Energy Choice Matters

April 16, 2010

Briefly:

Champion Energy Services Receives Authority to Market to Pa. Residential Electric Customers
The Pennsylvania PUC has granted Champion Energy Services' request to expand its electric generation supplier license to include marketing to residential customers in all service areas, in addition to all other customer classes.

EnergyMark Receives Pa. Gas License
The Pennsylvania PUC granted EnergyMark, LLC a natural gas supplier license to serve all sizes of commercial, industrial, and governmental customers at National Fuel Gas Distribution Corporation (Matters, 2/23/10).

Glacial Natural Gas Withdraws Illinois Gas License Application
Glacial Natural Gas has voluntarily withdrawn its Illinois alternative natural gas supplier application, stating that while it has the financial and technical fitness to serve Illinois gas customers, at this time, "it is prudent to withdraw the Application due to a delay in the effective date of Applicant's natural gas financing." Glacial has sought gas supply licenses in just under a dozen states.

Freedom Choice Energy, LLC Withdraws Conn. Aggregator Application
Freedom Choice Energy, LLC has withdrawn its application for a Connecticut electric aggregation certificate, which will allow Freedom Choice Energy, LLC to continue to act as an agent or broker representing certain supplier interests. As only reported by *Matters*, the Connecticut DPUC had issued several interrogatories to Freedom Choice regarding its current activities in the state (presumably as a broker/agent which do not require licensure, see Matters, 3/31/10). As previously noted, the DPUC has held that Connecticut aggregators may not act as a representative or agent of a supplier, and must act as the representative of the customer.

Paetec Energy Receives Pa. Broker License
The Pennsylvania PUC granted Paetec Energy (organized as Technology Resource Solutions, Inc.) an electric broker license to serve all sizes of commercial, industrial, and governmental customers in all service areas.

BidURenergy Receives Pa. Broker License
The Pennsylvania PUC granted online broker BidURenergy, Inc. an electric broker license to serve all sizes of commercial, industrial, and governmental customers in all service areas (Only in Matters, 1/7/10).

Eisenbach Consulting Receives Pa. Broker License
The Pennsylvania PUC granted Eisenbach Consulting, LLC an electric broker license to serve all sizes of residential, commercial, industrial, and governmental customers in all service areas (Only in Matters, 2/15/10).

Tybec Energy Management Receives Pa. Broker License
The Pennsylvania PUC granted Tybec Energy Management Specialists, Inc. an electric broker license to serve commercial customers over 25 kW, industrial customers, and governmental customers in all service territories (Only in Matters, 12/10/09).

Pa. PUC Adopts Rate Ready Collaborative Report
The Pennsylvania PUC adopted the report of a rate ready collaborative for PPL implementation, but, according to a summary of the Commission's actions yesterday, "suspends adoption of a statewide Rate Ready billing option until further notice." A written order was not available (M-2009-2104271). As only reported by *Matters*, in the rate ready collaborative suppliers and distribution

companies agreed on the "rate code" method of rate ready billing, whereby a supplier utilizes a minimum of three alphanumeric characters to define a rate code (versus the price-driven model of rate ready billing). Additionally, the collaborative developed a consensus around permitting six rate components under rate ready billing: Usage (kWh) charge only (No Proration); Demand (kW) charge only (No Proration); Flat fixed monthly charge (No Proration); Any combination of Usage, Demand, and Flat fixed monthly charge; % of default service rate; and Flat fixed monthly charge, plus % of default service rate (Only in Matters, 11/10/09). Vice Chairman Tyrone Christy dissented from the Commission's acceptance of the report, but a written dissent was not available, and Christy offered no comment in voting on the order during the Commission's meeting. Currently, only PPL and PECO lack rate ready billing.

Pa. PUC Waives Load Cap, Raises Collateral Threshold in UGI April Default Service RFP

The Pennsylvania PUC granted UGI Utilities' request to raise the collateral threshold from $1.5 million to $10 million for counterparties potentially participating in the UGI April default service RFP, and to waive the limit prohibiting any single wholesale supplier from supplying more than one-third of the default service supplies for a default service supply group, in order to ensure robust participation in the April RFP (P-2010-2167278). As only reported in *Matters*, UGI had asked for the waivers because it believes the current collateral threshold and load cap will hinder bidding in the RFP to the point of making it uncompetitive. The PUC agreed, and said that the increased risk of default from the waivers was less probable and immediate than the risk of, and negative impacts from, an uncompetitive default service solicitation. UGI's April RFP will acquire default service supplies for Group 1 Customers (less than 100 kW) and Group 2 Customers (100-500 kW).

Ontario Energy Board Approves New Generation Rates

The Ontario Energy Board has established electricity commodity prices that take effect May 1, 2010 under the Regulated Price Plan. For customers on tiered pricing, the default rate will be (figures Canadian):

- 6.5¢/kWh up to and including 600 kWh each month (750 kWh for small business)
- 7.5¢/kWh above that

Time of Use pricing will be:

- On-peak Price: 9.9¢/kWh
- Mid-peak Price: 8.0¢/kWh
- Off-peak Price: 5.3¢/kWh

Pepco, Delmarva Cite Losses from Residential SOS Service in Maryland Exceeding $750,000

In the current SOS year, both Pepco and Delmarva Power & Light are losing money providing residential SOS service in Maryland, while the allowed return for non-residential SOS customer types has been "significantly impacted" by increased cash working capital costs, the utilities said in testimony supporting their request for an increase in cashing working capital cost recovery in Maryland (Case 9226, Only in Matters, 3/10/10). Pepco said that it is losing over $765,000 providing residential SOS while Delmarva said that it is losing almost $900,000 in providing residential SOS. Based on a Pepco Holdings exhibit, Pepco's return from providing SOS across all classes for the 2009-10 delivery year is $1.55 million. At Delmarva, the combined return from providing SOS across all customer classes is a loss of $214,000 for the same period.

AEG Affiliated Energy Group Names Lily Le EVP and Chief Marketing Officer

AEG Affiliated Energy Group yesterday named Lily Le as its Executive Vice President and Chief Marketing Officer. Le joins AEG from GDF Suez Energy Resources where she was a Texas Regional Sales Manager and Market Manager for the Texas and Mid-West Regions. Le will help oversee AEG's retail client relationships and marketing operations, as well as product and service development. Le will also become a part of AEG's executive management team, which directs all aspects of company strategy, planning, and operations. Le had been with Suez since 2004 and is credited with championing Suez's entry into the Illinois market, as well as playing an instrumental role in helping to grow its retail business in Texas. Prior to joining Suez, Le served in a variety of roles with Reliant Energy.

PUCT Issues for Comment Proposed Substantive Rule Changes to Allow Nodal Guardrails

The PUCT approved for comment a 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 approved proposal for publication, aside from ministerial changes, is identical to Staff's draft (see Matters, 3/26/10). In short, the proposed amendments would permit ERCOT through the stakeholder process 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. Per the proposal, any ERCOT protocols adopted as market safeguards could not set the offer cap 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.

Oncor, CenterPoint Update AMS Deployments

Oncor reported that it has installed 846,941 advanced meters as of March 31, 2010. CenterPoint has installed 289,093 advanced meters as of March 31, 2010. Consistent with their deployment schedules, the AEP companies have not deployed any advanced meters outside of the approximately 5,000 meters involved in an initial pilot.

Reliant Offering 20% Wind with All Fixed Products

Reliant Energy has revamped its fixed-price offerings and is offering 20% Texas wind power as part of each fixed product. As listed on Power to Choose and its own website, Reliant is offering at Oncor (9.9¢) and CenterPoint (11.3¢) a sole fixed priced product with a term of 12 months. Reliant also said that it is purchasing RECs to offset all of its residential and small business customers' estimated usage on April 22. The RECs will be sourced from NRG Energy's 150 MW Langford Wind Project near Abilene. Reliant will also make a $25 donation to EarthShare of Texas for each customer who signs up for a new 100% wind plan from Reliant Energy between April 18 and April 24. Currently, Reliant's only 100% wind plan at Oncor and CenterPoint is a variable product.

Positive Energy Electricity Supply Offering Military Discount

Connecticut aggregator Positive Energy Electricity Supply, LLC said that it is offering active, reserve and retired military personnel a discount rate program with prices up to 15% off of Connecticut Light & Power's and United Illuminating's rates.

NASDAQ OMX Commodities Clearing Company Assumes Position on NEM Executive Committee

NASDAQ OMX Commodities Clearing Company (NOCC) has elected to assume the position on the National Energy Marketers Association's Executive Committee formerly held by North American Energy Credit and Clearing Corp., which NOCC recently acquired. NOCC will be represented by its CEO George Sladoje, who founded and led NECC prior to its acquisition, as well as several other senior executives. NOCC provides credit risk management and clearing-style services in both physical and financial electricity and natural gas.

PUCT Grants Good Cause Waivers for Distribution of In-Home Display Devices at Oncor, CenterPoint

The PUCT granted Oncor and CenterPoint Energy good cause waivers from the Substantive Rules to allow them to distribute up to 500 in-home electricity usage monitors to customers with advanced meters, in order to build customer confidence with the smart meters. The waivers were sought because the in-home devices could be considered a prohibited competitive service offered by the TDU, though the Commission in granting the waivers made no finding of whether the devices in fact constitute such a competitive service. The waivers were granted consistent with Staff's recommendation that aggregate information from the monitors shall be shared with REPs, and that the monitors shall be distributed so that no REP receives preferential treatment (Only in Matters, 3/24/10).

PUCO Clarifies All-Electric Relief

The Public Utilities Commission of Ohio has clarified its order regarding the restoration of the all-electric discounts at the FirstEnergy utilities, ordering that the credits shall be available to both customers who previously received the credits, and to any other residential customer who is the successor account to a customer who had previously qualified under the all-electric rate schedules. The Commission said that it expects that, at a minimum, the all-electric rate relief will remain in effect through the next winter heating season. PUCO also extended its previous 90-day deadline for a Staff investigation and report on the all-electric discount (Matters, 3/4/10).

FERC Schedules Conference on Mandatory Weekly Billing, Other Credit Topics

FERC has scheduled a technical conference for May 11 regarding the Commission's credit reform NOPR, which would impose weekly settlements on all RTOs, which would cost retail customers millions of dollars in higher cash working capital costs (RM10-13, Matters, 3/30/10).

FERC Denies Rehearing of Marginal Loss Refunds in PJM

FERC has denied rehearing of its order affirming that marginal loss refunds in PJM can be allocated based on whether a market participant pays for the fixed costs of the transmission grid, essentially reciting the findings from its September 2009 order (EL08-14, Only in Matters, 9/18/09). Financial marketers had argued that FERC's decision will place virtual transactions at a severe competitive disadvantage to physical transactions (Only in Matters, 10/20/09).

FERC Issues NOPR on Employee Sharing Restrictions for Affiliates

FERC issued a NOPR which would revise the separation of functions and information sharing provisions of the affiliate restriction rules in the market-based rate regulations (Order 697) to explicitly state that employees who determine the timing of scheduled outages or who engage in economic dispatch, fuel procurement, or resource planning may not be shared under the affiliate restrictions (RM10-20)

FERC to Allow Public Comment on Penalty Guidelines

FERC said that it will allow public comment on its recently issued Statement on Penalty Guidelines before issuing final guidelines. Comments are due within 60 days (Matters, 3/19/10).

FERC Issues State of the Markets Report

FERC issued its state of the markets report for 2009, with no unexpected or novel findings.

PUCT Defers Ruling on Appeal Relating to Primary Jurisdiction in Just Energy-TEZ Case

The PUCT deferred ruling on the appeal of an ALJ's order which denied a customer's motion to dismiss a petition for a declaratory order from Just Energy, which asks the Commission to assert primary jurisdiction over a complaint regarding pass-throughs for Unaccounted For Energy (UFE) charges and several ERCOT charges (37891).

As only reported in *Matters*, Taqueria El Zarape, Inc. (TEZ) has served Just Energy with two billing complaints in district court, alleging overcharges amounting to approximately $80, though Taqueria El Zarape clarified at the PUCT's open meeting that the amounts listed in the initial complaints were examples, and that it intends to develop a record at the court showing total overcharges in the range of $5,000 to $10,000.

The nature of the dispute itself was thrown into question during the open meeting. Based on initial pleadings, the crux of the complaint appeared to be that Taqueria El Zarape was alleging that Just Energy's "utility charges" per its bill are in excess of the TDSP tariffed rates. Just Energy justified the charges by citing its contract which defines utility charges as also including UFE and other ERCOT charges, which are the source of the higher charges (see Matters, 3/17/10).

The implication of the TDSP tariff is what led the ALJ to deny the motion to dismiss, finding 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.

However, at the open meeting, counsel for Taqueria El Zarape said that the dispute is not about the "category" of charges (i.e. whether Just Energy is permitted to pass through UFE and ERCOT charges through utility charges), but rather, the "amount" of charges passed through in such a manner.

"Taqueria is not disputing the language in the contract that expressly permits things like UFE and RMR charges to be passed through," Taqueria's counsel said. Taqueria El Zarape thus argued that the case is essentially a factual breach of contract claim which does not implicate the PUCT's expertise which would give it primary jurisdiction.

However, this new argument that Taqueria El Zarape is only disputing the amount, and not category, of charges conflicts with its earlier statements. Specifically, in a March 25, 2010 appeal of the ALJ's order denying the motion to dismiss, Taqueria El Zarape argued the following:

"The basis of the dispute is Just Energy's contract term 'Utility Charges,' a term that encompasses both regulated wires charges as well as the ERCOT Administration Fee, Unaccounted For Energy ('UFE') and ERCOT Reliability-Must Run Charges. As detailed below, TEZ's contract claim does not challenge Just Energy's passing through of regulated *wires* charges. Instead, *it challenges Just Energy's **imposition** of ERCOT Administration fees, UFE, and ERCOT RMR charges **through** 'Utility Charges*'" (emphasis added).

From this explanation, it is apparent that Taqueria El Zarape was not then solely questioning the amount of passed-though UFE and ERCOT charges, but was challenging the propriety of the imposition (regardless of amount) of such ERCOT-related pass-throughs via the "utility charge" line item.

Even in this March 25 pleading in which Taqueria El Zarape implicates the categorization of charges, and not simply the amount, it still argues that the Commission lacks primary jurisdiction since it is not challenging the TDSP tariff or pass-through of wires charges, and the dispute relates only to the definition of utility charges in the Just Energy contract, and not a broader context requiring the PUCT's adjudication for market consistency.

During the open meeting, Commissioners questioned whether, regardless of primary jurisdiction, the Commission was even empowered to grant Just Energy's requested relief through a declaratory ruling. Specifically, Commissioners questioned whether Just Energy's request essentially amounts to a factual -- and not legal -- question (specifically, a finding that Just Energy has not charged unauthorized charges).

Commissioner Kenneth Anderson said that he believes that the Commission may rule through a declaratory order on what types (or category) of charges Just Energy may pass through to the customer without adjudicating whether any specific amount of those charges is correct. Commissioner Donna Nelson leaned toward reversing the ALJ's order, stating she does not believe that the Commission can grant the requested relief.

The Commission directed additional briefing on the issue, including on what is meant by the term utility charges, and whether it necessarily references or incorporates the TDSP tariff; and whether a declaratory order is the appropriate venue for the relief requested.

FERC Denies Rehearing on Accelerated Payments to Wholesale Suppliers in PJM

Ignoring the opportunity to reduce retail customers' burden from paying for accelerated RTO settlements, FERC denied rehearing of its order allowing weekly settlements at PJM, specifically finding that it is appropriate for PJM to immediately transmit accelerated payments from load to generation and wholesale suppliers, rather than holding such amounts for monthly payment (ER09-650).

Hess Corporation had argued on rehearing that, while accelerating loads' payment to PJM under weekly invoicing will reduce credit risk, accelerating the transmittal of such payments from PJM to generation will not reduce risk or provide any other benefit to RTO members, while enriching generation suppliers. Hess thus suggested that PJM should hold such amounts for the benefit of its members (with such funds collecting interest which could be used to mitigate costs to LSEs, or used to offset RTO administrative costs).

Despite the benefits to RTO members, including retail load, from Hess' suggestion, and while not citing any actual benefit from accelerating payments to generators, FERC denied rehearing. "We do not agree that it would be appropriate for PJM to retain funds that it receives from load that are owed to generators if it is feasible for it to remit such funds, even if by doing so, it may reduce its operating costs," FERC said.

FERC Rules Poletti TCCs Have Not Terminated

FERC granted the New York ISO's petition for a declaratory order finding that 600 MW of grandfathered Transmission Congestion Contracts (TCCs) held by the New York Power Authority related to the Charles Poletti Power Plant did not terminate due to the plant's retirement and replacement with a new facility at the same location (EL10-33, Matters, 1/11/10).

The Commission said that the intent of the TCCs was that they would continue so long as NYPA was serving Southeast New York customers, until their otherwise established expiration date of December 1, 2017. While the TCCs provided that they would expire upon retirement of the "Charles Poletti Power Plant," FERC found the term ambiguous, and ruled that the term encompasses all generation at the Poletti site, and not only the generation units that existed when the TCCs were originally executed. Thus, since NYPA is replacing the recently retired Poletti unit with a new plant at the same site, the "Charles Poletti Power Plant" has not been retired, FERC said, and the TCCs shall continue.

FERC dismissed protests from generators and financial marketers, finding that the fact that the new Poletti plant has a different interconnection point is immaterial as to whether it is defined as the "Charles Poletti Power Plant" referenced in the TCCs, since the new plant remains on the same physical location with shared administrative buildings.