Energy Choice Matters

April 9, 2010

PUCT Staff Moves to Revoke Milagro Power REP Certificate

PUCT Staff moved to revoke the REP certificate of Milagro Power Company, alleging that Milagro: (1) has not possessed the required financial resources at all times during its operation as a REP; (2) does not have the requisite managerial resources and ability to operate as a REP; and (3) has made "material misrepresentations and omissions" in pleadings filed with the Commission.

As only reported in *Matters*, Milagro purchased TexRep3, LLC from Energy Services Group, and is seeking an amendment to its certificate reflecting that purchase (Only in Matters, 2/2/10).

Staff said that when Milagro first filed for the certificate amendment in June 2009, Milagro provided documentation showing that it met the financial requirement that it have unused cash resources of at least $100,000. However, in response to a subsequent Staff discovery request, Milagro produced a balance sheet dated December 31, 2009 and a schedule from its tax return, "both indicating that the company had less than $100,000 in cash at the end of 2009, in violation of PURA and the Commission's rules," Staff alleged.

Furthermore, Staff noted that P.U.C. SUBST. R. 25.107(f)(2)(A), as it was in effect on April 22, 2009, requires a REP to maintain and provide evidence of financial resources equal to the sum of its obligations to customers for any deposits or other advance payments received from customers. "Milagro indicated in a discovery response in Docket No. 37753 that it collects customer deposits. The fact that Milagro had less than $100,000 in cash while it operated as a REP suggests that it may

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CUB Urges ICC to Amend ARES License Rules to Make Sales Agents Comply With Protection Rules

The Illinois Citizens Utility Board has recommended that the Illinois Commerce Commission add several requirements to its licensing process for alternative retail electric suppliers (ARES) in order to provide the public, "with adequate assurance that consumers are protected from unscrupulous actors in the marketplace," and to determine whether an ARES applicant possesses sufficient managerial resources as required under 220 ILCS 5/16-115(d)(1).

CUB made its comments in Docket No. 10-0108, in which the ICC has proposed modifications to the electric supplier licensing rules regarding financial security and compliance with renewable portfolio statutes (Only in Matters, 2/12/10).

CUB said that in determining the level of managerial resources and abilities that the alternative retail electric supplier must demonstrate, the Commission should consider:

1) Complaints to the Commission by consumers regarding the alternative electric supplier, including those that reflect on the alternative electric supplier's ability to properly manage solicitation and authorization; and

2) The alternative electric supplier's involvement in the Commission's consumer complaint process, including the resources the alternative electric supplier dedicates to the process and the alternative electric supplier's ability to manage the issues raised by complaints, and the resolutions of the complaints

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Calif. PUC Approves Restrictions in Utility Solicitation of CCA Opt-Outs

The California PUC approved a resolution restricting how utilities may solicit opt-outs from customers within the service area of a community choice aggregation, while also prohibiting utilities from linking the receipt of energy efficiency funds to the non-pursuit of a CCA and prohibiting utilities from refusing to sell electric supplies to CCAs when such off-system sales would be beneficial to the utilities' customers (Resolution E-4250).

As only reported in *Matters*, the resolution was prompted by concerns from the San Joaquin Valley Power Authority and Marin Energy Authority regarding Pacific Gas & Electric's solicitation of customer opt-outs prior to the statutorily prescribed 60-day opt-out window (Only in Matters, 9/17/10). A second draft of the resolution expanded the scope to include controversies related to energy efficiency funds and the sale of electric supply (see exclusive story in Matters, 12/24/09).

As approved, the resolution prohibits utilities from soliciting or accepting opt-out requests until a CCA has sent out specific terms of its aggregation program, which occurs 60 days before the start of service. The PUC found that the 60-day opt-out period is intended to allow customers to make an informed decision, and thus opt-outs should not be permitted prior to the distribution of the CCA's specific terms of service and rates.

The resolution provides specific language for Pacific Gas & Electric's website regarding the opt-out process, and directs Southern California Edison and San Diego Gas & Electric to provide the PUC Staff with any language they have or will post on their websites regarding the CCA program.

Customers who have already opted-out of a CCA in PG&E's territory prior to the start of the 60-day window will still be automatically enrolled with the CCA unless they submit another opt-out form. PG&E shall notify customers that these prior opt-outs will not take effect due to the PUC's ruling, and that customers must take subsequent action to opt out.

The resolution does not address, after the initial phase, how to deal with opt-out requests for CCAs that choose to use a phased implementation plan, including subsequent phases of Marin Energy Authority's implementation plan. The PUC intends to deal with these and other issues in response to the City and County of San Francisco's Petition for Modification of Decision 05-12-041 filed in R.03-10-003 (see Matters, 1/14/10).

Additionally, the PUC declined to prohibit the utilities from providing truthful information about how customers can opt out once inside the opt-out window. This issue is also being debated in R.03-10-003.

The resolution provides that, "[t]he utilities cannot offer to provide, or provide, any goods, services, or programs to a local government, or to the electricity customers within that jurisdiction, on the condition that the local government not participate in a CCA, or for the purpose of inducing the local government not to participate in a CCA."

"This restriction applies regardless of whether the goods, services, or programs are funded by ratepayers or shareholders. (This restriction would also apply to any plan whereby the utility would pay someone else to provide such goods, services or programs.)," the resolution holds.

As previously reported by *Matters*, this measure was prompted by a letter from PG&E to the city of Novato, which, as described by the PUC, "raises the appearance that a utility is seeking to link the utility's provision of services to a decision by a local government not to participate in a CCA." Specifically, the letter from PG&E states that a "collaboration proposal" in which PG&E would partner with the city in order to "expand PG&E's existing Energy Efficiency programs," would, "provide[] a pathway for Novato to meet its climate change objectives faster, cheaper and with better results without exposing itself, the City, our customers and taxpayers to the uncertainty and risk of a Community Choice Aggregation scheme."

"We want to promote a level playing field in competition between the investor owned utilities and CCAs," the PUC said in prohibiting utilities from linking the availability of any public good funds to the non-participation of a city in a CCA.

Finally, "to promote a level playing field in competition between the utilities and CCAs, we

reiterate here that utilities may not refuse to make economic sales of excess electricity to a CCA, or refuse in advance to deal with any CCA in selling electricity, as there is no way of determining in advance, without analysis of the specific facts, whether such a sale would benefit the utility's remaining bundled electric customers."

This directive was prompted by a letter from PG&E to the members of the Marin Energy Authority in which PG&E stated, "we do not intend to respond to requests to supply electricity to Marin Energy Authority or to participate in any way in supplying electricity to a Community Choice Aggregation program in Marin."

"This statement appears to conflict with our existing rules that require each utility to dispatch its resources on a least cost basis for the benefit of its bundled customers' electric procurement portfolio," the PUC found.

While several CCAs and potential CCAs requested that the PUC review utility marketing materials, and not just the materials posted on the utilities' websites, the Commission said that the changes in the adopted resolution regarding the opt-out procedures are adequate, and declined to examine utility marketing materials. "However, anyone who believes that any of the utilities' marketing materials are incorrect or misleading may bring their concerns to the attention of [the] Energy Division," the PUC said.

Marin Energy Authority Says Flattening of PG&E Residential Generation Rate Will Hurt CCAs

The Marin Energy Authority (MEA) says that Pacific Gas & Electric's petition to remove the tiered generation rate structure for residential customers will negatively impact the development of community choice aggregation in PG&E's service territory. MEA moved for the PUC to open a comment period on a heretofore uncontested proposed decision eliminating the tiered rate structure, and the PUC withdrew the proposed decision from its agenda at yesterday's meeting (A. 06-03-005).

Currently, residential rates for higher amounts of usage increase in several tiers. PG&E recommended, and a proposed decision would approve, eliminating the tiered residential rates for generation service, with tiers applicable only to distribution service. The flat generation rates would be implemented, while still preserving tiered values for total bundled rates, through the introduction of a Conservation Incentive Adjustment, which is a residual component to exactly offset the generation rate changes.

With SB 695 eliminating direct access for residential customers except those grandfathered, the rate design is of little impact to electric service providers directly marketing to customers. However, MEA said that the elimination of tiered generation rates, "will have a seriously negative economic effect on CCA in general and MEA in particular."

"For example, MEA has recently executed an agreement to buy power for five years. The agreement contains various financial consequences and obligations and was premised on the existing PG&E rate structure. A significant change such as that proposed in the Petition and approved in the PD will undercut those underlying economic assumptions that are the basis for MEA's CCA plans," MEA said.

"Furthermore, by approving PG&E's approach in the Petition, CCAs with residential customers would be severely constrained in their ability to procure and deploy renewable energy consistent with California's Renewables Portfolio Standard ('RPS') mandates, meet and exceed AB 32 goals, and have revenues to implement energy efficiency programs, all of which are key underpinnings of MEA's CCA business plan. As it stands, it is unclear how the proposed Conservation Incentive Adjustment ('CIA') creates any benefits aimed at conservation. In fact, the Petition specifically notes that 'Total bundled rates for each tier will remain unchanged, as will the total effective rates paid by bundled electric customers.' As with the currently effective tiered rate structure, higher energy users are penalized with higher rates. There is no incremental conservation incentive created through the proposed changes. Rather than 'level[ing] the playing field between PG&E and ESPs/CCAs,' this action instead rewrites the rules of play in the utility's favor and unravels the significant time, effort and money

that MEA has invested in developing a better product for its customers and fostering, rather than quashing, competition in the PG&E service territory," MEA added.

MEA contended that the proposed decision "inadvertently facilitate[s]" PG&E's various efforts to stifle competitive options, such as Proposition 16, the Marin Common Sense Coalition, and an assortment of advertising attempting to dissuade customers from CCA service.

StarTex Launches New Marketing Campaign to Improve Customer Experience

StarTex Power has launched a new marketing campaign to build a premium status around its brand, emphasizing its "superior" customer service in addition to competitive energy rates. StarTex has engaged Steel Advertising & Interactive to implement the campaign.

StarTex has traditionally been, and remains, one of the lowest-priced REPs in the market. However, especially with the continued calm in the ERCOT wholesale market, that value-priced space has become more crowded with newer entrants such as Abacus Resources Energy, True Electric, Potentia Energy, Mission Power, and Bounce Energy, in addition to StarTex's traditional competitors. The partnership with Steel Advertising is aimed at building a premium cachet around StarTex, based in large part on its customer service, to separate StarTex from the other value-priced REPs.

The campaign is aimed at both retention and new business, with Steel developing an, "end-to-end relationship-centric approach, which will connect innovative marketing, sales, and renewal efforts with their customers." The campaign endeavors to build off of StarTex's first-place ranking in residential customer satisfaction in the most recent J.D. Power and Associates Texas REP survey, and further improve the customer experience.

"Texas has the most successful deregulated retail electricity industry in the US. It's extremely competitive and differentiating ourselves is critical," said Marcie Zlotnik, Chairman and COO of StarTex Power.

Calif. PUC Approves Utility-Owned Fuel Cells

The California PUC accepted the alternate decision of President Michael Peevey which approves Pacific Gas & Electric's and Southern California Edison's proposals to build 3 MW each of utility-owned fuel cells at several state universities (A.09-02-013).

While an ALJ's proposed decision found the proposals not to be cost-effective (see Matters, 3/3/10), the Peevey alternate approves the applications, through at slightly reduced costs from those sought by the utilities.

More importantly, the approved decision finds the fuel cell projects to be "preferred resources" eligible for exemptions from a competitive RFO, because they are distributed generation and clean fossil fuel. The decision also concludes that, "the Fuel Cell Projects involve an advanced and emerging technology that the market is unlikely to develop."

"Finally, we find that an RFO is infeasible for the Fuel Cell Projects because the circumstances of both applications involve a unique partnership between either SCE or PG&E and the state universities for educational and demonstration purposes," the decision states.

The order rejects SCE's proposed treatment of fuel cell project stranded costs, which would have essentially treated the costs as reliability generation costs (rather than new generation costs), which are not subject to exemptions that certain loads (such as municipal departing load, MDL) receive from nonbypassable charges (NBCs).

"The Fuel Cell Projects are new generation resources as defined in D.08-09-012, even if the utilities' major reason for pursuing the project is for demonstrative and educational purposes. Therefore, we reject SCE's suggested treatment of Fuel Cell Project stranded costs. We will not deviate from D.08-09-012 here and create a new category of 'demonstration project' that would allow SCE to charge stranded costs from this project on MDL and other customers exempt from NBCs according to D.08-09-012," the decision states.

Briefly:

Oasis Power Seeks Maryland Gas License

Oasis Power LLC, d/b/a Oasis Energy, has applied for a Maryland natural gas supplier license to serve residential and commercial customers at Baltimore Gas & Electric. As only reported in *Matters*, Oasis has a pending Maryland electric supply license as well (Only in Matters, 2/26/10).

Prospect Resources Seeks Pa. Gas Broker License

Prospect Resources, Inc. applied for a Pennsylvania natural gas broker/marketer license to broker all sizes of commercial, industrial and governmental customers in all service areas.

Risk Services Group Seeks N.H. Gas Aggregator License

Risk Services Group (RSG Energy) has applied for a New Hampshire natural gas aggregator license to serve customers at National Grid and Unitil/Northern Utilities.

Priority Power Management Reports 2009 Earnings

Broker-consultant Priority Power Management generated earnings of $400,000 for the fourth quarter of 2009, an increase of approximately 187% versus the same quarter in 2008, parent Amen Properties said in a Pink Sheets filing. The increase in earnings was caused primarily by a 42% increase in revenue driven by a large power reengineering consulting project coupled with a slight decrease in general and administrative expenses. For the full year ending December 31, 2009, Priority Power generated earnings of $1.2 million, an increase of approximately 6% over the prior year. The increase in profitability was caused by a 21% increase in revenue driven by a number of large consulting projects.

Cianbro Energy Seeks Waiver of Conn. EDC Communication Initiation Fee

Cianbro Energy, which will only be self-supplying affiliates in Connecticut, has asked for a waiver of the setup and initialization fees assessed by Connecticut Light & Power and United Illuminating associated with data exchange. Cianbro said that normally each utility charges $3,450.80 for such setup and initialization. Cianbro said that the fee is, "intended to recover the full cost of performing the EDI testing and training with the new supplier." However, Cianbro intends to satisfy the EDI requirements via email exchange, which it said is consistent with DPUC directives for other self-supplying entities, and thus argued, "it would seem unjust for either, or both utilities, to charge the usual set up and initialization fee of $3,450.80 as it is intended as a cost recovery mechanism and no, or minimal, cost will have been realized."

Dominion Retail, FirstEnergy Companies File SECA Settlement

Dominion Retail and the FirstEnergy Companies have filed a settlement regarding Seams Elimination Charge Adjustments under which Dominion Retail is to be refunded $114,024 by the FirstEnergy transmission owners related to Dominion Retail's prior payment of $561,421 in total SECA invoices for the benefit of the FirstEnergy companies (ER05-6).

FERC Revokes MBR Authority of Four Sellers

FERC revoked the market-based rate authority of the following sellers for failure to submit electric quarterly reports: G&G Energy, Inc.; NCSU Energy, Inc.; Primary Power Marketing L.L.C.; and WASP Energy, LLC.

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not have had sufficient financial resources to cover all customer deposits that it collected," Staff alleged.

Additionally, the Commission's rules require a REP to possess the managerial resources and ability necessary, "to supply electric service at retail in accordance with its customer contracts." Furthermore, a REP must comply with, "any customer protection requirements, disclosure requirements, marketing guidelines and anti-discrimination rules adopted by the commission," Staff noted.

Staff alleged that, "Milagro does not meet these requirements because its president,

William Wydler, was the subject of a securities fraud proceeding brought by the SEC in which Mr. Wydler agreed to pay $350,000 and agreed not to associate with a broker, dealer, or investment adviser for five years." As previously reported, an SEC complaint had alleged that a broker-dealer and investment advisor under the control of Mr. Wydler and another principal sold nearly $70 million in interests in two affiliated offshore funds whose prospectuses represented that the funds would invest in safe investments and that the return of customers' principal was guaranteed, while, per the SEC, the two funds instead engaged in a highly risky investment strategy, by investing in volatile emerging markets debt instruments from countries such as Russia, Venezuela, Brazil, Argentina and Mexico.

Staff said that in a related federal court proceeding, Mr. Wydler agreed to pay $350,000 to the SEC, comprised of a civil monetary penalty of $50,000 and disgorgement and prejudgment interest of $300,000. "With Mr. Wydler as its president, Milagro does not have the managerial resources and ability to operate a REP in accordance with PURA and the Commission's rules, including rules related to customer protection," Staff alleged.

Finally, Staff alleged that, "Milagro made material omissions and misrepresentations in Docket No. 37753 that constitute significant violations of the Commission's rules." Staff said that Item D-9 of the Commission's REP certification form requires a REP to disclose certain complaint history, disciplinary record, and compliance record information described in P.U.C. SUBST. R. 25.107(g)(2)(B). Staff alleged that Milagro's response to that question, "omits material information because Milagro failed to disclose in Item D-9 that Mr. Wydler had a compliance record related to his SEC settlement during the 60 months prior to Milagro's submission of its amendment application in Docket No. 37753." Milagro did subsequently disclose the SEC settlement, but only after Staff had already become aware of it, Staff said.

"Furthermore, when Milagro disclosed the settlement, it materially misrepresented the nature of that settlement," Staff alleged. "In response to a Staff discovery request, Milagro stated, 'I consented to the judgment since I had already left the firm and was not interested in spending my time and resources to keep a license in an industry I was no longer a part of.' Milagro's response completely fails to disclose the fact that Mr. Wydler also agreed as part of that settlement to pay $350,000 to the SEC. The response is materially misleading because it suggests that Mr. Wydler simply walked away from a license that he was no longer using, when in fact he agreed to pay the SEC a substantial sum to settle the proceeding," Staff alleged.

Staff requested that the revocation proceeding (38138) be consolidated with Milagro's pending amendment proceeding (37753), and that the amendment proceeding be abated until Staff's motion to consolidate is ruled upon.

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Furthermore, CUB believes that an ARES applicant's track record in another state is indicative of what type of operation the ARES would run in Illinois, "which is why the Commission should examine the track-record of ARES applicants for certification before granting a certificate to the ARES to do business here in Illinois." Specifically, CUB said the ICC should examine:

1) Whether the applicant has been denied an electric supplier license in any state;

2) Whether the applicant has had an electric supplier license suspended or revoked by any state;

3) Where, if any, other electric supplier license applications are pending in the United States, and

4) Whether the applicant is the subject of any lawsuits filed in a court of law or formal complaints filed with a regulatory agency alleging fraud, deception or unfair marketing practices, or other similar allegations, identifying the name, case number, and jurisdiction of each such lawsuit or complaint. CUB defines formal complaints as including only those complaints that seek a binding determination from a state or federal regulatory body.

CUB noted that in its complaint against Just Energy regarding gas sales, Just Energy "denied liability" for the actions of its independent

contractors.

Accordingly, CUB said that new language is needed in the rule to ensure that an applicant's sales agents, and not simply the ARES itself, are required to comply with ICC rules with respect to the marketing, offering and provision of products or services to residential and small commercial retail customers as a condition of licensure. CUB would define "sales agent" as, "any employee, agent, independent contractor, consultant, or other person that is engaged by the alternative retail electric supplier to solicit customers to purchase, enroll in, or contract for alternative electric service on behalf of an alternative electric supplier."

CUB recommended that the ICC amend its rules so that the Commission can extend the time for consideration of an ARES application by up to 90 days, and can schedule hearings on an application, if:

a) A party to the application proceeding has formally requested that the Commission hold hearings in a pleading that alleges that one or more of the allegations or certifications in the application is false or misleading; or

b) Other facts or circumstances exist that will necessitate additional time or evidence in order to determine whether a certificate should be issued.

CUB also recommended placing in the rule authority for the Commission to deny, with prejudice, any application that, "repeatedly fails to include the attachments, documentation and affidavits required by the applications form [sic] or that repeatedly fails to provide any other information required."