Energy Choice Matters

July 27, 2010

Branded Retail Energy Launches Texas Longhorns Energy Affinity Program

Dallas-based broker-agent Branded Retail Energy Company has launched the first of what is expected to be a series of branded affinity programs by joining with The University of Texas Men's & Women's Athletics program to create Texas Longhorns Energy, which will offer retail electricity in ERCOT.

Supply for Texas Longhorns Energy will be sourced from Champion Energy Services, which will serve as the load serving entity.

Branded Retail Energy CEO Jason Helms said that Champion was selected from about five REPs via bilateral negotiations. Branded Retail Energy did not formally bid out an RFP for service.

Helms told *Matters* that Champion will serve as Branded's REP of record in future endeavors, both in Texas and other markets Champion may currently offer service (notably the Illinois, Pennsylvania and Ohio electric markets). Helms noted that Branded may seek to expand into markets where Champion does not currently offer service, such as the Georgia gas market. The ERCOT market remains the immediate focus, however.

Champion was selected due to its financial stability, Helms said.

Aside from other collegiate and professional athletic affinity opportunities, Branded Retail Energy is examining affinity opportunities with various non-profit, cause, and educational institutions.

Though not officially announced, Texas A&M confirmed it will offer a similar arrangement with Branded Retail Energy.

Branded Retail Energy's agreement with UT is for six years, with the Champion agreement running concurrently.

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Texas Distribution Companies Seek to Include Additional Costs in DCRF

Texas distribution service providers (DSPs) are seeking to include additional costs in the proposed Distribution Cost Recovery Factor (DCRF), while REPs said that the annual rate changes would frustrate fixed price customers while raising administrative costs of retail service (38298).

As only reported in *Matters*, the DCRF would allow distribution service providers to recover new distribution costs from REPs outside of full rate cases (Only in Matters, 6/7/10). The proposed rule would permit distribution service providers to update the DCRF once annually, effective either March 1 or September 1.

Oncor argued that in addition to the infrastructure that is physically used to distribute power, the DCRF should also apply to changes in invested capital associated with depreciable information technology (IT) assets, including hardware, software and communication facilities that are used in direct support of the distribution of electricity. Examples of such IT assets include hardware and software related to automation and control of distribution equipment, real-time equipment/asset condition sensors and back-office data management and analytical software solutions, and outage

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Unopposed Settlement Reached in Penn Power Default Service Case

An unopposed settlement has been reached in Penn Power's default service proceeding (P-2010-2157862). A copy of the complete settlement was not available yesterday, but a major provision of the stipulation is that the procurement of 75% of default service supply for residential customers shall be accomplished through full requirements contracts obtained via descending clock auctions.

Penn Power had originally applied to serve residential customers by procuring 95% of load through full requirements contracts, with 5% spot purchases (Only in Matters, 2/11/10).

Under the settlement, 90% of default service supply for commercial customers would be procured through full requirements contracts obtained through descending clock auctions.

Industrial customers would be served on a real-time hourly priced default service procured through the use of separate descending clock auctions.

Residential and commercial generation rates would be adjusted quarterly to reflect changes in the weighted average cost of default service supply, which will cause default service rates to more closely reflect market prices, as well as the quarterly reconciliation of the difference between revenues and costs.

The settlement also includes provisions to enhance retail competition, such as improved access to customer information and other data, and the development of a referral-type program under which Penn Power will mail supplier offers to residential and small commercial customers.

Furthermore, Penn Power's uncollectible accounts expense would be unbundled, with the recovery of uncollectible accounts expense associated with default service included in the default service support rider.

As originally proposed, the default service plan would cover the two-year period beginning June 1, 2011.

BGE Seeks Rehearing of Gas POR Order Over Interest on Reconciliations

Baltimore Gas and Electric has filed for rehearing of the Maryland's PSC order authorizing its natural gas Purchase of Receivables program, seeking rehearing of the Commission's denial of BGE's proposal that reconciliation imbalances earn interest at the company's rate of return, and the denial of the recording of the reconciliation component as a regulatory asset.

In the PSC's June 25 order approving the gas POR program, the Commission rejected BGE's proposal to recover, or refund, reconciliation imbalances at BGE's authorized rate of return. Instead, the Commission directed BGE to recover or refund such imbalances at a rate equivalent to the interest rate set by the Commission annually for customer deposits (Only in Matters, 6/28/10).

"BGE must finance imbalances, to the extent they occur, in the administration of its POR program. Therefore, BGE should be compensated in a fashion that, in sum, enables BGE to recover its overall rate of return for its entire business in order to preserve its financial integrity, maintain its credit and attract capital," BGE said. BGE stressed that it would pay refunds to suppliers for any over-recoveries at its rate of return in addition to receiving a rate of return on any under-recoveries.

BGE noted that in its demand response and energy efficiency programs, the Commission approved recovery of carrying costs at a rate equal to BGE's authorized rate of return, and said similar treatment is warranted for the gas POR program. "This is appropriate because a utility company does not finance its businesses by assigning differing portions of debt, equity and preference stock to some assets and programs, but not others," BGE said.

The PSC's June 25 Order approved the creation of a reconciliation component with interest, but rejected recording imbalances as a regulatory asset or regulatory liability.

BGE called the denial of a regulatory asset or regulatory liability inconsistent with the Commission's electric POR order which allows the deferral of the imbalance for electric POR via a regulatory asset.

BGE further called deferring any gas POR imbalance as a regulatory asset or liability consistent with generally accepted accounting principles.

"Without this deferral, over or under billings of discount revenues will create artificial volatility within BGE's income statement, with increases or decreases to operating income that will be offset in the following year when the reconciliation component of the discount rate is established," BGE explained.

PUCT Staff Discussion Document Includes Earlier Dates for Filing TCRF Changes

PUCT Staff have posted a proposal for discussion concerning changes to the process for twice annual updates to the Transmission Cost Recovery Factor (TCRF) charged to REPs, for discussion at a July 29 workshop (37909, Matters, 3/26/10).

The proposal for discussion includes earlier dates by which distribution service providers would have to file to seek changes in the TCRF.

Under the proposal for discussion, for the March 1 TCRF update, the distribution service provider would be required to file a request to update its TCRF no later than December 1, and for the September 1 update, no later than June 1. Under the proposal for publication, these filing deadlines were January 15 and July 18, respectively.

With the earlier deadlines, the proposal for discussion removes language providing that if the Commission approves a TCRF that is different from the rate filed by the distribution service provider, the as-filed rate would be charged to provide REPs with rate certainty, with any reconciliation versus the approved rate addressed in the next TCRF filing.

Instead, the proposal for discussion states that within 45 days after a distribution service provider files a request to update its TCRF, the Commission shall issue an order establishing the amount of the revised TCRF and, "to facilitate rate certainty for retail electric providers, suspend the effective date of the revised TCRF as necessary so that the new TCRF charges will take effect on March 1 or September 1."

The proposal for discussion also holds that distribution service providers shall file to update the TCRF twice per year effective every March 1 and September 1, rather than providing distribution service providers with the discretion to seek an interim change in the TCRF up to twice annually.

Arizona Co-ops Oppose Sempra Energy Solutions' Procedural Motion on Direct Access

Several Arizona cooperatives have opposed Sempra Energy Solutions' (SES) request to use its pending Arizona electric supplier CC&N application as vehicle to evaluate retail electric competition issues (E-00000A-02-0051).

As only reported in *Matters*, Sempra Energy Solutions had recommended to the Arizona Corporation Commission that the Commission use the pending CC&N application as a forum to address retail market issues since it provides a tangible context for considering and resolving various policies (Only in Matters, 7/15/10).

The cooperatives called addressing the rules formulation process through an evidentiary hearing involving a single applicant unprecedented.

"Effectively, it would turn the SES CC&N hearing into a much larger, unfocused and generic policy-making docket on retail electric competition issues rather than using the traditional, non-hearing process for addressing such broad policy issues. Hiring experts, filing testimony and spending weeks not only to debate the myriad policy issues associated with retail electric competition, but, as well, to guess at what subsets of issues are even of interest to the Commission would be unprecedented, cumbersome, time consuming and expensive," the cooperatives said.

"In its rush to serve profitable commercial and industrial customers, the SES Procedural Proposal puts the cart before the horse. If it wants to return to this subject, the Commission should first decide through the traditional process whether this is the time to address retail electric competition and, if it is, to seek input on what model, if any, might best serve the public's interest," the cooperatives added.

Briefly:

Amigo Energy Files Intent to Use Customer-Premise Prepayment Device or System

Amigo Energy (the trade name of Fulcrum Retail Energy LLC) submitted a notice of intent at the PUCT to offer prepaid service using a customer-premise prepayment device or system. Amigo submitted terms of service for the product, which will rely on the usage data from advanced meters, under confidential seal. As only noted in *Matters*, Amigo affiliate Tara Energy recently filed a similar notice of intent to offer a prepaid product relying on a prepayment device or system (Only in Matters, 7/5/10).

USPowerGen Initiates Strategic Review for Sale of Astoria Generating Assets

US Power Generating Company announced yesterday that it has initiated of a strategic review process to solicit a sale or merger transaction for its subsidiary, Astoria Generating Company Holdings LLC, which owns 20% of the generating capacity in New York City with approximately 2,300 megawatts of competitive generation. The portfolio consists of dual fuel capable natural gas and oil-fired steam units and combustion turbines. USPowerGen has retained Goldman, Sachs & Co. to act as its exclusive financial advisor in connection with the strategic review. This spring, US Power Generating Company began a strategic review of its Boston Generating subsidiary, which owns 3,000 MW (Matters, 4/13/10). Standard & Poor's Ratings recently lowered its debt ratings on Boston Generating and speculated that Boston Generating would seek bankruptcy protection in the third quarter.

Hess Opposes Use of Ness Energy Services Name due to Confusion

Hess has moved to intervene in the application of Ness Energy Services, LLC for a Connecticut electric aggregator certificate, arguing that Ness' proposed service as an aggregator violates the Connecticut Unfair Trade Practices Act because Ness' name infringes on the "Hess" trade name and trademark. Under the "likelihood of confusion" standard, Hess said that its mark has been infringed, because an aggregator trading as Ness will cause the consuming public to likely be confused or mistaken as to the source of a product or service sold. Ness Energy Services derives its name from its principal Erik Ness, head of the Energy & Utility practice at Shipman & Goodwin LLP (Only in Matters, 7/13/10).

ALJ Accelerates Illinois Electric Consumer Protection Rulemaking

An Illinois Commerce Commission ALJ has advanced the procedural schedule for the Part 412 rulemaking, concerning consumer protections for electric customers, with a proposed order now scheduled to be released September 17, about a month earlier than as was provided in a procedural schedule filed in early July. Briefs on exception are now due September 29, 2010 (09-0592, Only in Matters, 4/22/10).

Taylorville Energy Center Receives Federal Tax Credit

The Tenaska Taylorville Energy Center has received a $417 million tax credit from the U.S. Department of Energy to support the plant being developed under Illinois' clean coal law. The STOP Coalition, which includes retail suppliers and various commercial and industrial end users, countered that the $417 million tax credit is dwarfed by the $8.76 billion in above market energy prices the plant would require customers to pay.

Champion Energy Services Announces Contract Wins

Champion Energy Services announced that it recently won separate electric supply agreements to serve Landry's Restaurants' 134 ERCOT locations (36 months), as well as The Briar Club (24 months), a Houston member-owned recreational club. Pricing was not disclosed.

Branded ... *from 1*

Texas Longhorns Energy will be officially launched in August, at which time pricing will be announced. The product will be a 100% renewable plan with the rate comparable with other renewable offerings in ERCOT.

Champion will pay a fee to Branded Retail Energy for new enrollments. Branded's relationship with UT is a hybrid licensing/sponsorship agreement, developed in concert with UT's marketing and sponsorship consultant IMG College. UT will also receive fees for customer enrollments.

Customers enrolling with Champion through Texas Longhorns Energy will receive various UT-related rewards, discounts, incentives, and other merchandise, facilitated by IMG College.

Texas Longhorns Energy said that customers living in areas of Texas not open to retail choice will have an opportunity to support UT through Texas Longhorns Energy, though details were not announced. UT said that funding received from the affinity program will be directed to sustainability initiatives, and one of the most obvious services that Texas Longhorns Energy could make available to customers in non-choice areas such as Austin would be REC and/or carbon offsets.

There are about 280,000 UT alumni in Texas, and 450,000 nationally.

Helms, who leads Branded Retail Energy, is also a principal at brokers GSE Consulting and Great Lakes Energy, though they are legally distinct from Branded Retail Energy with different ownership.

DCRF ... *from 1*

management systems.

CenterPoint Energy sought the inclusion of even more costs in the DCRF, such as (1) changes in the level of non-distribution capital investment, (2) changes in retail operations and maintenance (O&M) expenses, (3) changes in retail depreciation and amortization expenses, and (4) changes in taxes associated with these additional cost components.

"Broadening Rule 25.243 to include these changes in additional costs would promote a number of regulatory and policy initiatives that benefit customers, such as system hardening, electric vehicle deployment, energy efficiency and conservation, vegetation management, and implementation of the intelligent grid," CenterPoint said.

The REP Group, however, argued that the proposed DCRF would result in a negative customer experience, particularly for customers on fixed price contracts. The REP Group includes the Alliance for Retail Markets, Texas Energy Association for Marketers, Reliant Energy, and the Direct Energy companies.

"For REPs participating in the ERCOT Market, the addition of a DCRF will likely lead to six additional rate adjustments per year. The REP Group is already concerned by the growing frequency of rate adjustments made by utilities since the opening of the competitive retail market. The continued addition of new DSP charges such as transition charges, advanced metering surcharges, EECRFs [energy efficiency cost recovery factor], system restoration charges, and this proposed DCRF charge, as well as the semiannual adjustment to the TCRF [transmission cost recovery factor] along with future rate cases continue to increase the frequency of changes to the DSP costs," the REP Group said.

REPs noted that during 2009 a customer on a fixed price product in either CenterPoint or Oncor could have seen price changes in eight separate billing cycles due to the implementation of various modified distribution rate elements.

"Multiple DSP price changes across multiple months results in a poor customer experience, especially for customers on Fixed Price Products. TDU rate changes are outside the control of REPs, yet it is the REPs that must bear the brunt of customer complaints," the REP Group said.

"Additionally, implementing these ever-changing DSP rates increases the administrative burden, and therefore cost, to REPs which in turn increases the cost to customers. Therefore, in the REPs' view, to add yet another rate change mechanism, through creation of a DCRF, is a step in the wrong direction. Retail customers will not benefit from the proposed DCRF," the REPs added.

CenterPoint countered that both REPs and retail customers would benefit from the DCRF rule.

"[A] DCRF will benefit retail electric providers ('REPs') by providing more predictable changes in costs. Under the proposed rule, REPs will be able to predict that distribution costs are likely to change on March 1 or September 1 of each year, and they can prepare their contracts with retail customers accordingly," CenterPoint said.

However, REPs said that merely knowing the effective date of a rate change is not helpful, and explained that REPs must know the amount of the rate change in advance. Thus, if the Commission did adopt a DCRF, REPs recommended language that would require that the rate to be put in effect shall be specified by the Commission at least 45 days before March 1 or September 1. The REPs' language further clarifies that if the DCRF is not approved 45 days in advance of March 1 or September 1, no change is implemented and the Commission may consider the distribution facility costs during the next DCRF revision period.

CenterPoint argued that retail customers will benefit from the DCRF since it will reduce rate case expenses and help utilities avoid a deterioration of their credit quality. Additionally, CenterPoint said that the DCRF will provide for more gradual rate changes and the avoidance of "rate shock" in rising-cost environments, while leading to faster implementation of rate reductions in falling-cost environments.

REPs countered that since the DCRF excludes the factors under PURA §36.052 that are typically considered in setting a rate of return, such as service quality, distribution service providers will have a reduced incentive to focus on improvements in service quality and system performance under the DCRF, as opposed to a full rate case where such factors are considered.

"In addition, by having the ability to recover costs through both a TCRF and DCRF, the utility will have little inducement to file for a full rate case. It may be several years before the utility files which could lead to reduced electric service reliability for long periods of time," REPs said.

REPs cited several statutory arguments against the DCRF, contending that the PUCT has neither express nor implied power to implement the streamlined ratemaking.

The "piecemeal" adjustments permitted under the DCRF are contrary to PURA §36.003 and also violate the prohibition on automatic pass-throughs, REPs said.

"Given that distribution costs constitute approximately 75 percent of an electric utility's overall cost of service, the proposed DCRF would essentially circumvent the statute's general rate case construct. An electric utility could increase its rates by approximately 'x percent' without the Commission or interested parties having the opportunity to test whether offsetting factors permitted the electric utility to earn its authorized rate of return, thereby obviating the need for any rate change," REPs added.

REPs noted that unlike the TCRF or other approved single-issue riders, which explicitly allow for "timely" recovery of costs thus giving rise to the rider, nothing in PURA suggests the Commission may grant the timely recovery of distribution costs.

Texas Industrial Energy Consumers and several cities with original jurisdiction and state agencies made similar statutory arguments in opposition to the DCRF.

TIEC further argued that because the DCRF is designed to recover distribution-related costs, customer classes that take service at transmission-level voltage and do not cause incremental distribution investment should not be charged a DCRF rate. "This exemption should also include customers who take service directly from a substation that is connected to the transmission system. These customers receive power at distribution voltage immediately after that voltage has been stepped down by the transformers in place in the substation, but they do not use any other portion of the distribution system (e.g., distribution poles and wires)," TIEC said.

Oncor argued that interest payable to customers under the reconciliation of the DCRF should be paid at the Commission-prescribed rate of interest applicable to overcharges, instead of at the utility's cost of capital as proposed.

CenterPoint and the AEP companies asked that the rule shorten the proposed 185-day timeline for approving DCRF updates to 135 days. Oncor suggested a 90-day review. The AEP Companies also believe that DCRF updates should be eligible for administrative approval.