Energy Choice Matters

June 30, 2010

PUCT Staff Enters Settlements with 5 REPs Concerning Consumer Protection Audits

PUCT Staff have entered into settlements with five REPs to resolve allegations of violations of various consumer protection regulations and other Substantive Rules. The stipulations, which include administrative penalties, are with Spark Energy ($44,500), Affordable Power ($40,000), Andeler Corporation ($30,000), Bounce Energy ($28,000), and Ambit Energy ($22,500).

The alleged violations resulted from compliance audits conducted by Staff during 2009-2010.

Spark Energy (38394)

Staff's audit of Spark alleged that Spark was not in compliance with 20 provisions of the Substantive Rules. Among these deficiencies were:

- The affirmative consent utilized by Spark was not provided in the language the customer had chosen for communications (SUBST. R. 25.475(e)(2))
- Spark failed to inform customers of available assistance options during the initial contact regarding bill payment concerns (SUBST. R. 25.480(g))
- Spark failed to offer a deferred payment plan to customers who were under an active disconnection notice (SUBST. R. 25.480(j))
- For payments received after 5 p.m., Spark failed to send reconnection requests to the TDU until the start of the next business day (SUBST. R. 25.483(m))
- Spark did not include a notice with its deposit request that a qualifying applicant may be eligible to pay the deposit in two installments (SUBST. R. 25.478(e))
- Spark only returned eligible deposits when requested by customers (SUBST. R. 25.478(j)). As

Continued P. 4

Duke Ohio, Kentucky Utilities Submit "Initial" Filing to Exit MISO, Join PJM

Duke Energy Ohio and Duke Energy Kentucky have submitted what they termed their "initial" filing to FERC to execute their previously announced exit from the Midwest ISO and integration into PJM (ER10-1562). The Duke utilities are seeking to join PJM effective January 1, 2012, which coincides with the end of Duke Energy Ohio's current electric security plan.

The filing primarily seeks authorization for the Duke Energy Ohio and Duke Energy Kentucky loads to participate in the May 2011 Reliability Pricing Model capacity auction for the delivery year commencing June 1, 2014. To permit adequate time to prepare for such participation, Duke Energy Ohio and Duke Energy Kentucky requested FERC approval of their proposal by November 1, 2010. To participate in the May 2011 auction, load needs to be committed into that auction before February 1, 2011.

The initial filing defers several issues related to the MISO exit and PJM integration. Most notable for competitive load serving entities is the absence of a plan to conduct integration capacity auctions to meet PJM capacity requirements from the date of PJM integration on January 1, 2012 through May 31, 2014. Duke Energy Ohio and Duke Energy Kentucky said that they would file a Fixed

Continued P. 5

FERC Orders CAISO to Further Justify or Remove Disparate Scarcity Pricing for Sub-regions

FERC generally accepted the California ISO's tariff revisions to implement scarcity pricing but rejected as unsupported CAISO's proposal to value sub-regional ancillary services and energy less than Expanded System Region reserves in shortage conditions. FERC thus accepted the CAISO tariff, suspended it until November 29, 2010, and directed CAISO to submit a compliance filing either justifying the different values or making the values consistent. FERC said that it anticipates that it will issue an order on the compliance filing during the suspension period (ER10-500).

The CAISO scarcity pricing mechanism is an administrative mechanism that, during periods of operating reserve shortages, applies pre-determined prices to energy and ancillary services to more accurately reflect their value in such an emergency.

CAISO proposed that a rate of 20 percent of the maximum energy bid price would be applied during scarcity conditions for the Expanded System Region, but that a rate of only 10 percent of the maximum energy bid price would be applied for the sub-regions. CAISO said that the difference reflects the lower value of sub-regional ancillary services and energy, since a sub-regional shortage is less of a threat to reliability than an Expanded System Region-wide shortage.

FERC, however, said CAISO has failed to demonstrate that its proposal to use a lower rate for the sub-regions is just and reasonable, finding that the reliability standards governing the Expanded System Region and sub-regions are equally as important. The Commission directed CAISO to submit a compliance filing justifying the disparate treatment or modifying the values consistent with FERC's findings.

The Commission agreed with wholesale suppliers that the scarcity pricing mechanism should be reviewed annually for the first three years to ascertain whether it is providing the intended price signals and incentives. CAISO had only proposed reviewing the scarcity pricing mechanism at least every three years.

FERC denied the California PUC's argument that system-wide cost allocation for sub-regional deficiencies runs contrary to the principle of cost causation and creates an incentive for load serving entities to under-procure ancillary services to meet sub-regional needs. The Commission said that the instant scarcity pricing proposal does not alter the type of ancillary service being procured, the existing cost allocation, or the market participants involved from what is currently in-place for ancillary service procurement in non-scarcity conditions. "Therefore, we find CAISO's proposed ancillary service cost allocation for a scarcity condition to be consistent with what the Commission previously accepted, and what is currently in place, for ancillary service procurement in non-scarcity conditions," FERC said.

FERC Clarifies Tres Amigas Need Only Offer Comparable Rates, Terms On One-Time Basis

FERC clarified that Tres Amigas need only offer rates and terms comparable to those provided to its anchor customer on a one-time basis in an open season to satisfy FERC's requirement that initial merchant transmission line capacity be allocated in a fair, open and non-discriminatory manner (ER10-396, Matters, 3/19/10).

In a March 18 order, FERC held that, "we have conditioned [Tres Amigas'] negotiated rate authority on it providing the same rate and terms as the anchor shipper received to any customer in an open season willing to commit to the same term, consistent with Chinook."

In a request for clarification, Tres Amigas asserted that the phrase "an open season" is ambiguous and could be construed as requiring it to offer the same rates, terms and, conditions that it provides to an anchor customer to other customers in each open season after the anchor customer agreement is executed.

Tres Amigas claimed that such a requirement would unfairly hamstring its efforts to negotiate an anchor customer agreement and goes further than needed to protect customers from undue discrimination. Tres Amigas sought authorization to offer other potential customers the same rates and terms as it may negotiate with the anchor customer on a one-time basis after the anchor customer agreement has been approved by the Commission

"We find that Tres Amigas' proposal to offer its anchor customer agreement on a one-time-only basis satisfies the Commission's policy that initial merchant transmission line capacity be allocated in a fair, open and non-discriminatory manner," FERC held.

FERC stressed that to satisfy the requirement that anchor customer agreements be available on an open, fair and non-discriminatory basis, Tres Amigas' one-time offer must be carried out in an open and transparent manner consistent with the open season requirements in Tres Amigas' Commission-approved open access transmission tariff, which Tres Amigas has committed to file before an open season is held. Furthermore, Tres Amigas' one-time offer shall take place after the Commission approves the anchor customer agreement, and "fundamentally the one-time offer must provide public notice of the relevant rates, terms and conditions and a fair opportunity for potential customers to respond."

Given these conditions, FERC dismissed protests from Occidental Power Marketing which had raised concerns that Tres Amigas may implement the one-time offer in a discriminatory manner.

Briefly:

Online Broker CTenergysavings.com Launches Service

New online electric broker CTenergysavings.com has officially launched its online rate comparison and enrollment service for Connecticut electric customers. Currently offering residential service through the site are ConEdison Solutions, Discount Power, MXenergy, North American Power and Gas, and Verde Energy. All but MXenergy are also offering commercial service through the site. CTenergysavings.com said that it is the only Connecticut online broker offering customers the ability to compare multiple rates and enroll with a supplier on the same site. There are other online brokers offering Connecticut service which allow online enrollment but transfer the customer to the supplier's website for enrollment. CTenergysavings.com was founded by Connecticut resident Michelle Erca, an entrepreneur with an online sales and marketing background

Lamont Plan Emphasizes Long-Term Supply Contracts

Ned Lamont, who is vying for the Connecticut Democratic gubernatorial nomination, has announced an energy plan emphasizing long-term electric supply contracts with generators, which Lamont claimed could save the average Connecticut family over $160 per year on its electric bills. Lamont envisioned such contracts lasting 10-15 years.

Stream, Ambit Rated in Direct Selling Rankings

Stream Energy and its marketing arm, Ignite, rank 16th internationally on the recent list of the Top 100 Direct Selling Companies in the World in *Direct Selling News*, Stream said yesterday. "Ignite's continued growth is proof that consumers are hungry for the power to choose among energy providers," Stream Chairman Rob Snyder said. That growth may soon include Pennsylvania in addition to current markets Texas and Georgia, as Stream has applied for a Pennsylvania electric supplier license (Only in Matters, 6/16/10). Ignite was listed with annual revenues of $845 million, with 150,000 distributors and 275 employees. Ambit Energy was listed 38th in the rankings, with annual revenues of $324 million, and 60,000 distributors and 188 employees.

Constellation Energy Invests in Consert

Constellation Energy is among several investors committing an aggregate $17.7 million to fund strategic marketing, North American sales, and ongoing enhancements of Consert Inc.'s advanced smart grid software, Consert said yesterday. Other investors include GE Energy Financial Services, Qualcomm Incorporated, and Verizon Ventures. Consert is engaged in a variety of smart grid activities, including intelligent distributed energy resource management systems.

FERC Sets Hearing for PJM-MISO Joint Operating Agreement Complaints

Concluding that disputes regarding material fact exist, FERC consolidated and set for hearing and settlement procedures three related complaints from PJM and the Midwest ISO concerning procedures under the Joint Operating Agreement (EL10-45, EL10-46, and EL10-60). As previously reported, MISO has alleged that PJM has failed to initiate the market-to-market redispatch provisions of the Joint Operating Agreement, and alleged that PJM erroneously calculated charges to the Midwest ISO for market-to-market settlements made from 2005-2009. PJM has alleged that MISO improperly used substitute flowgates in redispatch procedures and market-to-market settlements under the Joint Operating Agreement (Matters, 4/13/10).

PUCT Audits ... *from 1*

a result, bill credits with interest will be issued to customers eligible for a deposit return

- Spark was not immediately providing the Your Rights as a Customer (YRAC), Electricity Facts Label (EFL), or Terms of Service (TOS) to commercial customers upon enrollment (SUBST. R. 25.474(e) and SUBST. R. 25.475(c)(1))
- Required documents were printed in a font smaller than 10 point and the type of rate product (fixed, indexed or variable) was contained in the EFL but not the TOS (SUBST. R. 25.475(c)(2))

Prior to settlement, Spark corrected all of the alleged deficiencies cited by Staff.

Affordable Power (38396)

Staff's audit of Affordable Power alleged that Affordable Power was not in compliance with seven provisions of the Substantive Rules. Among these deficiencies were:

- Affordable Power's bills for variable rate products did not inform the customer about how to obtain information about the price that will apply to the next bill (SUBST. R. 25.475(d))
- Affordable Power's prices on the Electricity Facts Label (EFL) could not be verified and certain products did not provide an estimate for Energy Delivery Charges (SUBST. R. 25.475(g))
- The EFLs for various products were not in the proper font size and did not contain certain required language (SUBST. R. 25.475(g))
- Affordable Power failed to disclose in telephonic verifications the length of the Terms of Service (TOS), termination fees, or deposit information (SUBST. R. 25.474(h))
- An Affordable Power affidavit submitted to Staff contained some inaccuracies (SUBST. R. 25.107(j))

Prior to settlement, Affordable Power corrected all of the alleged deficiencies cited by Staff.

Andeler Corporation (38393)

Staff's audit of Andeler Corporation alleged that Andeler was not in compliance with 15 provisions of the Substantive Rules. Among these deficiencies were:

- The 12-month price history for variable rate product(s) was not publicly available on Andeler's website (SUBST. R. 25.475(c)).
- Andeler's residential bill did not contain a statement informing the customer how to obtain information about the price that will apply on the next bill (SUBST. R. 25.475(d))
- Andeler's affirmative consent recordings did not contain the end date or estimated end date of the contract or the contract term (SUBST. R. 25.475(e))
- Andeler's EFL did not contain the actual recurring pricing information (SUBST. R. 25.475(g))
- Andeler's TOS failed to conspicuously itemize the non-recurring charges (SUBST. R. 25.475(f))
- Andeler's TOS did not contain a description of the bill payment assistance program and low income energy efficiency program (SUBST. R. 25.475(f))

Prior to settlement, Andeler corrected all of the alleged deficiencies cited by Staff.

Bounce Energy (38395)

Staff's audit of Bounce Energy alleged that Bounce was not in compliance with 10 provisions of the Substantive Rules. Among these deficiencies were:

- Bounce's residential bill for a variable rate product did not indicate how to obtain information about the price that will apply on the next bill (SUBST. R. 25.475(d)(2))
- For internet enrollments, Bounce was not including all required information regarding rescission of enrollment in the case of a switch or the YRAC with the confirmation email (SUBST. R. 25.474(d)(11)).
- Bounce's TOS only made reference to the EFL and did not specifically disclose on the TOS the type of product being described using one of the terms: fixed rate product, indexed product, or variable price product (SUBST. R. 25.475(c)(2))
- Bounce did not list all customer rights and protections relating to disconnection in the YRAC (SUBST. R. 25.475(h))
- Staff identified certain compliance deficiencies that were not self-identified in an affidavit from Bounce (SUBST. R. 25.107(j))

Prior to settlement, Bounce corrected all of the alleged deficiencies cited by Staff.

Ambit Energy (38392)

Staff's audit of Ambit Energy alleged that Ambit was not in compliance with five provisions of the Substantive Rules. Among these deficiencies were:

- The 12-month price history for all variable rate products was not publicly available on the Ambit website. Specifically, the price history for Ambit's legacy variable rate product, which is only available to grandfathered customers, was not publicly available online (SUBST. R. 25.475(c))
- Ambit did not conspicuously itemize the non-recurring charges in its Terms of Service document (SUBST. R. 25.475(f))
- Some of the billing terms used on Ambit's bills differed from the terms used in the TOS and EFL (SUBST. R. 25.479(c))

Prior to settlement, Ambit corrected all of the alleged deficiencies cited by Staff.

Duke ... from 1

Resource Requirement integration plan in 30 to 60 days.

The initial filing also does not calculate MISO exit fees or address any issues regarding pass-through of exit fees. Additionally, the initial filing does not address rates for transmission service for the zone that will be formed for Duke Energy Ohio and Duke Energy Kentucky within PJM (the Duke Energy Zone), including recovery of transmission expansion costs and any "hold harmless" issues.