratepayers.

As for recovery of uncollected transmission costs due to changing transmission rates, the Staff proposal provides that the difference between the amount of the Transmission Service Provider's Commission-approved wholesale transmission costs that are paid by the DSP and not included in the base rates of the DSP, and the revenues recovered through the TCRF, shall be trued-up and credited or charged to the DSP's ratepayers in the DSP's next TCRF update. However, in no event shall the true-up result in the DSP recovering more than its actual cost of wholesale transmission services included in the TCRF. This true-up shall include costs paid and revenues recovered over a six-month period ending in November for a March 1 TCRF update and in May for a September 1 TCRF update. Additionally, the DSP shall credit or recover carrying costs in an amount that shall be calculated by applying to the monthly over- or under-recovered balance the interest rate applicable to over- and under-billings as established pursuant to Subst. R. §25. 28.

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Staff's preamble further provides that the Commission believes that any temporary startup safeguards adopted by ERCOT must:

(1) be of a short duration;

(2) be consistent with existing nodal market design to ensure limited or no system changes;

(3) facilitate diagnosis of startup issues by removing high-priced offers as a possible contributing cause of unusual or unexpected market results;

(4) allow for market-based resolution of energy balance and congestion conditions; and

(5) allow resources offered into the market to cover, at a minimum, their marginal production cost.

Staff's proposed language provides that ERCOT, through its stakeholder process, may adopt protocols setting the high system-wide offer cap (HCAP) at a level below that specified in §25.505. Such protocols shall terminate no later than the 45th day after ERCOT begins to use nodal energy prices for resources pursuant to §25.501(f). Additionally, "[p]rotocols adopted pursuant to this subparagraph shall not set the HCAP so low that a resource would be required to offer service to the market below its marginal cost, unless the protocols provide a mechanism allowing the resource to recover such costs."

Regarding transmission constraints, Staff's proposed language states that ERCOT, through its stakeholder process, may adopt protocols that categorize all constraints as noncompetitive constraints. Such protocols shall terminate no later than the 45th day after ERCOT begins to use nodal energy prices for resources pursuant to §25.501(f), and need not be submitted to the Commission for oversight and review prior to taking effect.

ERCOT stakeholders have been debating NPRR 091, which as previously drafted would require the System-Wide Offer Cap (SWCAP) to be set at the higher of $180/MWh or 18 mmBtu per MWh times the Fuel Index Price (FIP) during the first 45 operating days of nodal. The NPRR would also establish an Energy Offer Curve floor adjusted to -$50 per MWh, and hold that all transmission constraints are to be treated as non-competitive constraints during an initial 30 Operating Day period (Only in Matters, 2/2/10).