Energy Choice Matters

June 26, 2008

PUCO Staff Recommends Prohibiting Termination Fees in Certain Variable Gas Contracts

Ohio gas marketers would not be permitted to charge a termination fee on variable contracts if they continue to follow current rules regarding disclosure of the nature of the variable rate, PUCO Staff proposed in changes to O.A.C. 4901:1-29, standards for competitive gas retailers (08-724-GA-ORD). However, Staff also proposed a new, different method for marketers to disclose how their variable rate will be calculated and fluctuate, and if marketers choose to disclose the rate structure using the new manner, the prohibition on termination fees would not apply.

For variable offers, marketers, under 4901:1-29-11 as currently written, must disclose a "clear and understandable explanation of the factors that will cause the price per Ccf or Mcf, whichever is consistent with the incumbent natural gas company's billing format, to vary (including any related indices) and how often the price can change." While marketers could still disclose their variable offers using that format, they would not be allowed to charge an early termination fee when doing so.

Staff proposed an alternate, more detailed method for marketers to disclose the structure of variable offers. Under Staff's recommendation, marketers could include in contracts a, "clear and understandable formula, based on publicly available indices or data, that the retail natural gas supplier or opt-in governmental aggregator will use to determine the rate that will be charged." When such a formula is included in the contract, the rule would not prohibit the imposition of a termination fee on variable offers.

Staff also proposed that marketers be allowed to cancel a contract due to force majeure events without giving up the right to impose a termination fee on customers. Rule 4901:1-29-11 currently allows a customer to terminate the contract without penalty if the contract allows the marketer to terminate without penalty for any reason other than customer nonpayment. Staff would define force majeure to include a change in any governing law or regulation that would prevent the marketer from

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PUCO Staff Proposes Ban on Marketers, Utilities Using Check Cashing Stores as Payment Agents

Ohio electric and gas marketers, as well as utilities, would be prohibited from contracting with check-cashing businesses and payday lenders to act as authorized agents for the receipt of payments, under a staff proposal. The recommendation is part of a sweeping array of proposed changes regarding low-income assistance programs, disconnection rules, and credit policies under O.A.C. 4901:1-17 and 4901:1-18 (08-723-AU-ORD).

Staff believes that the practice of using check cashing stores as payment centers unnecessarily exposes Ohio's financially vulnerable low-income population to the "predatory" practices of the payday lending industry.

Specifically, the proposed rules would prevent marketers, governmental aggregators and utilities from contracting with, "a check-cashing business or licensee" to be an authorized payment agent. Check-cashing business is defined as any person who engages in the business of cashing checks for a fee, as defined in section 1315.21 of the Ohio Revised Code, while licensee means any person to whom one or more licenses have been issued as defined in sections 1321.01 to 1321.19 of the Revised Code. At a high level, the definitions cited exclude financial institutions and certain mortgage and other lenders from being considered a check-cashing business. The definition also would not

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DPUC Confirms Selection of Ratepayer-Backed Peakers

The Connecticut DPUC confirmed that it is in the "best interest" of ratepayers to approve cost-of-service contracts for approximately 678 MW of new summer peaking capacity comprised of 360 MW from a facility owned by Bridgeport Energy II (Dynegy-LS Power) in Bridgeport, 188 MW from a facility owned by GenConn (NRG Energy-United Illuminating) in Milford, and 130 MW from a facility owned by PSEG Power in New Haven, confirming the selection made in an earlier draft (Matters, 6/12/08). The portfolio will be able to provide approximately 321 MW of Ten Minute Non-Spinning Reserve (TMNSR).

The DPUC reported that the selected portfolio of projects will provide a net present value benefit to ratepayers of $925 million over the life of the 30-year contracts.

The Department will allow full recovery of all contract payments and contact administration costs through the non-bypassable FMCC if the output from the facilities is sold into the market. Under such a scenario, the distribution utilities can file a rate case to seek recovery of costs related to the cost sharing agreement, adverse financial accounting treatment and financial downgrades to the utilities attributable to the contracts for differences approved by the peaker decision.

But if the DPUC decides to require the distribution utilities to take title to the output and to use the output to provide standard service or default service, the costs associated with the contract payments and the cost associated with the administration of the contracts will be passed though to ratepayers in the generation service charge.

Connecticut Light and Power will contract with GenConn and PSEG. United Illuminating will contract with Bridgeport II.

PJM Defends Retirement-Based ACR

PJM defended the ability of a generator to be paid an avoided cost rate (ACR) under RPM based on the assumption the unit would retire absent the ACR (ER05-1410-007 et. al.). The Maryland PSC and other state regulators had urged FERC to strike the retirement-based ACR and only permit an ACR based on mothballing assumptions (Matters, 6/11/08).

A retirement-based ACR is warranted even if only one generator is legitimately entitled to receive the retirement-based rate, PJM argued. Availability of a retirement-based ACR is just and reasonable, particularly given the fact that PJM is trying to encourage generation owners not to retire units so that the RTO can better relieve congestion, PJM noted.

PJM is amenable to suggestions that units requesting application of the retirement-based ACR provide a sworn statement attesting operation would be uneconomic without the retirement-based ACR, including the date on which the unit would be retired. But PJM opposed requiring the Market Monitor to write and publish its opinion on whether a particular unit would be uneconomic without the higher retirement-based ACR payment. PJM described such work for the Market Monitor as unnecessary since the Market Monitor already has the authority to inquire into any suspected abuse of PJM's market rules, and nothing stops the Market Monitor from expressing its opinion publicly on any subject.

National Grid Says FCM Revenues from Efficiency Should Fund More Programs

The size of rebates for energy efficiency measures is designed to motivate customers to take actions while paying no more than is needed for a customer to act, National Grid reminded the Massachusetts DPU (08-8).

Thus, allowing customers to keep forward capacity market revenues and transition payments associated with efficiency measures funded by utility incentives would be "inappropriate," Grid explained, since such a policy would pay customers above what is needed to motivate efficient behavior, depleting funds that could be used for other efficiency measures.

Wal-Mart had argued that customers should be able to keep capacity market revenues from efficiency measures (Matters, 6/19/08), but Grid pointed to the DPU's decision in Western Massachusetts Electric's efficiency case that found Wal-Mart's request would direct efficiency funds away from customers relying solely on utility programs to fund projects (Matters, 3/11/08).

Grid also opposed Wal-Mart's alternate suggestion that capacity market revenues at least flow back to programs aimed at the specific customer class that created the revenues. Grid countered that since a customer relying on a utility-funded rebate in essence relied on funds collected from all ratepayers to pay for an efficiency upgrade, the revenues from such a project should flow to all customers who contributed to funding the rebate, and not be limited to a specific customer class.

PUCO Adopts Updated Rules for Uniform Purchased Gas Adjustment Clause

PUCO rejected most of the Ohio Consumers' Counsel's suggestions for changes to O.A.C. Chapter 4901:1-14, relating to the uniform purchased gas adjustment clause (08-178-GA-ORD). Of most interest to marketers is that PUCO denied OCC's request to expand the time that interest is accumulated on refunds that LDCs receive from interstate pipeline suppliers or other suppliers or service providers (Current Rule 4901:l-14-5(A)(2)(a)).

OCC noted that, rather than requiring refunds and reconciliation adjustments received from upstream pipelines to flow through to customers immediately, the rule provides for the accrual of interest on those amounts. OCC reported that "at least some" of the LDCs do not begin the calculation of interest until the date the refund actually begins to flow back to customers. OCC likened an LDC's holding the refunds but not paying interest immediately on it to an LDC earning a profit on the sale of gas, which is prohibited.

PUCO, however, agreed with LDCs who argued that the current symmetry in over-recoveries and under-recoveries ensures that customers are not unduly harmed.

PUCO also declined to modify Rule 4901:1-14-06(B) which allows companies to apply a weighted average GCR rate to customer bills when the LDC is billing on a services-rendered basis and the GCR rate changes mid-cycle. PUCO noted that the change would be expensive for small LDCs, and that Vectren Energy Delivery of Ohio is the only large LDC that bills on a services-rendered basis. Since Vectren is entering the first phase of its exit from the merchant function, the GCR rules aren't pertinent to Vectren's supply arrangements, PUCO noted.

MSC Concerned CAISO's Uneconomic Adjustment Policy Masks True Impact of Enforcing Constraints

The true impact of enforcing certain constraints arising from existing transmission rights (ETCs), transmission ownership rights (TORs) and self-schedules under the California ISO's Market Redesign and Technology Upgrade will be masked by the use of much higher penalty values in the scheduling run than in the pricing run, the Market Surveillance Committee noted in comments on CAISO's uneconomic adjustment policy.

The uneconomic adjustment policy outlines the circumstances under which ETCs, TORs and self-schedules will be relaxed to obtain a feasible day-ahead schedule or real-time operating levels. CAISO committed to giving priority to ETCs, TORs, and self-schedules over economic bids into the day-ahead and real-time energy and ancillary services markets as part of the MRTU design process.

While acknowledging political constraints, MSC is concerned that different penalty values in the scheduling and pricing run mechanisms permits stakeholders to avoid confronting and defining the relative costs of the choices that need to be made between various, conflicting priorities, such as honoring ETCs/TORs, meeting demand, and ensuring just and reasonable prices.

While MSC recognizes the need to allow a divergence between penalty parameters in the scheduling and pricing run during the initial stages of the MRTU market to protect consumers from unjust and unreasonable prices, MSC prefers a process in which there is only one combined scheduling/pricing run with one set of parameters that are used to determine both priorities and prices, in which the penalties are based on an agreed upon economic and regulatory rationale for relative marginal values of preserving different schedules.

Under such a scenario, prices would provide appropriate incentives for rights holders and market participants to adjust schedules and increase flexibility.

As market participants gain greater experience with the MRTU market, MSC recommends that the ISO take actions to equate the penalty parameters between the scheduling and pricing runs.

Briefly:

PUCT Opens Project for REP Compliance Review of Financial, Managerial Standards

The PUCT Staff received control number 35806 for a project relating to a REP compliance review pursuant to requirements in Subst. R. 25.107(f)-(g). Subsection (f) of the rule relates to REP financial requirements, including requirements for holding customer deposits. Subsection (g) relates to technical and managerial requirements, such as the ability to perform scheduling and settlement.

FERC Approval of Credit Policy Opens NYISO Ancillary Service Markets to Demand Response

FERC accepted the New York ISO's credit requirements for demand resources participating in the ancillary services markets, which had been rejected by the Commission last month (Matters, 5/26/08). The requirements, backed by Multiple Intervenors, have now been amply supported and justified by NYISO as an appropriate balance between enabling demand resources to participate fully and freely in NYISO's ancillary services markets, and protecting NYISO's customers from the risk of default, FERC determined (ER04-230). The credit requirements are modeled after the requirements imposed on virtual bidders, because of the similarities between the two types of entities in terms of their exposure to balancing costs.

Glacial Withdraws Request to Serve Conn. Residentials

Glacial Energy asked the DPUC to withdraw its application to serve residential customers in Connecticut (06-12-13RE01). Glacial currently markets to C&Is in the state.

GIM Retail Energy Gets REP Certificate

GIM Retail Energy was awarded REP certificate No. 10165 by the PUCT yesterday, which approved GIM as an Option 2 REP. GIM, a subsidiary of Global Infrastructure Partners, needs the certificate to serve Equistar Chemicals under a supply contract GIM acquired when buying Reliant Energy's 803-MW Channelview cogeneration plant sited at Equistar's Channelview Complex (Matters, 6/13/08).

PUCT Sets Project for CHP RFP

The PUCT opened project 35809 for an RFP for a study concerning Combined Heat and Power.

Termination Fees ... *from 1*

performing under the terms of the contract.

Contracts would have to disclose a customer's right to terminate without penalty in the event of relocation or if the marketer reserves the right to terminate without penalty, except in the above cases of force majeure or customer nonpayment.

Contracts would also have to state that a marketer can terminate a contract for nonpayment (when dual billing us used) on 14 days' notice, and that early termination fees may apply for such nonpayment termination.

Staff also submitted revised language to make rules concerning disclosures and procedures for contract renewals under O.A.C. 4901:1-29-10 more clear.

Comments on the Staff proposals are due July 18.

Ohio Check Cashing ... *from 1*

include persons primarily engaged in the business of selling tangible personal property or services at retail and that does not derive more than five per cent of the person's gross income from the cashing of checks.

With the proposed elimination of payday lenders as authorized payment agents, Staff asked what other outlets are readily available to customers that are, or could be, payment centers. Staff wants to know the costs and equipment, if any, required to establish an authorized payment agent. For example, Staff asked, if neighborhood drugstores became payment agents, what would be the cost associated with establishing that new authorized payment agent location?

Staff also proposed that utilities may use prepaid meters as an option for customers to establish credit. Staff issued a list of questions regarding prepaid meters, seeking stakeholders' experience regarding uncollectibles, customer satisfaction and consumption levels under prepaid systems.

Additionally, Staff asked stakeholders whether customers should be permitted to choose the monthly due date of their bills on an annual basis. If so, should there be any limits on the date selected, staff questioned.

The majority of Staff's proposed changes are related to regulated utility programs, such as the Percentage of Income Payment Plan assistance program and disconnect rules, which are not directly applicable to marketers. However, PIPP changes could impact the number of customers eligible to receive assistance and thus eligible to shop, while new disconnect rules could impact marketers' bad debt.

Staff is to conduct a workshop on the proposed changes on July 8.