

# Energy Choice

# Matters

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## **REP of Record Receives Greater Control in Revised PUCT Staff Meter Tampering Draft**

PUCT Staff has issued a revised draft proposal for publication to address meter tampering, with the updated draft allowing the current REP of record to determine whether a Move-In request for an ESI ID flagged for meter tampering is legitimate and may proceed (37291).

As only reported in *Matters*, Staff's draft would impose a hold preventing both switches and Move-Ins for ESI IDs flagged for tampering by the TDU (Only in Matters, 12/11/09). Move-Ins would be allowed if the customer provides adequate evidence that the Move-In is legitimate and that the customer is new to the premise.

However, Staff's revised draft changes how a Move-In hold could be lifted. Originally, the REP submitting the Move-In would be responsible for gathering adequate evidence of the legitimacy of the Move-In (such as a lease, closing documents, etc.). Upon notification from the new REP that adequate evidence had been obtained, Staff's original proposal required the TDU to execute the Move-In.

Under Staff's revised draft, once the new REP obtains adequate evidence, it must submit the evidence to the TDU, who in turn is required to share it with the current REP of record. Per Staff's new draft, the current REP of record is empowered to review the evidence and, "shall make a determination of whether the switch-hold should be removed," within 24 hours of receipt of the evidence. If adequate evidence is not received, the current REP of record may deny the Move-In

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## **Nelson: Final Renewal Notice Rule Omits Part of Small C&I Exit Fee Waiver Period**

PUCT Commissioner Donna Nelson filed a memo to correct language included in final amendments to Subst. R. §25.475, regarding fixed price renewal notices, because the filed language does not provide for a 14-day termination fee waiver period for small commercial customers under all circumstances, though that was the Commission's intent in approving the amendments at its Nov. 20 open meeting (37214).

The issue specifically relates to REPs defining the contract end date by reference to the first meter read on or after a specific calendar date (Only in Matters, 11/23/09). For REPs providing an actual, specific date for contract expiration, the final language reflects the Commission's finding that termination fees for residential and small commercial customers should be waived 14 days prior to contract expiration (which had been the standard under prior changes to §25.475).

For REPs defining the contract end date by reference to the first meter read on or after a specific calendar date, the Commission intended to apply different waiver periods to different customer classes. During the open meeting, Commissioners agreed that for residential customers, the waiver period for contracts without a specific end date should extend to the point at which the customer receives the renewal notice (some 30-60 days ahead of expiration). For small commercial customers with an estimated end date, the Commission intended to keep the current 14-day termination fee waiver period.

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## N.Y. PSC Maintains Central Procurement Model for RPS

The New York PSC adopted a series of revisions to its Renewable Portfolio Standard yesterday, but maintained the central procurement model currently in use (03-E-0188). PSC Chairman Garry Brown said that a final order would likely be published around January 1, 2010.

As recommended by Staff (Only in Matters, 10/28/09), the Commission declined to transition the RPS to a model where individual load serving entities are responsible for compliance. Such a move was favored by certain generators, but opposed by retail suppliers.

The Commission increased the Renewable Portfolio Standard to 30% of electricity usage, from 25%, which equates to 10.4 million MWh, accounting for reduced usage from energy efficiency measures. The PSC also extended the date for reaching the RPS to 2015 from 2013.

The PSC authorized a fifth Main Tier RPS solicitation in the amount of \$200 million, to be conducted as expeditiously as practicable, to take advantage of expiring federal tax incentives and market conditions.

The Commission recognized the potential benefits of allowing bidders to use commodity hedges or related contract options in response to RPS solicitations, and directed Staff, in collaboration with interested parties, to explore the need for such arrangements or other alternatives to help control the costs and minimize the bill impacts of the RPS program. Staff is to report back to the Commission in three months.

Staff said that such hedges could encourage renewable resource financing, and said that the Commission should not conduct another Main Tier solicitation (aside from the fifth solicitation mentioned above) until it resolves the question of hedges.

In a previous Staff report, Staff noted that allowing developers to make bids that act as hedges to offset future increases in wholesale commodity prices could be accomplished in a variety of ways ranging from a contract for differences to a solicitation bid that establishes a maximum commodity price. "The option value of such mechanisms, which is created by the potential for wide swings in commodity prices,

could at some point in the future easily exceed the projected bill impacts," Staff has said. In order to realize the benefits produced by these mechanisms, Staff noted that it is probably necessary to develop an RPS cost recovery mechanism that varies by month.

The Commission also allocated up to \$30 million annually for RPS solicitations targeted downstate, in order to achieve greater geographic parity between sources of RPS funding and resource siting (which has largely been upstate to date). The downstate carve-out would solicit solar photovoltaic (PV), anaerobic digester, and fuel cell projects. Staff is to report back in three months with an implementation plan for the carve-out, including recommended solicitation methods.

## NYISO, NiMo Say Maintaining Final Invoices Is Consistent With Filed Rate Doctrine

The New York ISO did not violate its filed rate doctrine in allocating inaccurate costs of Unaccounted for Energy (UFE) to NYSEG based on metering errors by NYSEG and Niagara Mohawk, as FERC Staff has claimed, because tariff provisions requiring use of actual data must be read in concert with tariff provisions requiring the finality of settlements, NYISO and NiMo said in reply briefs at FERC (EL09-26).

As first reported by *Matters* last year, the case concerns National Grid and NYSEG metering errors dating back to 1999 which resulted in an overstatement in NYSEG's subzone UFE and an understatement in NiMo's subzone UFE, resulting in loads in NYSEG's territory overpaying by about \$20 million (Only in Matters, 12/31/08). A settlement among several parties would prescribe the methodology for any potential rebilling of the affected subzones, leaving to litigation the question of whether rebilling should occur (Matters, 10/7/09).

In an initial brief, FERC Staff argued that rebilling is required, because the use of the inaccurate data constitutes a violation of NYISO's filed rate, since the tariff requires invoices to be based on actual usage.

NYISO and NiMo rebutted this argument in

reply briefs by contending that the tariff provisions cited by Staff must be read in concert with a provision relating to settlement finality. NYISO noted that Staff relies on Section 7.2.A of the NYISO tariff, which sets forth the requirements for the NYISO to revise estimated settlement data once actual data becomes available. Staff's argument is "flawed," NYISO said, because Staff fails to recognize that the settlement provisions in Section 7.4 of the tariff are also part of the NYISO's filed rate.

"Trial Staff's reading of Section 7.2.A of the Services Tariff ignores and is in conflict with the requirements set forth in Section 7.4 of the Services Tariff, which establish explicit time periods for the review, challenge, correction, and finalization of customer invoices. Specifically, Trial Staff's interpretation of the NYISO's filed rate does not attempt to reconcile the requirements for the finalization of customer invoices set forth in Section 7.4 with the sometimes competing requirements set forth in Section 7.2 to update estimates in customer settlements with actual information as it becomes available," NYISO said.

NYISO argued that in two cases decided this year, the Commission has found that NYISO's settlement provisions must be read together with the NYISO's other tariff provisions to give proper effect to both provisions.

In a prior decision which rejected NYSEG's petition for NYISO to revise finalized invoices to correct inaccurate congestion relief provided to NYSEG, FERC rejected the argument that those errors violated the filed rate doctrine, since providing financial certainty to customers under tariff sections related to settlement finality, "is fully consistent with the filed rate doctrine." NiMo also cited this case in its reply brief.

"Trial Staff urges the Commission to adopt an interpretation of the NYISO's filed rate that fails to give proper effect to Section 7.4 of the Services Tariff and would effectively nullify the finality provisions of the NYISO tariffs," NYISO said.

"Such a nullification of the finality provisions of the NYISO Tariffs would disrupt customers' ability to determine their financial status in the NYISO-administered markets and would, as a result, significantly harm the efficient operation of the NYISO-administered markets," NYISO

added.

NYISO distinguished the current case from two cases cited by Staff and NYSEG in their briefs, in which FERC required an RTO to issue refunds to correct an RTO error causing incorrect settlements. In the cited cases, NYISO argued, "the relevant RTO's tariffs did not contain explicit time periods for the resolution of the errors in customer invoices similar to those found in the NYISO tariffs, which the Commission indicated was a relevant factor in its determination."

FERC Staff had noted that unlike PJM's finality provisions, the NYISO tariff expressly provides that settlements may be adjusted after the final deadline, upon the order of FERC or a court. However, NYISO said that this exception merely recognizes that parties retain the right to seek redress from the Commission in accordance with the Federal Power Act, and does not weaken the NYISO's finality provision compared to PJM, noting another section of PJM's tariff contains similar language recognizing such rights under the Federal Power Act.

As previously reported, the Retail Energy Supply Association and ConEdison Solutions oppose rebilling, citing the harm rebilling for a 10-year period would impose on competitive suppliers, who do not have captive customers and guaranteed cost recovery for prudent expenses.

NYSEG argued that FERC need not consider how LSEs previously undercharged for UFE will "cover" any amounts to be refunded under rebilling. NYSEG noted that, "[c]ertain of the entities undercharged as a result of the meter errors ask FERC not to use the Refund Methodology, because if they are responsible for any part of the refund amounts, they will not be able to pass those amounts through to their retail customers."

"Presumably, this is because there is no pass through in these entities' retail contracts. Therefore, their retail customers also did not receive a pass through the 'savings' or 'windfall' that these LSEs experienced earlier, however inadvertently, at NYSEG's expense when these LSEs did not pay for UFE for which they were responsible for under the tariff," NYSEG said.

"Also, those entities could provide for the

pass through for this type of refund in their retail contracts but have decided not to, instead taking the risk of a regulatory charge on themselves. This could make these sellers more attractive to customers. NYSEG (and its customers) should not bear the cost of these entities choosing to tailor their contracts in such a way to make them more competitive as retail providers," NYSEG argued.

FERC Staff likewise dismissed retail suppliers' concerns.

"[A]nother way of viewing these same facts is that retail LSEs drafted contracts that allowed them to retain all of the potential upside of any refunds granted under Section 7.4 but failed to anticipate or protect against any downside from this provision. In this light, Con Ed's [Staff's abbreviation for ConEdison Solutions] concerns appear more like a failure to plan on its part rather than a significant financial harm worthy of Commission protection. In any event, these general allegations establish no harm specific to Con Ed," Staff said.

"We also know, because RESA has told us, that knowing that the ESCOs themselves could not access meter data to determine whether they were billed properly under the NYISO tariff, the ESCOs nonetheless decided to participate in this market and assume the risk to pay whatever the NYISO billed. Thus, RESA's problem appears to emanate from a failure to plan for errors such as metering errors, rather than a significant financial harm incurred by re-invoicing here," Staff added.

"From the above, it appears that the Parties opposing rebilling are asking the Commission to shield them from any risk of participating in the NYISO markets generally rather than remedying any actual wrong here. Moreover, it appears that their real concern is with precedent rather than any actual harm that would be caused by rebilling here. Given other customers' rights and expectations under Section 7.4, if retail marketers need more finality, in general, they should ask the NYISO or the Commission to change Section 7.4, on a going forward basis, to remove the right to a Commission review," Staff said.

"[T]he Parties opposing re-invoicing did not even allege that their individual ESCO members share the problems with rebilling that they allege

the ESCOs have generally. Rather, their sole proof is based on explanations of the way ESCOs do business generally, without showing that any one of their companies actually does business that way. There is simply no causal nexus between their general industry concerns and significant financial harm to their companies," Staff noted.

## **PUCO Approves Update to Duke Energy Bypassable Rider PTC-AAC**

The Public Utilities Commission of Ohio approved a stipulation setting Duke Energy's bypassable Rider PTC-AAC (annually adjustable component).

Rider PTC-AAC recovers costs associated with environmental compliance, changes in taxes, Homeland Security, and fuel flexibility (Only in Matters, 9/2/09).

As part of the stipulation, Duke will move environmental reagent costs from Rider PTC-AAC to bypassable Rider PTC-FPP (fuel and purchased power), which is reconciled quarterly rather than annually, effective January 2010. The stipulation holds that Rider PTC-AAC revenues shall be determined with reference to Rider SRA-CD (the system resource adequacy - capacity dedication rider), with said Rider PTC-AAC revenues being calculated as a percentage of Rider SRA-CD revenues.

New charges for Rider PTC-AAC are listed below for select classes. Additional classes may be found in Case 09-770-EL-UNC.

### **Duke PTC-AAC Charge (per unit)**

#### **Rate RS, Residential Service**

Summer, First 1000 kWh	\$0.008966
Summer, Additional kWh	\$0.011360
Winter, First 1000 kWh	\$0.008966
Winter, Additional kWh	\$0.003382

#### **Rate DS, Service at Secondary Distribution Voltage**

First 1000 kW	\$1.553700
Additional kW	\$1.229000
Billing Demand Times 300	\$0.003974
Additional kWh	\$0.003301

**Duke PTC-AAC Charge (per unit)**

Rate DM, Secondary Distribution Service, Small	
Summer, First 2800 kWh	\$0.011884
Summer, Next 3200 kWh	\$0.003034
Summer, Additional kWh	\$0.001322
Winter, First 2800 kWh	\$0.009432
Winter, Next 3200 kWh	\$0.003037
Winter, Additional kWh	\$0.001255

**Rate DP, Service at Primary Distribution Voltage**

First 1000 kW	\$1.403200
Additional kW	\$1.106900
Billing Demand Times 300	\$0.004474
Additional kWh	\$0.003588

**Rate TS, Service at Transmission Voltage**

First 50,000 kVA	\$1.701100
Additional kVA	\$1.226300
Billing Demand Times 300	\$0.002922
Additional kWh	\$0.003325

## ERCOT Non-AREP Residential Load Surpasses 51%

Some 51% of residential load in ERCOT has switched away from the native affiliated REP as of October 31, 2009, ERCOT said in a monthly market report. ERCOT said that October was the first time residential load migration from the affiliated REP had surpassed 50%. On an ESI ID basis, migration from the affiliated REP is 48%.

During an annual membership meeting, ERCOT membership approved ERCOT's 2010 Board of Directors, including the following new members:

- Calvin Crowder, American Electric Power, investor-owned utility segment
- Mark Dreyfus, Austin Energy, municipal segment
- Jean Ryall, Constellation Energy, independent power marketer segment
- Marcie Zlotnik, StarTex Power, independent retail electric provider segment

New alternates include Brandon Whittle, DB Energy Trading, independent power marketer segment; Scott Prochazka, CenterPoint Energy Houston Electric, investor-owned utility segment; and Ray Schwertner, Garland Power & Light, municipal segment.

The ERCOT board approved Technical

Advisory Committee membership for 2010. In the independent retail electric providers section, TAC members are Rob Bevill (Green Mountain), Read Comstock (Direct Energy), William Lewis (Cirro), and Steve Madden (StarTex Power).

The board also approved Protocol Revision Request 824 (Primary Frequency Response from Wind-powered Generation Resources), which adds a requirement for wind generator control systems to be programmed to respond to frequency deviations by controlling wind generation resource real power output in a way that is similar to governor response for conventional steam generators (Only in Matters, 7/22/09).

## **Briefly:**

### **NOAC Extends Contract with FirstEnergy Solutions**

The Northwest Ohio Aggregation Coalition has extended its electric supply contract with FirstEnergy Solutions for its governmental aggregation for an additional six years until May 2017. FirstEnergy Solutions will make a one-time grant to each of the nine NOAC communities, totaling nearly \$5.4 million, as part of the agreement. The NOAC aggregation includes approximately 200,000 customers. NOAC's original pricing will continue through May 2011. Starting in June 2011, residential customers will receive a price 6% off the applicable Standard Service Offer Price to Compare, and small businesses will receive a price 4% off the applicable Price to Compare through May 2017.

### **Conn. Draft Would Grant Electric License to North American Power and Gas**

A draft Connecticut DPUC decision would grant North American Power and Gas, LLC an electric supplier license to serve residential, commercial and industrial customers (Only in Matters, 10/19/09).

### **Mich. PSC Approves Glacial Energy Renewable Plan**

The Michigan PSC approved Glacial Energy's renewable energy compliance plan, required of all alternative electric suppliers. Glacial filed the plan in October once it began serving Michigan

load (it had previously received a waiver from the requirement to file a plan). The plan merely affirms that Glacial shall meet applicable renewable standards through renewable energy credits, renewable energy, or a combination of both.

### **Mich. PSC Approves Consumers Energy GCR Reconciliation**

The Michigan PSC approved Consumers Energy's natural gas cost recovery reconciliation for the 12-month period ending March 31, 2008, authorizing Consumers to roll into its 2008-2009 gas cost recovery plan a net over-recovery of \$16.795 million.

### **NextEra Completes Purchase of Babcock & Brown Wind Assets**

NextEra Energy Resources has completed its previously reported acquisition of three operating wind projects with a combined capacity of 184.5 MW from Babcock & Brown (Matters, 10/2/09).

### **Shenyang Power, U.S. Renewable Energy Group, Cielo Wind Sign Definitive Agreement for Texas Wind Project**

Shenyang Power Group, the U.S. Renewable Energy Group, and Cielo Wind Power LP have entered into a definitive agreement for their ownership of a project company to develop a 600 MW wind farm in West Texas, confirming an earlier agreement.

### **Dayton Power to Install Solar Array**

Dayton Power and Light plans to construct a 1.1 MW solar array near its Yankee substation in Montgomery County, Ohio. The project is expected to cost approximately \$5 million and be on-line in March 2010.

## ***Meter Tampering ... from 1***

request, and the switch-hold will remain in effect, governed by a timeline set elsewhere in Staff's proposal. If adequate evidence is received, the current REP of record "shall" grant the Move-In request, at which point the new REP shall resubmit the Move-In transaction, and the TDU shall complete the Move-In.

Although adequate evidence is not strictly

defined in Staff's proposal, the draft holds that, "Adequate evidence may include a copy of a signed lease, closing documents, or a certificate of occupancy in the name of the retail applicant for electric service, and shall include a signed statement from the applicant stating that the applicant is a new occupant of the premises and is not associated with the preceding occupant."

Staff's revised proposal, which empowers the REP of record to make a determination on removing the switch-hold upon receipt of evidence, does not address any disputes which may arise from interpreting whether evidence submitted by the new REP meets the rule's provisions for adequate evidence.

Staff's updated draft also adds a question to be asked of stakeholders in the proposal for publication, requesting comments on whether, and if so how, the rule should address a switch-hold in the case of a mass transition due to a Provider Of Last Resort event.

## ***Termination Fees ... from 1***

However, the final language excludes this 14-day waiver period for small commercial customers with estimated end dates. Specifically, the final rule provides that the renewal notice must include, "[i]f the REP defined the contract end date by reference to the first meter read on or after a specific calendar date, a statement in bold lettering no smaller than 12 point font that no termination penalty shall apply to residential customers after receipt of the contract expiration notice." No provision is made in that subsection regarding a termination fee waiver period for small commercial customers, and because of how the rule was amended, a broader statement regarding a 14-day waiver period for all customers was removed since the issue was broken into subsections based on how the contract end date was determined.

Nelson asked that the relevant subsection be revised to read, "If the REP defined the contract end date by reference to the first meter read on or after a specific calendar date, a statement in bold lettering no smaller than 12 point font that no termination penalty shall apply to residential customers after receipt of the contract expiration notice, or that no termination penalty shall apply to small commercial customers for 14 days prior to the contract end date."