Energy Choice
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Christy Favors Ban on all Pa. Door-to-Door Solicitations for Competitive Energy Supply

The Pennsylvania PUC, "should ban the practice of door-to-door sales of gas and electricity by unlicensed and licensed individuals and entities," Vice Chairman Tyrone Christy said in a sharp dissent of an order granting Just Energy gas and electric supply licenses (see related story), which evolved into a discussion on marketing practices in general.

During a Commission meeting yesterday, Christy registered his concerns with a recent secretarial letter issued by the PUC which informed electric suppliers that marketing services agents under contract to a supplier for solicitations and similar services do not require their own supplier license (Only in Matters, 12/14/09). A similar provision exempting gas marketing agents from licensing when under contract is codified in PUC regulations, but no such provision is codified in the electric rules.

Christy noted that the Commission will not be reviewing marketing agents for fitness, will have no record of their name or address, and will have no ability to monitor their activities. Moreover, the Commission will have no recourse against bad acting marketing agents even when their identities are known. While the secretarial letter squarely makes energy suppliers responsible for the actions of their agents, Christy said that enforcing this provision may be difficult given the PUC's limited jurisdiction over competitive suppliers.

"The potential for deceptive sales practices that is created by door to door sales is just too great,"

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FERC Approves Petition of ATSI to Leave MISO, Join PJM

FERC conditionally approved American Transmission Systems, Inc.'s petition to withdraw from the Midwest ISO and join PJM, accepting the proposed capacity integration plan but rejecting ATSI's request for waiver of certain PJM regional transmission expansion planning costs. The ATSI footprint includes Penn Power, Cleveland Electric Illuminating, Ohio Edison and Toledo Edison, all FirstEnergy companies (ER09-1589 et. al.).

Subject to compliance filings, the transition to PJM would take effect June 1, 2011. Aside from FirstEnergy Solutions' more than 10,000 MW in the ATSI zone that will have access to the Reliability Pricing Model capacity market, an additional 2,150 MW of unaffiliated generation located in ATSI (owned by RRI Energy, International Power, and others) will also benefit from FirstEnergy's decision (Matters, 8/18/09).

FERC approved, with clarifications, ATSI's proposed use of an out-of-time Fixed Resource Requirement (FRR) integration plan to procure capacity requirements for associated loads for the 2011-12 and 2012-13 delivery years, similar to the process employed at Duquesne Light.

Under the approved FRR plan, the ATSI utilities will obtain through integration auctions firm capacity from qualified capacity resources in an amount equal to the forecast pool requirements of the ATSI zone for the 2011-12 and 2012-13 delivery years. LSEs may opt out upon meeting the requirements of the PJM Reliability Assurance Agreement, and such load will not be included in the

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MXenergy Promoting PPL Rate With and Without GRT

Despite calls for suppliers to provide customers with simple and straightforward information, MXenergy began promoting a PPL residential "energy rate" of 8.99¢/kWh yesterday, though the rate excludes the gross receipts tax. When including the GRT, MXenergy's rate is 9.52¢/kWh.

Specifically, a PPL customer wishing to enroll with MXenergy online will see a price listed as "Rate per kWh" of $0.0899, in bold. Two columns over in a chart, under the heading "Features & Benefits," MXenergy discloses, in non-bold font of about the same size, that "Price to compare with GRT $.952/kWh [sic]," which probably does not mean much to most first time residential shoppers. On a banner ad at the bottom of the same enrollment webpage, bold text urges customers to lock-in an "energy rate" of "$.899¢/kWh" [sic]. In text that is about half the size of the "$.899¢/kWh" [sic], MXenergy discloses that the energy rate "Does not include taxes or delivery. Price to compare with GRT is $.952¢/kWh [sic]."

MXenergy's rate is fixed through December 2010 with no cancellation fee.

It is not entirely clear whether all other suppliers' quotes include the gross receipts tax, though on the Office of Consumer Advocate website, MXenergy's rate is listed as 9.52¢/kWh and other suppliers' rates are identical to their announced rates, suggesting that they include the tax as quoted.

Direct Energy's publicly announced rates explicitly include the gross receipts tax, and its website does not list any rate which does not include the gross receipts tax.

In an any event, given MXenergy's call for suppliers to adopt a customer bill of rights, even if there are prices from other suppliers quoted in the market that do not include the tax, MXenergy has set a higher bar for itself by stating that customers have the, "right to know what they're buying." While the all-in 9.52¢/kWh rate is by no means hidden, it is not prominent, and giving customers two different rates is undoubtedly confusing (some press reports are labeling MXenergy's rate the lowest in the market, though it is not when the tax is included). MXenergy also praised a proposed Ontario rule which would require a "plain language" disclosure statement (see related story).

Just Energy Receives Pennsylvania Gas, Electric Licenses With Conditions

The Pennsylvania PUC, in 4-1 decisions, granted Just Energy electric and natural gas supply licenses on rehearing, with several conditions. Final orders were not available yesterday.

Vice Chairman Tyrone Christy issued a dissenting statement, though it was not available yesterday. During the Commission's meeting, Christy cited the high number of complaints against Just Energy affiliates in Illinois, New York and Texas, and said that given this track record, the Commission should affirm its earlier denial of the licenses. "We would be better off by not certifying this company for service in Pennsylvania," Christy said.

The PUC had originally denied both licenses due to concerns about complaints and litigation in other states (Only in Matters, 11/12/09). In a rehearing request, Just Energy said that the Commission ignored various remedial measures it has already implemented, and further committed to additional measures, such as a $50 cap on termination fees for door-to-door contracts, and a commitment to use only employees, and not independent contractors, for door-to-door sales (See exclusive coverage in Matters, 11/24/09, which outlines additional conditions).

Absent a written order, it is not clear if the PUC imposed any other conditions on licensing that had not been previously proposed by Just Energy. However, during yesterday's meeting, Chairman James Cawley characterized the conditions as "unprecedented" for a supplier license, and said that the Commission will monitor Just Energy like it has monitored no other supplier before. Cawley confirmed that Just Energy will only be allowed to use employees for door-to-door sales, and not third party contractors. At the first indication of trouble, Just Energy's license will not remain issued for very long, Cawley said.

Cawley added that the conditions resulted from "intense" negotiations between Just Energy and Staff, and stressed that the PUC's actions show that the Commission does not simply rubber stamp applications. Cawley said that the initial denials caused great consternation to Just Energy, which had been planning on starting Pennsylvania sales to drive growth.

Sharyland Affiliate to Purchase Cap Rock Energy

Hunt Transmission Services has entered into an agreement to purchase Cap Rock Energy and its subsidiary, NewCorp Resources Electric Cooperative, from Continental Energy Systems for $221 million. Hunt Transmission Services is an affiliate of Sharyland Utilities.

Sharyland will acquire and operate all of Cap Rock's electric transmission and distribution assets located in West Texas, Central Texas, and an area northeast of Dallas under the sale, which is subject to PUCT approval.

Cap Rock Energy is partially in ERCOT and partially in the Southwest Power Pool. Originally, it was a cooperative when retail choice began, and was exempted from retail competition. As it transitioned to an investor-owned utility, legislation prohibited the introduction of retail choice to the service area, but that provision has since expired and the PUCT is free to direct a transition to competition as it sees fit. Cap Rock does not own substantial generation, and relies mostly on purchased power to serve its load.

In the summer of 2008, there was a small backlash against the lack of choice at Cap Rock, mostly prompted by higher generation costs and an editorial in the *Midland Reporter-Telegram*. The PUCT established docket 36130 to house customer letters asking the Commission to introduce competition to the region; about a dozen customer letters were filed (Only in Matters, 9/12/08).

Any transition to competition at Cap Rock would be governed by PURA § 39.102(d) & (e). Sharyland is currently open to customer choice.

A representative from Hunt Transmission said that it would not make its determination on whether Cap Rock should begin a transition to competition until after regulatory approvals are granted and the sale closes. At that time, customer feedback will determine if Cap Rock wishes to offer retail choice, Hunt Transmission said. Regulatory applications for approval of the sale are expected to be filed in early 2010.

In 2008, PNM Resources entered an agreement to purchase Cap Rock, but the deal was not consummated.

Calif. Direct Access Subphase Will Consider One-Time Waiver of Switching Rules

The appropriate direct access switching rules to be applied for the long-term in California will be deferred to a subsequent phase of a proceeding implementing an expanded cap on direct access, but an instant subphase of the rulemaking will address whether a one-time waiver of the currently applicable switching rules should be granted, per an Assigned Commissioner's Ruling from PUC President Michael Peevey. Based on stakeholder comments, the ruling updates the scope of the instant subphase, which is meant to focus on setting the level of the cap and establishing a phase-in process starting by April 2010 (R. 07-05-025, Only in Matters, 12/9/09).

Customers who return to the utility from direct access are currently subject to a six-month notice requirement when they leave or return to direct access, and a three-year minimum stay when returning to bundled service. Per Peevey's ruling, the instant subphase will not address permanent changes to such switching rules; however, the subphase will address whether a one-time waiver of the notice and minimum stay requirement should be enacted so that customers currently eligible for direct access, but unable to switch due to the notice and stay rules, are not locked-out of returning to direct access by newly eligible direct access customers filling up the choice cap before their minimum stay expires.

A subsequent phase of the rulemaking will address the switching rules, and whether they should apply to all customers (including customers who have never shopped), not only those who have returned to bundled service from direct access as is currently the case.

Peevey directed that the issue of competitive supplier bonding requirements shall not be addressed in the instant subphase, but shall be addressed "promptly" in a subsequent phase after April 2010.

The instant subphase will address whether direct access customers above 50 kW should still be required to obtain an interval meter to take direct access service, as required currently.

The instant subphase will also consider what procurement-related (such as RPS, capacity, and carbon) issues remain to be addressed so that competitive suppliers and investor-owned utilities have the same obligations, as required by statute. While the instant subphase will identify such areas, specific additional procurement-related requirements will be considered in appropriate proceedings, Peevey said.

Peevey also directed the utilities to file additional information regarding their calculation of the direct access load cap, such as whether the data includes line losses, and whether, as calculated by the Alliance for Retail Energy Markets, San Diego Gas & Electric only has 320 GWh of new direct access load available under its cap. The proposed cap levels as calculated by the utilities were exclusively reported in *Matters* (12/8/09).

MXenergy Hopes to Increase Ontario Marketing with Passage of Customer Protection Rules

MXenergy, "hopes to increase marketing activity," in the Ontario area with the adoption of proposed new marketing rules, the retailer said yesterday. MXenergy did not return a call seeking comment.

As only reported in *Matters*, the Ontario government has proposed a series of new marketing and solicitation rules to "crack down" on competitive suppliers' customer acquisition methods (see full analysis of the rules in exclusive 12/9/09 story).

Briefly, the proposed rules would require a signature on all contracts; limit termination fees and prohibit such fees in certain circumstances; eliminate negative option contract renewals; require a direct comparison between the supplier and utility rate; and allow no-fee cancellations up to 30 days after the first bill, among other things.

MXenergy is currently a licensed retail gas supplier in Ontario. MXenergy is not active in the Ontario electric market.

Smitherman Proposes Priority Issues for PUCT in 2010

PUCT Chairman Barry Smitherman posted in project 23100 his proposed list of priority projects and proceedings before the Commission, and a ranking of such projects. Commissioners will discuss the list and rankings at the next open meeting.

Projects receiving the highest priority ranking include the comprehensive disconnect moratorium proceeding (36131), meter tampering (37291), designation of critical care customers (36622), and the 500 MW non-wind renewable energy goal (35792), among other proceedings. Smitherman also highlighted a docket addressing wholesale market price signals (referencing attempts last year at ERCOT to introduce administrative scarcity pricing), and a proceeding on plug-in electric vehicles, as other priority issues, in a second tier. Smitherman said that he would like to open a project on both issues, though project 37339 was previously opened to partially address some wholesale price signal issues. Although 37339 is mainly related to wind operating issues, Commissioners this summer discussed addressing issues related to quick-start generation needed to firm wind (such as appropriate scarcity price signals) in the docket (see Matters, 8/6/09). There have been no filings in the docket since an August workshop.

Commissioner Kenneth Anderson said that his proposed rulemaking on the transfer of REP certificates should be a priority, which was ranked in the third tier by Smitherman. Anderson cited a number of recent incidents, though he declined to get into specifics, as heightening the need to address REP changes in ownership and control.

Pa. PUC Waives Load Cap for UGI Small Customer Group

The Pennsylvania PUC granted UGI a limited waiver of the load cap applicable to default service suppliers serving Group One customers.

Specifically, the Commission waived the one-third load cap applicable to suppliers serving Group One customers (customers with peak loads less than 100 kW) for the period between January 1, 2010 and May 31, 2011. As only reported in *Matters*, UGI had asked for the waiver because a prior RFP for swing service, comprising of 25% of its small customer requirements for the period starting January 1, 2010, was deemed uncompetitive by the PUC as there was only a single bidder (Only in Matters, 12/14/09). UGI said that two suppliers are near the current one-third load cap for the Group One Class, and said that waiving the cap could create greater participation. Absent a successful RFP for swing service, UGI said that it would have to rely on spot purchases to meet customers' requirements.

The Commission stressed the limited nature of the waiver, and said that should UGI or any party to the default service settlement desire to modify or remove the one-third load cap for a group's estimated requirements, UGI and/or the parties should file to amend UGI's default service plan (P-2008-2022931). UGI had indicated that it will seek to remove the cap for all other customer groupings in a subsequent filing.

Pa. PUC Grants Revision to PPL AEC Procurement Qualifications

The Pennsylvania PUC granted PPL's petition to modify its post-2010 default service plan to increase the number of competitive bidders eligible for the procurement of alternative energy credits (AECs).

A final order was not available yesterday (P-2008-2060309). Under the petition, PPL proposed removing from the RFP for AECs associated with PPL's block energy purchases the requirement that a bidder demonstrate that its, or its guarantor's, unsecured senior long-term debt rating (or issuer rating if the unsecured rating is unavailable) is currently available from one of the three listed rating agencies (Only in Matters, 11/17/09).

A recent solicitation for AECs had been rejected by the PUC due to a lack of bidder participation (Matters, 10/23/09). Easing the credit requirements would allow more, smaller AEC providers to qualify to submit bids, PPL has said.

The RFP only procures AECs for supply not purchased on full requirements contracts. For the majority of PPL's load purchased on such full requirements contracts, the wholesale supplier is responsible for supplying AECs.

FERC Denies APPA Rehearing Requests on Order 719 as Discriminatory

FERC denied several rehearing arguments from the American Public Power Association regarding the aggregation of retail customers (ARC) for demand response under Order 719-A (RM07-19).

APPA had argued that the Commission's finding that customers at small utilities serving less than 4 million MWh annually should not be permitted to participate in wholesale markets, absent an order from a retail regulator, should be amended so that load serving entities aggregating demand response are not subject to this condition requiring retail regulator approval.

FERC dismissed the request, finding that it would be discriminatory. "In essence, APPA Petitioners ask the Commission to provide special treatment to a particular group of aggregators by allowing them to be exempt from Order No. 719-A's small system provision (which was adopted in response to APPA's own comments and request for rehearing of Order No. 719)," FERC said.

"If we were to grant APPA Petitioners' request, then a load-serving entity for a small utility system (or its designated third-party aggregator) would not have to make a showing of authorization by the relevant electric retail regulatory authority to make a demand response bid into an RTO's or ISO's organized market, as required under Order No. 719-A, while all other ARCs would be required to make such a showing. In that respect, granting APPA Petitioners' request would potentially permit a load-serving entity to circumvent the relevant electric retail regulatory authority's policies regarding ARC qualifications and requirements and, would effectively have the Commission provide load-serving entities and their designees with a competitive advantage over other ARCs," the Commission found.

FERC also denied APPA's proposal which would have required retail regulatory authorities to implement qualifications for ARCs by considering each ARC individually, rather than allowing for an order permitting RTO participation from all ARCs. "This is inconsistent with our goals ... not to interfere with retail regulation or existing demand response programs. We therefore will not require an ARC-by-ARC determination of eligibility as the only method of implementing qualifications for ARCs. It is up to the individual relevant electric retail regulatory authority to determine the suitable method for qualifying ARCs within its jurisdiction," FERC said.

FERC to Focus 2010 Enforcement on Fraud, Manipulation

FERC will focus its 2010 enforcement efforts on fraud, market manipulation, anticompetitive conduct, conduct that threatens transparency in regulated markets, and serious reliability matters, according to an annual Office of Enforcement Staff report issued yesterday.

In a new section of the report, the Commission discusses enforcement priorities for the coming year, consistent with the Commission's Strategic Plan. Some 70 percent of investigations opened in fiscal 2009 involved allegations of market manipulation.

FERC said that enforcement Staff entered into 22 Commission-approved settlement agreements for a total of $38.3 million in civil penalties and an additional $38.6 million, plus interest, in disgorgement of unjust profits for fiscal 2009. The settlements included several involving alleged market manipulation.

Enforcement Staff received 122 new self-reports of violations (versus 68 in 2008), opened 10 investigations and closed 36 investigations. The Enforcement Hotline received 509 complaints and inquiries during the past year; Staff closed 485.

Enforcement Staff completed 33 audits of public utilities and natural gas pipeline and storage companies: 28 were financial and five non-financial. These audits generated 112 recommendations for corrective action and included $2.8 million in monetary recoveries from accounting and billing adjustments.

Briefly:

Gateway Energy Services Receives Pa. Electric License

The Pennsylvania PUC granted Gateway Energy Services Corporation an electric supplier license to serve residential and all sizes of commercial customers in all territories except Duquesne Light, Citizens' Electric, and Wellsboro Electric (Only in Matters, 10/23/09). Gateway has already announced intentions to start residential marketing at PPL in short order, and has already established a call center outside of Wilkes-Barre. In addition to telemarketing, Gateway has said that it plans to market door to door.

Palmco Power Receives Pa. Electric, Gas Licenses

The Pennsylvania PUC granted Palmco Power an electric supplier license to serve residential, commercial and industrial customers in the service territories of PECO, Duquesne, PPL, Met-Ed, Penelec, Pike County Light, Penn Power, and Allegheny Power. The PUC also granted affiliate Palmco Energy a natural gas supplier license to serve to serve all customer classes. Palmco is led by Robert Palmese, who is also a principal at New York ESCO Columbia Utilities.

Acclaim Energy Receives Pa. Broker License

The Pennsylvania PUC granted Acclaim Energy Advisors an electric broker/marketer and aggregator license to serve commercial, industrial and governmental customers in all service areas (Only in Matters, 10/8/09).

AGR Group Receives Pa. Broker License

The Pennsylvania PUC granted AGR Group an electric broker/marketer license to serve residential, commercial and industrial customers in all service areas (Only in Matters, 10/20/09).

DaCott Energy Management Receives Pa. Broker License

The Pennsylvania PUC granted DaCott Energy Management an electric broker license to serve industrial and municipal customers in all service areas (Only in Matters, 7/29/09).

UtiliTech Receives Pa. Broker License

The Pennsylvania PUC approved an electric broker/consultant license for UtiliTech, for commercial customers with loads greater than 25 kW, industrial customers, and governmental customers in all service territories (Only in Matters, 11/6/09).

EnerNOC Receives Pa. Broker License

The Pennsylvania PUC granted EnerNOC an electric broker/marketer license to serve commercial, industrial and governmental customers in all service areas.

Commercial Utility Consultants Receives Pa. Broker License

The Pennsylvania PUC granted Commercial Utility Consultants an electric broker/consultant license to serve commercial, industrial, and governmental customers in all service areas.

ClearChoice Energy Receives Pa. Broker License

The Pennsylvania PUC granted ClearChoice Energy (legally organized as Comperio Energy, LLC) an electric broker/consultant license to serve commercial, industrial, and governmental customers in the service territories of PECO, Duquesne, PPL, Met-Ed, Penelec, Penn Power, and Allegheny Power.

Energy Trust Receives Pa. Broker License

The Pennsylvania PUC granted Energy Trust LLC an electric broker/consultant license to serve commercial customers with loads greater than 25 kW, industrial customers, and governmental customers in all service territories.

Good Energy Receives Pa. Broker License

The Pennsylvania PUC granted Good Energy, LP an electric broker/marketer and aggregator license to serve commercial, industrial and governmental customers in all service areas (Only in Matters, 9/30/09).

Mid American Natural Resources LLC Receives New Pa. License to Reflect Corporate Reorganization

The Pennsylvania PUC approved a natural gas supply license for Mid American Natural Resources LLC and the withdrawal of the license previously granted to affiliate Mid American Natural Resources Inc., to reflect a corporate reorganization. Mid American Natural Resources' supply license permits it to market to and aggregate large commercial, industrial and governmental customers in the service territories of Columbia Gas, Equitable Gas, National Fuel Gas Distribution and People's Hope Gas.

N.J. BPU Retains BGS Retail Margin for 2010-11, Opens Investigation for 2011-12

The New Jersey BPU has decided that, due to the complexity of the issue, it will not change the current retail margin applicable to all Basic Generation Service sales for customers above 750 kW for the delivery year starting June 1, 2010. However, the Board directed Staff to initiate a proceeding, upon conclusion of the 2010 BGS Auction, regarding the potential reduction, phase-out, or elimination of the retail margin so that a decision can be rendered prior to the filing of the utilities' BGS procurement process for the period beginning June 1, 2011. The Board also directed Staff to include consideration of any adjustments to the Commercial and Industrial Energy Price (CIEP) hourly pricing threshold as part of the proceeding because of its connection to the retail margin issue (docket EO09050351).

PUCT Approves Meter Tampering Switch-Hold Proposal for Publication

The PUCT approved, with Staff's latest revisions, a proposal for publication that would implement a hold on switches and Move-Ins for ESI-IDs flagged for meter tampering (see complete discussion in exclusive 12/17/09 and 12/11/09 stories). The proposal was revised to include a question from Commissioner Kenneth Anderson regarding whether backbilling resulting from a metering error that results in a credit to a customer should extend for a longer period, such as 24 months, versus the 12-month period listed in the proposal (37291).

PUCT Approves Standard Letter of Credit, Guaranty Forms

The PUCT approved Staff's recommendations for a standard form letter of credit and guaranty agreement to be used by REPs (see analysis in exclusive 12/11/09 story). As previously reported, the adopted proposal allows REPs to use letters of credit that are substantially compliant with the standard form, but does not allow any changes from the standard form guaranty (37035.).

PUCT Approves Corrections to Maintain 14-Day Termination Fee Wavier Period at Contract End for Small C&Is

The PUCT approved corrections to Subst. R. §25.475 to clarify the Commission's intent that small commercial customers are to have the right to terminate a contract without penalty up to 14 days prior to its expiration date regardless of how the expiration date is determined. As only reported by *Matters*, the adopted language for the rule mistakenly omitted this termination fee waiver period for instances in which the customer's contract end date is estimated (see exclusive analysis in 12/17/09 issue).

Pa. PUC Approves Small EDC Customer Participation in PJM

The Pennsylvania PUC issued an order granting permission for all jurisdictional electric distribution companies and load serving entities to participate in PJM load response programs (Only in Matters, 12/10/09). A final order was not available. The order came in response to a petition from Citizens' Electric and Wellsboro Electric to confirm that their customers could participate in the PJM markets, as both utilities deliver less than 4 million MWh annually, and under FERC Order 719-A, their customers are presumed to be ineligible to participate (P-2009-2146230).

Perry Reappoints Nelson to PUCT

Texas Gov. Rick Perry has reappointed Donna Nelson to the Public Utility Commission of Texas for a term to expire Sept. 1, 2015. Nelson has served on the Commission since 2008.

Peevey Confirmed for Additional Term

California PUC President Michael Peevey was confirmed by the California Senate for a new six-year term. As previously reported, California Senate leadership refused to hold a hearing on the re-appointment of PUC Commissioner Rachelle Chong, citing her handling of telecom issues. Chong will be forced to leave the Commission at the end of the year absent a last-minute hearing.

FirstEnergy Generation Sells Michigan Plant

FirstEnergy Generation Corp. has reached an agreement in principle to sell its 340-megawatt Sumpter Plant in Sumpter, Michigan, to Wolverine Power Supply Cooperative, Inc., for an undisclosed amount. The sale is expected to close in first quarter of 2010. The plant, built in 2002 by FirstEnergy Generation Corp., consists of four 85-MW natural gas combustion turbines. "The Sumpter Plant was built with the intention of serving customers in northwest Ohio and participating in the emerging competitive electricity marketplace in Michigan," said Gary Leidich, president of FirstEnergy Generation. "As our only facility in Michigan, the Sumpter Plant no longer is a good strategic fit for us," Leidich added.

Pa. PUC Approves Citizens', Wellsboro Generation Rates

The Pennsylvania PUC accepted updated Generation Supply Service Rates at Citizens' Electric Company ($0.082687¢/kWh) and Wellsboro Electric Company ($0.073017¢/kWh) (Only in Matters, 12/10/09).

Big Rivers Electric Corporation to Join MISO

The Midwest Independent Transmission System Operator said yesterday that Big Rivers Electric Corporation intends to fully integrate into the Midwest ISO as a transmission-owning member in September 2010. The addition of Big Rivers Electric Corporation incorporates approximately 1,756 megawatts of generating capacity into the Midwest ISO's footprint.

FERC to Make Investigations Public Earlier

FERC acted yesterday to make its investigations more transparent by directing its Secretary to issue a "Staff's Preliminary Notice of Violations" after the subject of the investigation has had an opportunity to respond a Staff preliminary findings letter (PL10-2). Currently, investigations are typically not made public until either the investigation is resolved through a settlement or the Commission issues an order to show cause. Public disclosure after the subject has had an opportunity to respond to the preliminary findings letter, "balances the need to protect the subject's confidentiality in the early stages of an investigation with the public interest of promoting additional transparency during investigations," FERC said. The public disclosure in the Notice issued by the Secretary will include (1) the identity of the entity or entities that are the subject of the investigation; (2) the time and the place of the alleged conduct; (3) the rules, regulations, statutes or orders that staff alleges were violated; and (4) a concise description of the alleged wrongful conduct. FERC also formalized in a policy statement Staff's current sharing of exculpatory material during proceedings (PL10-1)

Calif. PUC Approves Tehachapi Line

The California PUC approved Southern California Edison's request to construct Segments 4-11 of the Tehachapi Renewable Transmission Project (TRTP) in order to increase access to new renewable energy. The project approved yesterday is the main portion of the 11 segment Tehachapi line, which will provide access for up to 4,500 MW of renewable energy generation, primarily wind from the Tehachapi Wind Resource Area in Kern County.

Door to Door ... from 1

to allow suppliers to use them, Christy said.

Chairman James Cawley responded that the secretarial letter affirming that marketing agents need not be licensed was "carefully considered." Cawley noted that the Commission retains the ultimate authority to revoke licenses for marketing or other violations, and will not hesitate to do so. The Commission expects that suppliers using marketing agents will engage in appropriate training and supervision, Cawley added. The Bureau of Consumer Services has been alerted to monitor suppliers using third parties to solicit and market energy, Cawley reported.

ATSI ... from 1

integration auctions. FERC confirmed that LSEs may choose to self-supply a portion of their requirements while relying on the integration auctions for the remainder of their capacity.

All current Reliability Pricing Model market power mitigation rules will apply to the integration auctions. FERC agreed with RRI Energy that because a generator will not have the opportunity to obtain replacement capacity in the integration auction, generators will not be required to bid below their offer caps. The Commission said that the offer cap options shall be the same as for the third incremental RPM auction, as set forth in Docket EL08-8.

Additionally, FERC clarified that it will not require that all generators in the ATSI zone be required to offer into the transition auction. "The RPM rules do not require all generators within the PJM footprint to offer into a base residual auction or an initial auction," FERC said. While some intervenors cited Section 6.6 of the tariff as requiring a must-offer requirement for the transition auction, FERC stressed that Section 6.6 deals with different issues, i.e., the ability of a generator to withhold capacity from the initial base residual auction and then offer such capacity in incremental auctions, and the ability of a generator that has already manifested its desire to participate in an auction to withhold uncommitted capacity in a later auction. "These requirements, however, do not obligate all generators within PJM to participate in capacity auctions," FERC noted.

The Commission also agreed with PJM that the use of the vertical demand curve is appropriate for the integration auctions.

Responding to concerns from some LSEs that ATSI's FRR plan requires an opt-out notice from an LSE before relevant information is known, FERC agreed that, "to the extent feasible, load serving entities should be entitled to know their transition period capacity obligations prior to the imposition of ATSI's proposed opt-out deadline." Accordingly, FERC required ATSI to address this issue in a compliance filing to be made within 15 days of the date of its proposed January 31, 2010 opt-out deadline. Specifically, ATSI is to address the means by which load serving entities will be able to determine their capacity obligations prior to making their opt-out decisions, or otherwise explain why the lack of this right will not impose any undue uncertainty or burden on these entities.

The Commission further directed ATSI to address in a compliance filing the manner in which resource deficiency penalties will be allocated under its FRR plan, and the communication protocols that will apply for resources subject to the FRR plan.

Generators located in the ATSI zone will be considered internal to PJM, FERC affirmed. If a generator is selected in the integration auction, PJM will be obligated to pay that generator based on the auction. PJM also will have the right to dispatch that generator. Should ATSI decide not to join PJM, the generator would continue to be entitled to payment based on the RPM auction. PJM and the Midwest ISO would have to coordinate any transmission issues that arise, but the generator would not be required to obtain any additional transmission from the Midwest ISO, FERC said.

FERC denied ATSI's request (and a related complaint) to only pay PJM regional transmission expansion planning costs for projects approved after its integration into PJM, finding that there is no basis to find PJM's current cost allocation unjust or unreasonable.

The Midwest ISO allocates costs for regional reliability transmission projects on a one-time basis, and a transmission owner remains responsible for paying for such projects even after withdrawing from MISO. PJM, however, re-allocates the costs of regional reliability projects every year, on a pro rata load share. Thus, exiting members are not responsible for transmission project costs after they leave, and new members are responsible for costs of prior projects as their load joins PJM. Thus, ATSI will be responsible for the costs of MISO projects already allocated, and PJM costs for projects approved during the same time period, due to the annual re-allocation. ATSI argued that such double-payment was unfair.

FERC, however, was unpersuaded that these costs, which resulted from ATSI's voluntary decision to switch RTOs, were in any way unreasonable.

"Each of the PJM and Midwest ISO cost allocation methodologies has been accepted by the Commission as just and reasonable and not unduly discriminatory methodologies for allocating the costs among the members of each RTO. ATSI's voluntary choice to move from one RTO to another does not cause either of these methodologies to no longer be just and reasonable or not unduly discriminatory simply because each produces a different result," the Commission said.

"Transmission owners that seek to change RTOs should be prepared to assume the costs attributable to their decisions. ATSI is permitted to balance the benefits it associates with its decision to join PJM under its existing tariff against the costs it anticipates it will incur in exiting the Midwest ISO and joining PJM to determine whether such a move is cost-justified ... We see no basis to modify the existing RTO rules simply because a particular cost allocation makes a transmission owner's business decision more expensive," FERC continued.

FERC suggested that as the ATSI integration in PJM is likely to create cost efficiencies, existing transmission owners may wish to negotiate a reduction in ATSI's regional transmission expansion planning costs to reflect these benefits. However, while FERC said that existing transmission owners should, "have both a will and an incentive to facilitate ATSI's realignment on a mutually beneficial basis," it did not order any change to the tariffed cost allocation.