Energy Choice Matters
January 6, 2010

PG&E Supports 3-Year Direct Access Phase-in, Large Customers Urge 5-Year Transition

Pacific Gas & Electric supports a phase-in period for new direct access load as short as three years, but the California Large Energy Consumers Association urged the PUC to phase-in new direct access load under the five-year maximum allowable time permitted by SB 695, to protect the rights of existing direct access eligible customers (R. 07-05-025).

In substantive comments on the California PUC's subphase rulemaking to implement the phase-in of expanded direct access load (Only in Matters, 12/18/09), PG&E suggested accomplishing the expanded competitive load levels within three years, provided that no more than 1,500 GWh of new load would be permitted to switch to direct access in a single year.

"PG&E believes that a three year phase-in period is the most efficient and customer friendly approach which, when coupled with a reasonable annual cap, will address the long term procurement and resource planning needs of the utility," PG&E said.

PG&E said that the 1,500 GWh annual cap is required to provide it with certainty in procurement decisions. Moreover, if the full 1,500 GWh cap is not subscribed to in a year, PG&E argued that, in the following year, switches to direct access should still be capped at 1,500 GWh, and any unused switches from the prior year should not carry-over. PG&E said that the cap is necessary to mitigate challenges created by swings in the rate of migration which impact its existing resource commitments, even though PG&E is also recommending (aside from a one-time waiver) continuation of the three-year minimum stay and six-month notice requirement applicable to

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ICC Staff Supports Dismissal of BlueStar Rescission Period Complaint

Illinois Commerce Commission Staff joined the Ameren Illinois utilities in seeking dismissal of a complaint regarding the rescission period, while BlueStar reiterated its argument that Ameren's tariff cannot trump the statutorily prescribed rulemaking process (09-0460).

As only reported in *Matters*, BlueStar filed the complaint because Ameren's revised tariffs, to implement utility consolidated billing with purchase of receivables, contain a 10-day rescission period for small volume customers. BlueStar contends that the 10-day rescission period in the Ameren tariffs conflicts with 83 Ill. Adm. Code 453.40(a)(4), which BlueStar said provides for a three-day rescission period for residential enrollments executed via the internet (Only in Matters, 10/21/09).

Ameren has moved to dismiss the complaint, arguing that 83 Ill. Adm. Code 453.40(a)(4) is "plainly and directly applicable to," retail suppliers, and does not serve as a restriction imposed upon the utilities' rescission periods. Ameren further moved for dismissal on procedural grounds, since BlueStar did not oppose the rescission period in Ameren's POR proceeding (Only in Matters, 12/21/09).

Staff supported Ameren on both these counts. "[N]othing prohibits the Commission, nor does BlueStar allege otherwise, from approving tariffs regulating the relationship between a regulated

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United Illuminating Reports December Migration Data

Supplier Accounts as of 12/31/09	Dec. '09 Residential	Dec. '09 Business	Dec. '09 Total	% of Migrated Customers	Change vs. Nov. '09 Total
Clearview Electric	1,595	67	1,662	2.4%	681
ConEdison Solutions	4,667	1,225	5,892	8.4%	(128)
Constellation NewEnergy	408	3,009	3,417	4.9%	(141)
Direct Energy Business	9	765	774	1.1%	0
Direct Energy Services	19,541	2,753	22,294	31.7%	820
Dominion Retail	14,958	1,294	16,252	23.1%	(190)
Energy Plus	1,768	251	2,019	2.9%	671
Gexa Energy	226	233	459	0.7%	55
Glacial Energy	50	384	434	0.6%	29
Hess Corporation	53	469	522	0.7%	(11)
Integrys Energy Services	8	1,546	1,554	2.2%	(179)
Liberty Power		50	50	0.1%	3
MXenergy	3,796	571	4,367	6.2%	264
Public Power & Utility	5,248	1,389	6,637	9.4%	192
Sempra Energy Solutions	31	691	722	1.0%	3
Suez Energy Resources NA	2	200	202	0.3%	(1)
TransCanada	8	475	483	0.7%	9
Viridian Energy	2,240	170	2,410	3.4%	665
Verde Energy	70	14	84	0.1%	84
Total All Suppliers	**54,678**	**15,556**	**70,234**	100.0%	2,826

Aggregate Data

Customer Load - Suppliers and UI (MWh)

	Residential - SS		Business - SS		Business - LRS		Total UI Territory	
	MWh	% of Class	MWh	% of Class	MWh	% of Class	MWh	% of Total
Suppliers	43,876	20.7%	109,368	65.2%	119,740	93.2%	272,984	53.8%
UI	167,605	79.3%	58,386	34.8%	8,702	6.8%	234,693	46.2%
Total	211,481		167,754		128,442		507,677	

Customer Count - Suppliers and UI

	Residential - SS		Business - SS		Business - LRS		Total UI Territory	
	Customers	% of Class	Customers	% of Class	Customers	% of Class	Customers	% of Total
Suppliers	54,678	18.9%	15,314	40%	242	89.3%	70,234	21.4%
UI	234,635	81.1%	22,592	60%	29	10.7%	257,256	78.6%
Total	289,313		37,906		271		327,490	

SS = Standard Service
LRS = Last Resort Service

Data as reported by UI

Briefly:

Utility Exchange Seeks Conn. Aggregation License

Utility Exchange, LLC applied for a Connecticut electric aggregator certificate to pool residential, commercial and industrial customers. Utility Exchange said that it receives pricing from ConEdison Solutions, Liberty Power, MXenergy, Dominion Retail and Public Power and Utility. Utility Exchange says that it provides procurement consulting in Connecticut, New York, New Jersey, Pennsylvania, Illinois, Maryland, Massachusetts, Texas and Washington, D.C.

Avalon Energy Services Seeks Pa. Broker License

Avalon Energy Services applied for a Pennsylvania electric broker/marketer and aggregator license to serve all sizes of commercial, industrial and governmental customers in all service areas. The start-up recently received Maryland electric and gas broker licenses (Only in Matters, 8/21/09). Elisa McDonnell, previously an engineer at Oklahoma Natural Gas and an entrepreneur, is president of Avalon Energy Services. James McDonnell, former CFO and senior vice president at Pepco Energy Services, is COO at Avalon.

UMG, Inc. Receives Maine Broker License

The Maine PUC granted UMG, Inc. a competitive electricity provider license as an aggregator/broker serving non-residential customers at Central Maine Power and Bangor Hydro-Electric (Only in Matters, 10/15/09).

Atlantic Group Energy Receives Maine Broker License

The Maine PUC granted Atlantic Group Energy, Inc. a competitive electricity provider license as an aggregator/broker serving all sizes of non-residential customers in all service areas. Atlantic Group Energy was formed in 2009 and recently received an aggregator license in New Hampshire as well.

Switch Energy Seeks N.H. Aggregator License

Switch Energy applied for a New Hampshire electric aggregator license, stating that it intends to pool customers for TransCanada Power Marketing, Integrys Energy Services, Glacial Energy, and other providers.

Early Bird Power Seeks Md. Broker License

Early Bird Power, LLC applied for a Maryland electric broker license.

Paetec Energy Seeks Illinois ABC License

Paetec Energy (Technology Resource Solutions, Inc.) applied for an Illinois electric agent, broker and consultant license, part of a previously reported national expansion (Only in Matters, 1/5/10).

Re-regulation Advocates Again Press for Action in Pa.

Re-regulation advocates held another rally at the Pennsylvania state capitol yesterday urging a continuation of rate caps or some other form of mitigation at PPL and the other utilities. Based on B-roll from WPMT, the rally attracted a dozen or so attendees. Re-regulation advocates said that pressure for legislative action would rise once customers receive their first bill reflecting uncapped rates, and argued that choice has not benefited customers. As reported yesterday, residential migration at PPL is 147,000, or only 11,000 customers shy of *total* migration (all classes) in the entire state of Maryland, which has about 2.2 million distribution customers versus PPL's 1.4 million. As noted in coverage of a similar December rally, legislation currently before lawmakers in committee, such as House Bill 20, would merely institute an opt-in, competitively neutral phase-in plan similar to what PPL has already offered. The main difference is that House Bill 20 would set different limits for the mitigated increases applicable each year, and allow for an extension of mitigation beyond three years (Only in Matters, 12/2/09). In previous sessions, drastic action on the retail market has gained little traction in the House, and has essentially been dead in the Senate.

IGS Energy Cites N.Y. POR Discount Rates in Md. Proceeding

Interstate Gas Supply filed with the Maryland PSC a letter concerning POR discount rates in

other jurisdictions, particularly New York, to rebut "inapplicable" data provided by the Office of People's Counsel relating to POR discount rates in the Illinois electricity market. IGS noted that the discount rates in New York range from 0.954% at Orange & Rockland Utilities to 3.31% National Fuel Gas Distribution. "Most importantly, the risk factors associated with each of the attached discount rates are a fraction of those cited in the Illinois electricity market data provided by the Office of People's Counsel. In fact, Orange & Rockland's approach to setting risk factors is similar to what has been proposed by Washington Gas Light Company - a reasonable 0.25% risk factor," IGS said.

Md. Staff Proposes Update to COMAR 20.52 Reflecting Shorter Enrollment Window

The Maryland PSC Staff filed proposed revisions to COMAR 20.52.03 to reflect the new 12-day enrollment window now contained in COMAR 20.53, and to replace references to Type III SOS service with Hourly Priced Service.

Peevey Directs Supplemental Testimony on PG&E Novations

California President Michael Peevey directed Pacific Gas & Electric to file supplemental testimony regarding its applications to novate contracts between the California Department of Water Resources and Calpine and GWF Energy (A. 09-10-022 et. al.). Among other things, PG&E was directed to provide a report from the Independent Evaluator regarding the Independent Evaluator's assessment of the 254 MW of new capacity requested by PG&E in the novation applications. PG&E must also demonstrate that it has a reasonable need to contract for more new capacity than authorized by D.07-12-052 due to the risk of project/contract failure or other factors, and explain why the 254 MW of new capacity was not selected as part of PG&E's recent long-term request for offers. Separately, an ALJ denied monitions to dismiss the application to novate the Calpine contract. An ALJ had previously denied motions to dismiss the GWF novation (Only in Matters, 12/14/09).

McDonald Named Ga. PSC Chairman

Commissioner Lauren "Bubba" McDonald, Jr. has bee named Chairman of the Georgia PSC for 2010, as the chair rotates for a one-year term among commissioners. Chairman McDonald announced that Commissioner Stan Wise will serve as Vice-chairman and as chair of the Energy Committee.

Amerex Energy Services Names New EVP

Amerex Energy Services has hired Steve Moore as Executive Vice President. Moore was most recently at Wells Fargo where he was part of the Commercial Banking Group focusing on new business development. Moore will report to Clay Davis, President of Amerex Brokers LLC and will be based in Houston where he will direct day-to-day operations of Amerex Energy Services.

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migration, which PG&E also justifies on the basis of providing certainty for utility procurement.

To avoid "disadvantaging" existing direct access eligible customers who may be serving a minimum stay on bundled service, PG&E supports a one-time exception to the three-year minimum stay for customers who are currently on bundled service after returning from direct access, to give such customers a one-time opportunity to evaluate whether or not to participate in direct access as the new rules established by SB 695 go into effect. PG&E envisions a 60-day waiver period to allow these customers to make a decision on whether to leave bundled service upon the PUC's initiation of the process to phase-in the cap. Once the one-time exception period is complete, the three year commitment rule should be reinstated for all current direct access eligible customers and future direct access customers who return to bundled service, PG&E said.

Additionally, PG&E supports a one-time exception to the six-month notice requirement for customers leaving bundled service and moving to direct access during an initial implementation period to be established for 2010. PG&E suggested reducing the notice period from six months to 90 days, with a 60-day window after the phase-in rules are implemented to take advantage of the shorter notice period.

After the one-time reduced notice period,

PG&E recommended applying the six-month notice requirement to all customers, arguing that a distinction is not appropriate between customers who have been on direct access previously, and those who would be moving to direct access for the first time. Several retail suppliers had noted that the PUC decisions implementing the notice requirements specifically apply the requirements to customers who have returned to utility service after being on direct access, and are thus inapplicable to new direct access customers.

PG&E claimed that, at the time of those PUC decisions, the only direct access eligible customers were those who were on direct access sometime in the past, and that the decisions merely recognize this fact. Suppliers' argument that the customer advance notice requirement is not applicable to new prospective direct access customers just because such applicability is not specifically stated in D.03-05-034 or the utilities' tariffs, "ignores the fact that SB 695 was enacted years after the Commission's decision and resulting utility tariffs creating the rules that provide advance notice of [direct access] service switches to the IOUs," PG&E said.

Moreover, PG&E dismissed retail suppliers' argument that the advance notice requirements are unnecessary since the load cap on direct access (DA) provides PG&E with certainty for its procurement planning activities. "Knowing the level of the cap does not provide sufficient certainty regarding the IOUs' procurement obligations. The IOUs need notice from both existing DA eligible customers as well as new prospective DA eligible customers in order to plan their short-term procurement activities," PG&E said.

While CLECA supports a one-time waiver of the minimum stay and notice provisions, it stressed that a one-time waiver will not alleviate problems for currently eligible direct access customers. First, a one-time waiver would require currently eligible direct access customers to make a decision to return to direct access service before the customers may be ready to make such a decision. Second, a one-time waiver requires the customer to make what may be a "one-time and forever" decision, because any subsequent return to bundled service might cut off, in practice, any subsequent return to direct access due to the new cap. Third, a one-time exception does not resolve the problem faced by a currently eligible direct access customer on bundled service who wishes to return after the one-time waiver period expires, since the waiver would not longer apply, and the customer would still be subject to a lengthy minimum stay or notice period, during which time the direct access cap may be exceeded.

"The larger problem created by the SB 695 DA re-opening provisions is that it raises the distinct possibility that existing DA-eligible customers who have returned to bundled service for whatever reason, who have done so pursuant to a published and known set of switching rules, and who have dutifully paid the applicable exit fees, will now be cut off from DA service and displaced by new non-DA-eligible customers. The ESPs [electric service providers] may well be pleased to see increased DA sales, the utilities may be indifferent as the total DA sales will be capped, but the existing DA-eligible customers will potentially lose a very important right," CLECA said.

CLECA contended that the solution to this problem, though unlikely fully satisfactory, is to implement the phase-in period of expanded direct access load over five years. "It would be a terrible mistake to allow the ESPs to add 50% or more of the 'delta' in the first year. Rather, we believe that the Commission should require the full five-year phase-in period and that it should permit the addition of 20% of the 'delta' each year during that period," CLECA said.

CLECA argued that a five-year phase-in would give existing DA-eligible customers more time to make their decisions on the form of service they would like for the long-term. "CLECA strongly urges the Commission to avoid the sort of 'gold rush' that creates problems for utilities and disadvantages customers."

CLECA further contended that currently DA-eligible customers should have a priority in the available amount of direct access service. "Such customers were originally eligible, they have paid the exit fees and they have followed the Switching Rules," CLECA said. PG&E said that it would support giving currently DA-eligible customers a higher priority to return to direct

access over "new prospective" direct access customers. However, PG&E said that this preference period would be limited to the initial implementation period, after which all customers would receive "first come, first served" treatment under the cap.

Turning to the direct access metering requirement, PG&E said that the requirement for direct access customers above 50 kW to have an interval meter should be retained. "As a practical matter, to allow a total waiver of the interval meter requirement until a utility AMI meter is installed would necessitate reprogramming of PG&E's DASR processing system to permit affected accounts to switch to DA service without the current 'meter investigation' process. Depending on when the Commission reaches a final decision, reprogramming such a change would likely take additional time beyond April, 2010. This is particularly true since PG&E will be devoting significant resources toward implementation of the Peak Day Pricing program in that same time frame," PG&E said.

Reiterating earlier comments, PG&E said that the Commission should act on suitable bond requirements for electric service providers as quickly as possible. The current temporary bond amount of $100,000 for electric service providers, "is insufficient to cover the costs that utilities may be asked to bear should customers ever return en masse in a volatile market," PG&E said.

PG&E, as it has done previously, also urged the Commission to make ensuring a level playing field for all energy procurement requirements, as required by SB 695, a top priority (Only in Matters, 12/9/09). Specifically, the Commission's examination should include consideration of any potential obligations for electric service providers to purchase from qualifying facilities (including Combined Heat and Power) resulting from Commission decisions, and obligations that may arise from the global settlement negotiations among the IOUs, the California Cogeneration Council, the Independent Energy Producers Association, the Cogeneration Association of California, Energy Users and Producers Coalition, The Utility Reform Network, and the Division of Ratepayer Advocates to resolve disputes regarding qualifying facilities, PG&E said.

PG&E again recommended that electric service providers be required to file Long-Term Procurement Plans, which would include identifying how suppliers would meet their RPS, Resource Adequacy, greenhouse gas, and other energy provider obligations and requirements. "In addition, the Commission should place the requirements and compliance burden for procurement-related activities directly on ESPs, just as it does for IOUs (i.e., ESPs would be mandated to physically provide all of these services and to comply with these requirements," PG&E said.

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utility and its business practices with retail electric suppliers ('RESs')," Staff said. Furthermore, Staff argued that the Part 453 "general rescission period" was not set by the Commission and serves as a floor rather than a ceiling relative to Commission-imposed specific rescission periods between any regulated utility and its delivery service customers.

Staff argued that the ICC's authority and dictates contained in the Illinois Public Utilities Act allow it to approve tariffs which supersede prior statute, such as the three business day rescission period contained in the Consumer Fraud and Deceptive Practices Act.

Staff noted that, should BlueStar's argument be accepted, and the three business day rescission period is interpreted as a maximum rather than a floor, a conflict must also presumably exist between the three business day rescission period of the Consumer Fraud and Deceptive Practices Act and the Alternative Gas Suppliers' provisions of the Public Utilities Act, which provide for a 10 business day rescission period [815 ILCS 505/2DDD(c)(3)(E)]. "This would be inconsistent with another fundamental statutory construction canon. See e.g., Dornfield v. Julian, 104 111.2d 261,267 (1984) (statutes are to be construed 'to avoid creating an unnecessary inconsistency in the law')," Staff said.

Staff supports dismissal of the complaint, but should the Commission wish to issue a declaratory ruling for clarity, Staff recommended that the Commission declare that BlueStar must

abide by the 10 calendar day rescission period in the Ameren territories, and otherwise provide notice of the general three business day rescission period in the rest of the state, until such time as the Commission specifically addresses the issue in Docket No. 09-0592 (in which the ICC is reviewing comprehensive electric consumer protection rules).

Staff also contended that, "BlueStar effectively waived its ability to contest the 10 calendar day rescission period in this proceeding by failing to contest the issue in the docketed tariff investigation proceeding."

BlueStar countered that Ameren's tariff filing was related to utility consolidated billing and POR implementation. "BlueStar has not participated (and has no intention of participating) in the AIUs' UCB/POR program, but instead continues to bill its customers by means of the 'single billing option,'" BlueStar said. "Thus, BlueStar did not intervene in the AIU UCB/POR Docket because there was no reason to believe that the provisions of the AIUs' UCB/POR tariffs would apply to [a retail supplier] (like BlueStar) not participating in the UCB/POR program. In fact, in its Order regarding the AIUs' UCB/POR tariffs, the Commission confirmed that AIU UCB/POR Docket was limited to the UCB/POR program," BlueStar added.

However, Staff noted that the rescission period was plainly included in Ameren's original September 2008 tariff filing, in a section unrelated to POR and utility consolidated billing.

In any event, BlueStar reiterated that, "no alleged procedural shortcoming on BlueStar's part can save the AIUs from the fact that Illinois law does not allow the AIUs to effect a change to existing law regarding the rescission window outside of the legislatively-prescribed rulemaking process. Indeed, despite the AIUs' strained attempt to reconcile the two provisions, it ... cannot be reasonably disputed that the 10-day rescission window - as applied to residential enrollments - conflicts with the existing Commission- and JCAR-approved rule (83 Ill. Adm. Code 453.40), which provides for a 3-day rescission window for internet enrollments."

"In fact, since BlueStar filed this Complaint, the Commission has initiated a formal rulemaking proceeding concerning the consumer protection measures discussed in the ORMD workshops, including a proposed amendment to Section 453.40 that would change the rescission period from 3 to 10 days. (See ICC Docket No. 09-0592.) The initiation of the Rulemaking Docket further underscores that any change to the existing rule governing customer rescission should - and must - be effected in a manner that complies with the formal rulemaking process. Following that process is not a mere technicality, but instead is a legislative requirement that, among other things, guards against the untenable situation that currently exists where there is one rule governing customer rescission in the AIUs' territory and a different rule in ComEd territory," BlueStar said.

BlueStar has also called inclusion of the rescission period in the final tariffs inconsistent with the ICC's directive that contested consumer protection issues were to be left to a subsequent tariff filing, or rulemaking. Staff countered that the Commission's final order recognized that some consumer protection provisions, such as the rescission period, were already contained in the originally filed tariffs, even though they were contested, and that the ICC clearly accepted such provisions despite the contention. Staff claimed that the final order's language that, "those aspects of consumer education and protection already addressed to at least some extent in AIU's tariffs, or logically tied to existing consumer education and protection provisions in AIU's tariffs, should be added to the tariffs if consensus can be reached on them in the ORMD workshops," supports its position, since the rescission period was already in the tariff and was not a provision that needed to be added. "In other words, the Commission was aware of the existing consumer protections such as the rescission period when it entered the Final Order on August 19, 2009. As a result, if the Commission wanted the proposed rescission period to be further discussed in the workshops, the Commission would have explicitly denied the inclusion of the AIUs' proposed 10-calendar day rescission period when it entered the Order," Staff argued.