Energy Choice Matters

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N.Y. Utilities Want to Clip Some ESCOs' Dubious Re-Enrollment Practices

Comprehensive new marketing standards in proposed revisions to New York's Uniform Business Practices (UBPs) would, "transform ESCOs into regulated sellers much like the distribution utilities, with the difference being that ESCOs would sell energy at non-tariff, market-based prices and subject to 'lighthanded' regulation of non-price terms and conditions of service," Energetix and NYSEG Solutions cautioned in comments on the changes (07-M-1514 et. al).

Although Energetix supports many of the proposed revisions (Matters, 3/20/08), it doesn't think the PSC should embark on a "fundamental" change in the nature of its regulatory approach to ESCOs. The abusive marketing practices reflected in complaints to the Commission (misrepresentation; exploitation of the elderly, the young, or those with limited language skills; and abusive $500 or $1,800 exit fees for ordinary residential service) all appear to be prohibited under the existing regulatory and legal framework, Energetix pointed out, and the Commission's existing review procedures and ability to revoke ESCO eligibility appear more than adequate.

"When activity is already prohibited by law, prohibiting it a second time is not likely to be an effective remedy," Energetix observed.

Termination Fees

While there is, "seemingly no legitimate justification for a $500 or $1,800 exit fee for [a] residential contract for gas or electricity service," Energetix cautioned the PSC against overly prescriptive measures. (Energetix's residential termination fee is a more reasonable $35).

Termination fees are "critical" for price risk management and may properly change over time, Energetix reported. Thus, pricing flexibility in that area is critically important and must be preserved, the ESCO urged.

… Continued Page 5

Michigan House Caps Retail Choice

The Michigan House approved 78-30 legislation which would virtually eliminate retail choice in the state, a move that the Michigan Customer Choice Coalition says will cost ratepayers $2 billion.

As passed, HB 5524 would limit retail choice sales to 10% of a utility's retail sales. Current shoppers would be given a preference in filling that limit, and customers continuously served by a competitive retailer since April 1, 2008 would always be allowed to take competitive service for their current use and any expanded use at their existing facilities regardless of the 10% threshold.

The bill faces a tougher fight in the Senate, which has been considering legislation more favorable to competition.

The passed version of the House bill does away with earlier proposals to force customers to choose whether they wanted to take competitive or utility service, on a permanent basis, within 90 days of the law's passage.

Utilities would charge cost of service rates to captive customers, with rates deskewed so residential ratepayers aren't subsidized by the other customer classes. That's to cost residential ratepayers by $350 million.

Utilities would not be forced to seek competing bids for new generation, and would be directed to develop integrated resource plans.

The PSC would have to develop a report on whether the state would benefit from creating a purchasing pool in which electric generation in Michigan would be purchased and then resold.

Burgeoning Connecticut Mass Market Gets Another Supplier

The growing Connecticut mass market officially has another residential supplier as the DPUC granted Horizon Power and Light an electric supplier license to serve residential and commercial customers (08-01-13).

In doing so, the Department affirmed that retailers cannot refuse service to residential customers based on their credit score, as detailed in a draft decision (Matters, 3/31/08).

Horizon typically only accepts residential customers with a credit score of 620 or higher, but the DPUC is ordering the retailer to change that part of its contract and customer service plan since Conn. Gen. Stat. § 16-245r prohibits suppliers from declining service to a customer for the sole reason that the customer is located in an economically distressed geographic area or that the customer qualifies for hardship status under Conn. Gen. Stat. § 16-262c.

Horizon serves 15,000 residential and commercial customers in Massachusetts, Maryland, Delaware and the District of Columbia.

It intends meet its Connecticut load through a wholesale power purchase agreement with Coral Power and will use Energy Service Group as its EDI provider.

FERC Waits on RPM Conference, But Orders More Info

A separate technical conference focusing solely on PJM's Reliability Pricing Model capacity market is "premature," FERC determined in ruling on a motion for such a conference by the load group RPM Buyers (ER05-1410 et. al.).

However, while FERC recognized PJM's ongoing review of RPM may aid the Commission's determination of whether a technical conference will eventually be needed, PJM's review, "does not provide the detail that RPM Buyers seek and that the Commission believes PJM should analyze," FERC concluded (Matters, 3/21/08).

FERC thus directed PJM to discuss in its forthcoming June report on RPM the issues that RPM Buyers raised in their motion, such as whether higher capacity prices in the first four base residual auctions relative to PJM's pre-auction simulations and, "reasonable expectations," can be explained; whether RPM prices have been instrumental in stimulating new generation, new demand response, or retention of capacity resources that would otherwise have deactivated; whether the slopes of the Variable Resource Requirement (VRR) demand curves to determine capacity prices provide inappropriate incentives to withhold capacity; and whether RPM's mechanism for determining the net Cost of New Entry (CONE), which uses historical energy and ancillary service revenues, produces prices that accurately reflect the need for new capacity.

FERC thinks PJM's June assessment, subsequent stakeholder review of the study, and the outcome of the May 2008 auction should provide additional information that will assist the Commission in considering the issues raised by the RPM Buyers.

ICC OKs Ameren REC Buying

The ICC approved Ameren's REC purchases for SOS from June 1, 2008 through May 31, 2009. Winning bidders included the City of Peru Electrical Department, Constellation Energy Commodities Group, FPL Energy Power Marketing, and Sterling Planet.

The load weighted average of the winning bid prices for each contract type and for each contract term for the April 14 procurement are below:

REC Class	**Average $/REC**
Illinois Wind	29.32
Illinois Non-wind	17.50
Adjacent State Wind	21.20
Adjacent State Non-wind	5.50
Other State Wind	5.65
Other State Non-wind	N/A

Per last summer's rate relief legislation, utilities must meet 2% of their sales with renewable power for the 2008/09 period, with at least 75% of the green power coming from wind. The green power also can't raise rates more than 0.5% of the amount paid per kilowatt-hour by customers in the previous year.

Surges and Circuits

A weekly review of what's up and down in energy markets.

Power Surges

ConEd, NYSEG, RG&E: Kudos to the utilities' proposed UBP revisions to honor customer choice. Nothing angers us more than retailers who pontificate on giving customers the right to choose their electricity provider, but who then do everything to not honor a customer's decision to fire their supplier.

Specifically, we're referring to the practice in New York where certain ESCOs use a customer's original authorization to override any subsequent enrollments (or return to default service) the customer wishes to exercise. Often this is based on a contract clause which requires the customer to notify (sometimes in writing) their incumbent ESCO of their desire to switch providers. If the customer does not complete such notification, the ESCO "protects" the customer by re-enrolling him/her to prevent what the incumbent ESCO shamefully calls a "slam" by the customer's new ESCO.

We don't think the PSC should permit such language in mass market contracts (and know of cases where it has been struck), but even if the language were allowed, we consider such shopping restrictions to be "material" terms and conditions which must be disclosed in the customer's authorization, and we doubt any ESCOs are notifying customers of these provisions in such a manner.

While losing customers to slamming is a legitimate concern for ESCOs, the above practice is not a proper solution because it places and undue hurdle on customers wishing to change their providers. Customers already have a better tool to prevent slamming, at least in some utility areas, where customers (and not the ESCO) can "lock" their account and keep their current provider, whoever that may be (ESCO or utility) until they decide to change. Rather than using stale authorizations to re-enroll customers who have allegedly been slammed, we think ESCOs should vigorously contest slamming at the PSC and support greater Commission oversight of authorizations.

We do think, however, ESCOs and customers would be better served by introducing the so-called "contest period" (as originally proposed by U.S. Energy Savings) across all utility territories, in which ESCOs would be required to get new authorizations from customers in order to cancel a switch the incumbent ESCO thinks is a slam. This would offer customers dual protection against slamming by new ESCOs, in giving their incumbent a chance to investigate, and also protection against slamming by incumbent ESCOs since the switch could only be stopped if the customer consented.

Briefly:

Green Broker Expands Partnership with WGES

Green energy broker Clean Currents is expanding its partnership with Washington Gas Energy Services to market renewable energy to residential customers in Maryland and Washington D.C. Clean Currents started a pilot residential program last year and will now broker for WGES a 50% and 100% renewable residential product in Pepco and Baltimore Gas & Electric territories, each for either a one-year or two-year term. Clean Currents markets the program as Chesapeake Green, and targets customers who wish to embrace a green lifestyle overall, emphasizing its green community. Essentially an affinity program, the Clean Currents community offers green newsletters, efficiency workshops, discounts from other clean energy business partners, and general info about living an eco-friendly life.

DPUC Recommends Limiting Summer Savers Program to Residential Customers in Final Decision

The Connecticut DPUC recommended in its final decision that the Summer Savers Rewards Program be limited to residential customers and not renewed until 2009, citing an apparent lack of cost-effectiveness (Matters, 4/16/08). In doing so, the Department rejected a plea from industrials that the program remain open for all customer classes since the intent of the legislature was to lower summer usage and C&Is use the most power (07-06-21). The DPUC, though, appeared to agree with United Illuminating's concerns that the rebate program likely paid C&I customers for actions they would have taken to lower their bills absent any extra incentive, though the Department did not specifically cite a reason for limiting the program to residential customers. Any future program should only accept customers who actively enroll to prohibit free ridership, the DPUC concluded.

FERC MBR Order Tweaked to Boost Long-Term Contracting

FERC again clarified its new market-based rate policy (originally adopted in Order No. 697 last June and clarified in December) to, among other things, encourage long-term contracts while protecting customers against market power. The Commission will allow mitigated sellers to demonstrate on a case-by-case basis that they do not have market power with respect to long-term contracts.

Chairman Joseph Kelliher explained that the final rule was inconsistent regarding mitigation of long term sales, and the change removes that inconsistency. On the one hand, the Commission has viewed long-term markets as competitive, he noted. Yet, the final rule originally imposed mitigation on long-term sales by companies that lost or surrendered their market based rate authority, although FERC's market power test only measures market power in short term markets.

FERC stressed that under the new policy all mitigated sellers have the burden of making case-specific arguments for being able to make long-term sales at market-based rates. An applicant must file with FERC under section 205 of the Federal Power Act a case-specific request for contract-specific market-based rates by demonstrating that it does not have market power with respect to the specific long-term contract being filed.

FERC also clarified that with respect to horizontal market power analysis, it affirmed its continued use of historical data and a "snapshot in time" approach, but will also consider case-specific sensitivity studies that present clear, compelling evidence that certain changes in a market should be considered as part of the market power analysis.

Barton, Shimkus Seek Probe of Carbon Offsets

Representatives Joe Barton and John Shimkus, ranking members on the House Energy Committee and Oversight and Investigations Subcommittee, respectively, have requested from their respective committee chairs a probe into carbon offset markets and whether the markets actually reduce greenhouse gas emissions. Barton and Shimkus cautioned that some carbon offsets which may have happened anyway are being sold as additional reductions, undermining the whole point of offsets. "If this is the case, the only additional greening taking place may be in the bank accounts of the people selling these offsets," they cautioned.

FERC OKs PSE-Macquarie deal

FERC conditionally approved the merger of Puget Energy and an international investment consortium led by the Macquarie Group, subject to Washington state regulators approving certain ring fencing provisions to protect customers of Puget Sound Energy. The Macquarie Group also owns Duquesne Light Holdings, and FERC determined the deal will not result in either horizontal or vertical market power, or adversely affect wholesale rates, based on that lack of market overlap of the jurisdictional facilities involved.

FERC Investigating Its Funding Method

FERC issued an NOI to determine whether its method of assessing annual regulatory charges on public utilities remains fair, or whether it should adopt a different mechanism (AD08-7). Currently FERC's fees are based on the volume of electricity transmitted by a public utility. The NOI investigates whether alternatives such as levying the charge only on wholesale transmission volumes, establishing new charges on wholesale power sales and other license fees, accounting for regional differences in market structure, or using factors such as peak load or transmission investment are better ways of allocating costs.

ConEdison Solutions Expands Scope Into Another Regulated State

ConEdison Solutions continued its expansion of service offerings in vertically integrated states, receiving formal accreditation as an energy services company from North Carolina, which will allow it to compete for state contracts. Last year, lawmakers allocated $200 million for use by State-owned agencies and universities to implement energy-saving upgrades in 2008.

N.Y. UBPs *... From 1*

The proposal to allow customers to end contracts without paying a termination fee up to 30 days after customers receive their initial bill could create a 75 day price-risk exposure for ESCOs, Energetix cautioned. That unreasonable risk would likely force suppliers to increase their prices for fixed rate service or refrain from offering fixed rate offers entirely, Energetix suggested.

ConEdison Solutions also warned that an administrative limit on ESCO risk management would likely reduce the types of products and services that ESCOs offer. ESCOs should be able to establish fees that adequately protect them from economic harm in the event of a breach of contract and, as long as those fees are clearly communicated to the customer, there is no rational basis to administratively limit such fees, ConEdison Solutions argued.

Customers wishing to leave their ESCOs because of misrepresentations or other unlawful practices would not need the new termination fee protection, Energetix noted, because the termination fee would not be legally applicable if the contract was struck under misrepresentation.

Thus, while not adding any new protections, the proposed grace period would allow customers to take advantage of the extended window to back out of the deal without consequence if they find a better offer, the National Energy Marketers Association (NEM) cautioned.

Energetix suggested a two-week grace period as more reasonable, if the PSC feels the current three-day rescission period does not offer enough protection.

Although not taking a position on the size of termination fees, NYSEG and Rochester Gas & Electric argued utilities should not be forced to collect exit fees on consolidated utility bills.

"An early termination fee is a special provision in a supply contract between the customer and the ESCO," NYSEG and RG&E noted.

"Placing an early termination fee on a utility consolidated bill, particularly in the case of the utility purchasing receivables without recourse, places the utility in the position of becoming a collector for special, non-commodity services for the ESCO," NYSEG argued.

Termination fees should be billed directly by ESCOs, NYSEG urged.

Re-Use of Initial Enrollment Authorizations

Consolidated Edison and Orange and Rockland urged the PSC to stop a practice among some ESCOs of perpetually re-enrolling customers who have switched to other providers.

"The Companies have experienced a practice whereby an ESCO, after receiving a notice from the utility that the customer will be switching to another ESCO or returning to the utility, utilizes the initial enrollment authorization to re-enroll the customer. The ESCOs claim that they have a valid sales agreement with the customer and ignore the fact that the customer has elected to switch providers," the ConEd utilities reported.

"The Companies believe that submitting an additional enrollment to the utility without contacting the customer to obtain an additional enrollment authorization constitutes 'slamming.' When an ESCO receives notice from the utility indicating that the customer is switching to another ESCO or returning to full utility service, this notice indicates that the customer has exercised its option to switch providers. This decision on the part of the customer should be honored by all parties, unless and until the customer authorizes some other action."

ConEd suggested the following language, "An ESCO's initial enrollment authorization is no longer valid should the ESCO receive notice from the utility that the customer is switching to another ESCO or is returning to full utility service. An ESCO must obtain a new enrollment authorization from the customer before submitting an additional enrollment to the utility."

NYSEG and RG&E proposed a similar measure to address ESCOs re-submitting enrollments that a customer has stopped, by requiring ESCOs to get a new authorization to re-instate a canceled switch.

The utilities, "have experienced numerous complaints from customers who call the utility to cancel a pending switch only to have the ESCO resubmit the enrollment."

"An ESCO should be required to treat a reversed switch as a 'no' from a customer," NYSEG and RG&E argued, noting the issue was not isolated to one or two ESCOs.

ConEd urged the PSC to prevent ESCOs from denying customers their right to return to bundled service by allowing the utility to de-enroll customers if customers request de-enrollment.

Currently the UBPs require a utility receiving a call from a customer to de-enroll to refer the customer to their ESCO to initiate the return to bundled service. The UBPs do not appear to let the utility honor the customer's request without the ESCO's sanction, ConEd observed.

"This has led customers to be retained in retail access programs even after they request the ESCO to return them to bundled utility service. The Companies have received complaints alleging that ESCOs inform customers who contact them to arrange for full utility service that they can not process the request and that the customer must contact the utility to arrange for such service. The Companies have also received calls from customers, on a daily basis, indicating that they have contacted their ESCO, understand any possible termination fees associated with their contract, and still request to be returned to full utility service," ConEd reported.

ConEd suggests allowing customers who contact the utility who wish to have their request processed without contacting the ESCO to de-enroll through the utility.

Identification of ESCO as Non-Utility

Although some ESCOs argued it was sufficient that they identify themselves as ESCOs, and that they not be required to positively state they are not the distribution utility (because the phrasing could carry a negative implication and thus not be competitively neutral), ConEd argued it was essential that ESCOs positively announce they there were not representing, or sent by, the distribution utility.

The ConEd utilities, "repeatedly field calls from customers asserting that 'someone identifying themselves as a Company employee' came to their door and: (i) insisted on seeing their bill to assess whether or not they were being charged correctly; (ii) claimed they were entitled to discounted service; or (iii) argued that they had to sign up with an ESCO for service by a date certain," the EDCs reported.

"ESCO misrepresentations regarding who they are and what they offer in the energy marketplace are harmful in two ways. First, they mislead customers who enroll out of fear of the loss of utility service and then complain they have been 'slammed.' Second, the contact time represents a missed opportunity to properly educate customers regarding how the competitive marketplace works and who plays what role in it. In fact, such conduct on the part of ESCOs needlessly risks alienating the very customers who are potential participants in retail choice," ConEd observed.

Thus, ESCO representatives not only need to affirmatively represent who they work for when conducting in-person or telephonic solicitations, they need to make it clear to the customer that they do not represent the utility and are not contacting the customer on behalf of the utility, "because of the on-going transition in the industry to a competitive market," ConEd argued.

Market Enhancements

NEM urged the PSC to allow customers to remotely access their utility account numbers, to facilitate shopping at places they would not carry their utility bill, such as energy fairs or malls. Utilities made compliance filings regarding the development of such remote access systems in December 2006 (98-M-1343) but the Commission hasn't issued an order on the filings.

Energetix suggested workshops to address the problem of ESCO information being "buried" in consolidated bills. Energetix believes cases where ESCO information is not listed until the fifth or sixth page of a utility bill creates confusion, especially for harried customers paying their bills quickly and who only glance at the top-line summary for amount due. The risk of confusion is higher for customers enrolled through ESCO Referral programs, since the customers may have no contact with the ESCO other than receiving the initial mailing of the ESCO's terms and conditions. Energetix suggested a workshop approach since the problem is probably caused by legacy billing systems that weren't designed for a competitive market, and changes would require investment.

ESCO Credit Postings

ConEd urged the PSC to change UBPs relating to credit requirements to prevent ESCOs from escaping the need to post collateral where appropriate. ConEd pointed out that ESCOs can satisfy the credit requirements simply by using utility consolidated billing and granting the utility the first right of access to those collected funds.

Some ESCOs have argued that simply by enrolling a few customers in utility consolidated billing, they have met the credit curbs, and can simultaneously bill the bulk of their customers on dual billing without posting additional security, ConEd reported. ConEd argued ESCOs using two methods of billing should not be allowed to avoid posting the required security with respect to their load billed under the dual bill option.

EDI Testing

NYSEG also attacked ESCOs which demand immediate EDI tests and then sit idle for to two years after completing Phase 3 before "going live."

"After sitting idle for so long, many of these ESCOs were unable to perform the EDI transactions adequately and had numerous problems in production, which then required even more resources to diagnose the EDI problems and fix errors created in the Companies' computer systems," NYSEG reported.

Utilities are required to perform Phase 3 testing in an expeditious manner and a similar requirement for ESCOs to go into production quickly would be appropriate, NYSEG argued, since the ESCO would be less likely to have production issues due to stale information or skills, easing unnecessary strain utilities' resources.

NYSEG suggested that ESCOs must commence providing service to customers within six months of completing EDI Phase 3 testing with the utility, or otherwise be re-tested.

Regulatory Assessment

ESCOs should not be charged a regulatory assessment to fund the PSC, ConEdison Solutions argued, because an ESCO assessment would force shoppers to pay the assessment twice -- once to their ESCO and a second time to their distribution utility.

Energetix argued that any review of whether ESCOs should be forced to fund the PSC through a regulatory assessment should be analyzed in a separate case that could consider the potential for inequitable imposition of costs and the risk of serious competitive distortions.

The ESCOs with the largest number customers don't have the largest number of complaints, and if the assessment is charged to fund PSC resources devoted to complaints, it creates a perverse race to the bottom, Energetix reasoned.

Data suggests that, "perhaps the most serious complaints are focused on the merest handful of competitive suppliers," Energetix noted.

Thus an assessment on ESCOs arising from complaint costs would impose a disproportionate percent of costs on ESCOs not primarily responsible for the complaints.

This inequity would result in charging those ESCOs that comply with the UBP standards for the regulatory costs imposed by those who do not and, "could create a perverse incentive to drive customer service down to the lowest common denominator," Energetix explained.

"Since ESCO's with poor compliance

procedures would effectively avoid the costs required for assuring compliance, they would tend to achieve a cost advantage over their competitors, allowing them to underprice competitors in the market – and then watch those competitors bear a higher percentage of the regulatory assessments, thereby gaining a second competitive advantage," Energetix explained.

That risk could be alleviated if any potential assessment were linked to an ESCO's per-customer complaint ratio, Energetix suggested.