Energy Choice Matters

February 26, 2008

Retailers Doubt Usefulness of Conn. Disclosure Labels

CONTINUING COVERAGE

New Connecticut disclosure labels are not shopping tools for customers and regulations for the labels should reflect that fact, the Retail Energy Supply Association told the DPUC (07-05-33).

The DPUC recently issued draft disclosure label rules that would force retailers to include mass market pricing on the labels (Matters, 2/18/08).

That's one of RESA's biggest objections. The DPUC draft "overburdens the label by requiring it to perform too many functions," RESA argued.

The DPUC "fails to recognize the limited role that the label actually plays in the competitive electricity supply business," RESA added.

"It is not now - and should not become - a shopping tool that paraphrases or summarizes important contract information," RESA explained. [We respectfully disagree, see Commentary]

"Including even limited price information on the label risks confusing customers who will be looking at as many as three different pricing sources: the label, the Department's website and their proposed contract (which will set forth the definitive price)," the retail coalition claimed.

The "best shopping tool" for electric customers, RESA argued, is the website the DPUC is currently developing that would require retailers to submit all residential price offers, and allow retailers to submit generally available small C&I offers as well.

RESA attempted to explain the typical shopping process for a customer.

"When customers shop for an electricity supplier, they refer to websites of generally available offers like the one being developed by the Department for residential and small commercial and industrial ('C&I') customers and review the marketing materials and draft contracts provided by

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PUCT Replacement Reserve Ruling "Unassailable," Staff and Parties Assert

CONTINUING COVERAGE

The PUCT's ruling that overturned an ALJ's proposed decision on Replacement Reserve Service (RPRS) costs is "legally unassailable," the Commission staff, ERCOT, Reliant Energy Power Supply, the Texas Energy Association for Marketers, TXU Energy, Luminant, Austin Energy, CPS Energy and the Lower Colorado River Authority (joint opponents) declared in a reply to Constellation Energy's motion for rehearing (docket 33500).

RPRS is an ancillary service needed when the ERCOT market is underscheduled. Constellation had asked for a rehearing and resettlement of the market because it believes RPRS costs were improperly settled on a zonal basis (Matters, 2/15/08).

Constellation had argued that the Commission erred by reversing the ALJ's finding that ERCOT's zonal treatment of RPRS charges was not supported by ERCOT protocols.

The Commission in a unanimous decision found the relevant protocols to be "in harmony," as it is "uniquely qualified and empowered to do," the joint opponents said.

Interpreting protocols is a legal issue, joint opponents explained, and thus the Commission is authorized to read the provisions and arrive at an interpretation different than one that the ALJ

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COMMENTARY: Follow Texas Roadmap to Mass Market Choices

We couldn't disagree more with RESA's assertion that the Connecticut disclosure label should not become a shopping tool for customers. We see the labels as integral to the success of any mass market, working in concert with the pricing website RESA supports.

We do agree the DPUC has muddled what it views as the ultimate function of the label, and that the current draft label would not be much of a shopping tool because it does not provide enough comparative information.

In one instance, the DPUC clearly contemplates customers reviewing the label only after getting a proposed contract from a retailer, as the draft states the label should direct customers to their individual contracts to determine what charges are added if a retailer's quoted price is not all inclusive. Thus, we agree with RESA it would be hard for the label to function as a shopping tool if customers have already received a contract when reviewing the label.

On the other hand, it seems the DPUC intends for customers to evaluate the label along with the price offers listed on the website of generally available offers RESA suggests is the first step in shopping, since the draft would require retailers to provide a link to their labels to the DPUC. Additionally, the labels include a list of questions the DPUC thinks customers should ask suppliers; such a list would not have much value if the customer is already at the contracting stage.

We note in ERCOT, not only are Electricity Facts Labels (EFLs) shopping tools for customers, but they have become the predominant pricing authority, with many mass market Terms of Service documents directing customers to consult their EFL for their price, rather than listing a price in the contract.

EFLs are available for all residential products listed on the state's shopping website (www.PowerToChoose.org), as are Terms of Service documents. With information on contract length and termination fees included – two items not in the proposed DPUC label – EFLs are a quick guide to weighing products customers view on the Power to Choose site. We think it's fair to say this process has been successful in ERCOT and has not caused price confusion.

As we noted in last week's Surges and Circuits, we think customer information and a simple shopping process are essential in creating a robust retail market. Without readily available disclosure labels, customers would have to read the legalese of each individual Terms of Service in the market to ascertain price and other relevant aspects of an offer, such as its length, whether the price is all-inclusive, whether a termination fee applies, and whether there is a monthly customer charge. We also fear that customers asking for such specific information may not get reliable, enforceable information from solicitations and will be steered to making a quick decision rather than having time to evaluate a Terms of Service or disclosure label.

In our previous life, we've written mass market contracts where important information including termination penalties and automatic renewal provisions become buried among less pertinent information such as contract assignment and governing law -- legal jargon most mass market consumers aren't going to base their product selection on. Thus, we see a need for a document which "paraphrases or summarizes important contract information," as RESA described the label.

The Texas EFL highlights the most relevant information in the Terms of Service to facilitate shopping. We think if the DPUC does want to promote use of the disclosure label as a shopping tool, it should add more disclosures (such as contract length, termination fee and other potential charges) to its label. Such summary labels are not unique to the retail electric industry, as (we think) credit card offers must include a pamphlet highlighting the most salient terms of an offer (APR, annual fee, transfer fees, etc) to facilitate quick comparisons for consumers without law degrees.

We find unconvincing arguments that a disclosure label places an undue burden on retailers given not only the wealth of REPs in

the ERCOT residential market (more than 20), but that these REPs are offering a combined 100 or so products, each with a unique (or shared) EFL.

As a customer, we would rather shop in ERCOT where we find EFLs provide more transparency, than in an environment where labels with summary product information (including termination fees, contract length, etc) are not available before contracting.

DPUC Favors UI Smart Meter Plan in Draft

Although United Illuminating's current meters fit the definition of "advanced meter" under Connecticut law, the DPUC in a draft decision would allow a gradual upgrade to UI's metering system to accommodate more data communication and more complex pricing structures (07-07-02).

The DPUC thinks "it will be essential for ratepayers to have access to more detailed usage information to help them control their consumption and cost," and added that, "anecdotal evidence suggests that competitive suppliers can offer lower generation costs when the customer can provide detailed consumption information."

UI's current system can store the data required to bill all customers on time-of-use rates, but its system is not designed for storage and billing of hourly data, nor is it configured to handle real-time pricing.

Thus the DPUC draft favors spending $3 million on a meter data management (MDM) system to collect, store, validate and distribute the large amounts of data needed for products with complex pricing. The MDM system would enable hourly billing and enhance real-time pricing, variable peak pricing and critical peak pricing rate design options that UI expects will be implemented in the near future.

The DPUC would delay upgrades to UI's Customer Information System (CIS) to determine whether they will be needed under the real-time pricing tariff the DPUC is to adopt in docket 05-06-04RE04. The DPUC may adopt a real-time pricing structure that can be accommodated by UI's current system, but a more complex real-time pricing tariff that requires hourly consumption to be tracked would require CIS upgrades, the DPUC noted.

Marketers Tell Calif. PUC to be Firm on Debt Equivalency Policy

The California PUC "got it right" in determining that debt equivalency should be dealt with in cost of capital proceedings and should not be a factor in evaluating purchased power agreements, the Western Power Trading Forum told the Commission (R 06-02-013).

Southern California Edison and San Diego Gas & Electric have asked the PUC to let them use a debt equivalence adder in judging PPAs versus utility owned generation.

The PUC eliminated the adder in D.07-12-052 because, as WPTF noted, the adder can be used to discriminate against PPAs and is counterproductive to the facilitation of head-to-head competition between utilities and independent generators.

PPAs do not always get treated as debt equivalence by ratings agencies, WPTF noted, and the designation depends on many factors, including whether or not the contract has a back-to-back sales contract attached to it, or a high degree of confidence that the costs can be passed along to ratepayers.

Utility construction can also have an impact on credit ratings, WPTF added, depending on the financing method.

Briefly:

More Pepco Credits From Mirant Settlement

Pepco wants to create a special fund totaling $320 million to pay the above-market costs of contracts with the Panda-Brandywine power plant. The account would be funded with damages paid to Pepco by Mirant from a settlement agreement stemming from Mirant's bankruptcy and cancellation of back-to-back agreements with Pepco. Pepco also wants to give customers a one-time credit totaling $48 million from Mirant's settlement payment, as Pepco anticipates that money won't be needed to pay for the above-market PPA. About $25 million would go to Maryland customers with the remaining $23 million going to DC customers. The typical residential customer in

Maryland would get a one-time credit of $20 while a DC residential customer would get $16. Pepco had entered into a long-term PPA with the Panda-Brandywine plant in 1992 that expires in 2021, but the contract has burdened customers with expensive power. In Maryland, Pepco's filing is in Case 8796.

Settlement Talks On Again in Iberdrola Case

Parties in the New York PSC's review of Iberdrola's acquisition of Energy East will have a second round of settlement talks before evidentiary hearings begin (07-M-0906). Settlement negotiations during the fall stalled, partly on Iberdrola's refusal to divest generation per PSC policy, and evidentiary hearings were to begin yesterday. But Iberdrola is now to provide an updated settlement proposal to parties tomorrow with a settlement conference on Feb. 29. Evidentiary hearings are to begin March 17 if an agreement in principle isn't reached by March 12. Speculation in Europe that Iberdrola may itself be bought out had prompted staff to ask for a delay in the case.

Central Hudson Efficiency Plan Won't Be Expedited

A NY PSC ALJ rejected a proposal from Central Hudson to immediately begin discussions regarding the utility's energy efficiency proposal (07-M-1139). Central Hudson had asked for the review because the strawman proposal in the energy efficiency portfolio standard (EEPS) case resembles its own proposal (Matters, 2/12/08). Parties, and the ALJ, ultimately objected because Central Hudson's plan includes revenue decoupling and because the strawman is simply a starting point, not a final decision or even a draft proposal for decision.

Dominion CEO Sees "Train Wreck" Looming

The U. S. "is headed for an energy train wreck if we do not create a national energy policy grounded in economic realism, common sense and **market principles** [emphasis added]," Dominion CEO Thomas Farrell told the National Governors Association. Although lauding market principles, Farrell proceeded to tell the governors of Dominion's plans to build new ratebased nuclear and clean coal generation, provide ratepayer-financed energy efficiency programs, and failed to mention its regulated utility's success last year in closing Virginia's competitive retail market. Farrell emphasized the need for a "policy framework designed for the long term" given today's climate challenges. Citing CRA International data, Farrell noted the Lieberman-Warner climate bill could reduce GDP by $1 trillion dollars in 2050 – and cost every American household on average about $2,400.

Reliant Selling Houston Cogen Plant

Reliant Energy is selling its Channelview Cogeneration Plant to IPP Kelson Energy for $468 million. Affiliates related to the plant had declared bankruptcy and proceeds from the sale will be used to settle the claims of creditors. The cogen plant is an 830 MW, combustion turbine facility 20 miles east of Houston that went online in 2002. Kelson's current portfolio consists of 4,002 MW of combined-cycle gas-fired generation in the Southwest and Southeast.

Comverge Inks ConEd DR Deal

Comverge subsidiary Public Energy Solutions won a $67 million contract from Consolidated Edison to provide demand side management and energy efficiency services to reduce base load energy requirements of commercial customers in Lower Manhattan. A limited build out of the program will start later this year, with a full roll-out for 2009-2012. Comverge is responsible for customer solicitation, assessment of energy reduction potential, and equipment and installation under the contract.

Texas Low-Income Discount Set

The PUCT accepted staff's recommendation to set the Low-Income Discount for eligible REP customers at 20% for May through September 2008 (Matters, 2/18/08).

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competing suppliers," RESA explained.

"Once the customer selects an offering, its chosen supplier then sends an executed copy or confirmation of the electricity supply contract and the disclosure label to the customer prior to initiating service. The shopping phase is complete by the time the customer receives the label. Furthermore, a customer generally receives a label only from its selected supplier. The label therefore does nothing to foster meaningful customer shopping." RESA observed.

"The only reason competitive suppliers send disclosure labels to their customers is to provide information on air emissions and power supply mix from which the customer's electricity will be sourced in accordance with state statutes and regulation," RESA told the DPUC.

RESA objects to posting the disclosure label on retailers' website as "overkill," because the disclosure label will be distributed to new customers upon enrollment and sent annually to existing customers, while mass market prices will be posted on the DPUC's website along with environmental information.

"The Draft Decision fails to recognize that suppliers generate different labels for their various offerings, and the number of labels will further increase if price information is required. Attempting to post and keep current all of these labels on a dedicated website would be overly burdensome to suppliers and not particularly useful to consumers," RESA observed.

RESA wants the DPUC to convene a working group to determine the small C&I customer segment whose labels will include pricing, should the DPUC not accept RESA's arguments. The draft did not explicitly define the cutoff for small C&I customers.

For products whose price per kWh is "all-inclusive," RESA wants the DPUC to clarify that the price does not include taxes.

RESA suggested that retailers be allowed to send their annual labels to existing customers through utility bill inserts for customers on utility consolidated billing. A coalition including Constellation NewEnergy, Dominion Retail and Direct Energy Services suggested that existing customers should simply be informed of the availability of the label, and directed to visit a website or contact their supplier if they wish to view or receive it.

Constellation, Dominion and Direct asked the DPUC to subject distribution utilities to the labeling requirements, as contemplated by state law. The utilities, however, asked the DPUC to clarify that the disclosure rules would not apply to them.

RPRS … From 1

recommended.

Although Constellation argued in its rehearing request that the Commission acted as its own fact-finder, joint opponents reminded the PUCT that no evidentiary hearings took place and that the ALJ's proposal for decision was essentially legal in nature.

Under Texas law, issues of statutory and protocol construction are questions of law, and the Commission is in a superior position to interpret the protocols, joint opponents reasoned.

Tex. Gov't Code § 2003.049(g) allows the Commission to reject an ALJ's ruling where, among other reasons, the Commission determines the ALJ, "did not properly apply or interpret applicable law, commission rules or policies, or prior administrative decisions," joint opponents pointed out.

Even if the case involved a factual dispute, the Commission could still determine factual issues first addressed by an ALJ, the joint opponents added.

The Austin Court of Appeals has interpreted § 2003.049(g) as "giving the Commission authority to supplant the ALJ's finding," noting the rule does not require the Commission to defer to the ALJ's proposed findings of fact.

In fact, the Court found Texas law "allows the Commission to assume an original fact-finding role," joint opponents argued.

Joint opponents also reiterated their view that interpreting the zonal treatment of RPRS as a typographical error in the protocols, as the ALJ had proposed, would not make sense. Joint opponents pointed to more than 60

occurrences of the “z,” “per zone,” and “for each zone” references in Protocol § 6.9.2.1.1, and noted eliminating them would eliminate the entire section.

“Any suggestion that all of these provisions were inadvertently included as the result of something akin to a scrivener’s error is both unreasonable and unsupported by the record,” joint opponents argued.