

Energy Choice

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PECO Procurement Plan Ladders Contracts for Customers Under 500 kW

PECO filed a default service plan with the Pennsylvania PUC for procuring power after the expiration of rate caps which includes laddered portfolios for mass market customers under 500 kW and procurement based upon PJM hourly spot prices for large C&Is. The initial plan would cover the period from Jan. 1, 2011 through May 31, 2014.

Generation rates would be adjusted quarterly for customers under 500 kW, and monthly for customers over 500 kW.

The residential portfolio would procure 65% of needs via laddered, 3-year fixed-priced contracts, with 30% met through 1-year fixed contracts and 5% met through spot purchases. For small commercial customers (under 100 kW), 40% of power would be bought on 2-year fixed contracts, with 50% bought on 1-year contracts and 10% via spot purchases. The medium commercial customer (100-500 kW) portfolio would include 85% 1-year fixed contracts and 15% spot purchases. Power for large customers (above 500 kW) would be bought completely on the hourly spot market, except in the first year when large customers will also have the option of a one-year, transitional fixed-price product. Large customers would have to opt onto the fixed price product.

All procurements would be for full requirements, load following contracts. PECO would procure power at different times, using competitive RFPs run by NERA Economic Consulting. Some initial contracts would have lengths of 41-months to start the laddering process and to make the start of the retail pricing year consistent with the PJM planning year (i.e., June 1).

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Brokers Counter BlueStar Complaint Over ABC Law

BlueStar Energy Services lacks standing to file a complaint against three Illinois brokers, and has failed to demonstrate any potential violation of the state's new ABC law, three brokers said in a motion to dismiss yesterday (08-0364).

Although the Illinois Commerce Commission has not finalized rules to implement last year's ABC law, which calls for licensing of agents, brokers and consultants as well as certain disclosures to customers, BlueStar filed the complaint against American Energy Solutions, Affiliated Power Purchasers International, and Lower Electric, arguing that ABCs have been subject to the act's code of conduct, regardless of ICC licensing implementation, since October 2007 (Matters, 6/5/08). Specifically, BlueStar alleged that the brokers failed to disclose to customers remuneration for their brokering activity, as required by the ABC act's code of conduct.

But the brokers insisted that, "BlueStar is not empowered to enforce laws or direct investigations." Although BlueStar's complaint references consumer protection, the brokers noted that the Attorney General is the only representative of the people of Illinois by statute.

"This complaint is an attempt by BlueStar to step into the shoes of the Illinois Attorney General, assume the power of the Attorney General and to represent the public by enforcing an Illinois statute," brokers said.

BlueStar also lacks standing in the complaint, brokers argued, because, "it has absolutely no interest that would be affected by a Commission ruling." In particular, brokers contended BlueStar has not alleged that it has suffered any damages, whether direct, indirect, consequential, or any other way one wishes to define damages. The brokers compared BlueStar's position to that of the International Brotherhood of Electrical Workers, which was denied standing in a complaint against

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Constellation Says FirstEnergy MRO Best SSO Option

With modifications to nonbypassable charges, FirstEnergy's proposed Market Rate Offer is the best means for the procurement of Ohio standard service supply, Constellation Energy Group argued in testimony.

The MRO is superior to FirstEnergy's proposed electric security plan, under which "PUCO is being asked to essentially bring an end to retail choice to the detriment of all consumers and to the benefit of FirstEnergy alone, without fully vetting the long-term consequences of adopting the ESP," said David Fein, Vice President of Energy Policy, Midwest, for Constellation.

Fein testified that while rates would be stable under the MRO for a full three-year period, the ESP would allow FirstEnergy to adjust base rates through a variety of riders, "that can increase consumers' electric bills basically at anytime within that period and at the whim of FirstEnergy." There is no limitation on the frequency or magnitude of such automatic increases, Fein pointed out.

Meanwhile a modified MRO, which Fein believes meets statutory directives, would better support the development of retail competition, large-scale government aggregation, and competitive wholesale electric markets.

However, Fein noted FirstEnergy has proposed making several generation charges nonbypassable, which would inhibit customer choice. As part of a quarterly standard service reconciliation mechanism (Rider CRT), FirstEnergy would also seek to collect: (1) competitive bidding process expenses not recovered through the tranche fees paid by SSO suppliers; (2) a working capital adjustment to account for the lag between incurrence of SSO supply costs and collection of SSO customer revenues reflecting such increased rates; (3) uncollectible amounts associated with SSO Generation Service; (4) the difference in revenue from the application of rates in the otherwise applicable rate schedule, including the SSO Generation Charge, and the result of any economic development schedule, energy efficiency schedule, reasonable arrangement, governmental special contract, or unique arrangement (i.e., "special contracts"); and (5)

the costs related to alternative energy resources.

Fein called it "entirely inappropriate" for FirstEnergy to seek to collect uncollectible amounts associated with SSO Generation Service, alternative energy resource costs, and costs from special contracts and economic development or energy efficiency schedules. Fein noted that FirstEnergy's attempt to make alternative energy costs nonbypassable is expressly prohibited by Section 4928.64(E) of the Revised Code. Additionally, customers not taking standard service should not pay for uncollectibles from that service, and should not have to be forced to subsidize special contracts FirstEnergy elects to make, Fein testified.

Fein supported FirstEnergy's proposal to eliminate existing declining block rates and demand charges as steps towards proper cost allocation which will remove cross-subsidies and enable customer choice.

Suppliers Seek Changes to Level Playing Field on Ohio Portfolio Standards

PUCO needs to revise several of its proposed alternative energy rules to ensure a level playing field for competitive suppliers, Constellation NewEnergy, Direct Energy Services, and Integrys Energy Services, told the Commission (08-888-EL-ORD, Matters, 9/10/08).

The Suppliers noted that Staff proposed setting a baseline for alternative energy requirements of competitive retailers based on sales for the previous three years. However, retailers not conducting business in the previous three years would be exempt from a baseline.

That puts existing retailers at a significant disadvantage to new entrants, Suppliers said. A baseline should be comparable regardless of when a retailer entered the market, the Suppliers argued.

Furthermore, since existing retailers may have long-term contracts with customers whose pricing cannot be changed, the energy associated with those contracts should not be counted towards setting a retailer's portfolio goals, Suppliers recommended.

Retailers would also be disadvantaged by provisions allowing utilities to count mercantile customer-sited resources as alternative resources, while not extending the same

provision to competitive retailers, Suppliers added. "There is no rationale that supports only allowing electric utilities and not electric services companies to count such mercantile customer-sited resources towards meeting the benchmarks," Suppliers observed.

Suppliers suggested shortening the required 15-year planning horizon for competitive retailers to one year, given the nature of churn and the competitive business model. Longer planning horizons are more appropriate for utilities, Suppliers said.

The Suppliers also noted the problem of using generation prices to determine whether competitive retailers have exceeded the 3% cost cap, at which point they may petition PUCO for waiver of the alternative energy requirements. Competitive supply contracts may not include a generation rate per se, which PUCO would use to determine the cost cap, but may instead include fixed or bundled pricing that encompasses services other than generation. Suppliers recommended using EIA-826 price data to set the cost cap benchmarks for competitive retailers.

Dayton Power and Light made an observation similar to one made by Duke Energy, noting that the proposed prohibition on making costs related to alternative energy standards unavoidable may conflict with sections of SB 221 that call for a nonbypassable charge for any type of generation resource that is found to be needed pursuant to an integrated resource plan and meets other criteria.

The FirstEnergy utilities also urged PUCO to make costs related to energy efficiency standards (applicable only to utilities) nonbypassable, except for certain exemptions related to mercantile customers. "All customers will enjoy the benefits of achieving energy savings, so all customers should bear the cost, except as otherwise specifically provided in the statute," the FirstEnergy utilities argued.

Kroger insisted that utilities not be allowed to administer energy efficiency programs, because of their profit motive related to throughput, and because such programs will favor "inefficient" customers at the expense of efficient customers who have invested their own dollars in such conservation measures. PUCO lacks authority over customer energy reduction efforts, Kroger said.

Ohio Utilities Resist Proposed Ban on Use of Check Cashing Stores as Payment Centers

Utilities opposed a PUCO Staff proposal that would prohibit utilities and competitive suppliers from using check-cashing businesses and payday lenders as authorized payments agents, citing an increased burden on customers who find the stores convenient (08-723-AU-ORD, Matters, 6/26/08).

The, "elimination of payday lenders as authorized payment agents will have a significant negative impact for low-income customers," Dayton Power and Light argued. Dayton explained that it only accepts payday lenders as payment agents when there are no other interested candidates in the geographic area. Dayton noted that the current 84¢ allowable charge for such transactions makes it "extremely difficult" to attract other payment agents.

AEP noted that more than 20,000 of its Ohio customers used such businesses to remit payments in June 2008, and argued that the issue should be left to the legislature. Logistically it would take at least six months for AEP to secure replacement payment agents to replace the check cashing vendors currently used by the utility.

Check cashing vendors ACE Cash Express and CheckFreePay Corporation noted the use of their establishments as payment centers is critical to customers with no alternatives. ACE reported its payment centers are in neighborhoods where residing utility customers may not have checking accounts and may have limited access to transportation. Thus, check cashing stores provide such customers a service that permits them to pay utility bills on time and conveniently in their neighborhoods, ACE said.

CheckFreePay Corporation, which contracts with grocery stores and pharmacies as payment agents in addition to check cashing stores, agreed that many customers using such services are "unbanked" and do not have traditional bank accounts with which to pay utility bills. Neighborhood payments centers in some cases are the only method some customers have to remit their payment, CheckFreePay Corp. said.

CheckFreePay Corp. reported it will process about 4 million utility walk-in bill payments this year. ACE processed 134,836 Ohio utility payments in the past 12 months. Accordingly, there may be a significant number of utility bills that will go unpaid or will be paid late if the proposal to restrict the types of businesses that can act as authorized payment agents is adopted, ACE reasoned.

ACE noted that less than 2% of customers paying their utility bills at ACE stores enter into a short-term loan transaction on the same day as paying their bill, per a sampling conducted by ACE.

"This data demonstrate that bill payment transactions and short term loans are two different services offered by ACE that are purchased by two different groups of customers," ACE contended.

ACE argued that PUCO lacks jurisdiction to impose the payment center restriction, while CheckFreePay Corp. noted the legislature recently passed the Short-Term Lender Law, which repeals the Check-Cashing Lender Law and makes a number of substantive changes governing the industry.

ACE objected to the Staff's use of the term "predatory," noting ACE has the requisite Ohio licenses and is in compliance with all applicable laws

Also part of the broad credit and payment rulemaking is an examination of allowing customers to choose their billing cycle. Dayton and AEP both opposed measures to let customers choose their monthly due date, citing backoffice logistics and administrative challenges. Dayton also reported customer-selected due dates would increase overall operating expenses due to more complex cash forecasting models which would need to be developed.

A coalition of consumer groups, including AARP and Ohio Partners for Affordable Energy, opposed the use of prepaid meters "for any purpose," including the establishment of credit and the re-establishment of credit or service. Consumer advocates cautioned that prepaid service could expose customers to intermittent service. The consumer groups also argued that utilities with automatic meter reading (AMR) technology should be required to base all monthly billings on actual meter readings.

Briefly:

Illinois ALJ Would Grant Progressive Energy Group AGS License

An Illinois ALJ would grant Progressive Energy Group an alternative gas supplier license to serve residential and commercial customers at Nicor, Peoples, and North Shore under a proposed order. Nicor's intervention into the case was also accepted (08-0478, Matters, 8/27/08).

Suez to Pay \$116,000 Under Revised LaaR Settlement

PUCT Staff and Suez have submitted a revised settlement under which Suez would pay \$116,000 in administrative penalties for failing to deploy 95% of its scheduled Load Acting as a Resource within 10 minutes of ERCOT instruction (35650). The penalty was derived by assessing Suez a penalty of \$10,000 or \$15,000 per MW it was deficient, adjusted downward by 20% to reflect that Suez has met its scheduling requirement for LaaR events since undertaking corrective changes in 2007. The settlement was revised after Commissioners expressed a desire to see a higher penalty. Under the original proposed settlement, Suez would have paid \$73,375.

Verdes Solaris Power Seeks REP Certificate

Lahey & Partners, which would market under trade name Verdes Solaris Power, has applied for a REP certificate. Verdes Solaris is also developing a 100-MW concentrated solar photovoltaic facility in West Texas. Verdes Solaris Power has contracted with Energy Services Group for billing and EDI functionality. Eagle Energy will serve as Verdes Solaris Power's QSE. Co-founder and managing partner Joseph Lahey has been chief executive at several oil, gas and energy services firms. Co-founder and managing partner H. Ray Atkinson founded an international telecommunications network company. Michael Tarte-Booth would serve as COO and has management experience in sales, marketing and customer management. Tarte-Booth was previously managing director of VarTec Telecom Europe, and also had stints at outsourced customer care provider TeleTech as well as BT. Verdes Solaris Power would meet PUCT

financial requirements through unused cash resources of at least \$100,000.

SAB Power Responds to Krescent

SAB Power urged the PUCT to dismiss Krescent Energy Partners' motion to intervene in SAB's REP certification docket, arguing that the Commission is not proper arbiter of agreements between SAB's founder, Tejbir Singh, and Krescent (36006, Matters, 9/8/08). Krescent claims to have a non-compete clause with Singh, but that matter is before a court of competent jurisdiction and has no place in the certificate docket, SAB said.

Texas State Rep. Urges Action on REP Renewals

Texas State Rep. Jim Jackson urged the PUCT to consider mandating that REPs with automatic renewal clauses be required to notify customers of the end of their initial contract at least 30 days from the date that the long-term contract is set to expire. Jackson noted constituents have had fixed-price contracts which have renewed onto more expensive variable-rate, monthly contracts without additional notice. "While this practice is not yet considered illegal, it strikes me as unethical," Jackson said in a letter to Commissioners. The Commission has issued various renewal notice provisions in project 35768.

Michigan Coalition Says Public Supports Energy Legislation

The Michigan Jobs and Energy Coalition, which includes DTE Energy and Consumers Energy, released results from a poll yesterday, claiming, "A new poll shows 83 percent of Michigan voters support the bipartisan energy reform package now before the state Legislature," although the 83% figure relates to energy efficiency and clean energy. In terms of regulatory reform, 67% approve of, "Encouraging Michigan's electric power companies to build new power plants in Michigan by streamlining state government regulation and oversight," per the poll by TargetPoint Consulting. Legislation pending in conference would cap retail choice at 10% of system sales.

EnergyConnect Signs California Property Manager

EnergyConnect has signed commercial property manager Equity Office to a demand response contract for 32 of the manager's California properties.

PECO Procurement ... from 1

The first solicitation would be in the fall of 2009, with additional procurements in the spring and fall of 2010.

PECO's price to compare on bills would include the generation charge, plus applicable transmission charges and alternative energy portfolio charges. Demand charges and block rates would be phased out over three years under PECO's plan.

PECO is proposing new interruptible and economic development rates, but claims they are competitively neutral. Discounts to transmission and distribution charges under the rates are independent of whether the customer is supplied by PECO or a competitive retailer. Generation-related credits that are part of the programs are derived only from PJM's demand response programs which are also available through competitive suppliers and other providers, PECO said.

PECO proposed both an early-payment mitigation plan and a post-cap deferral mitigation plan for residential and small commercial customers (under 100 kW). PECO says both are competitively neutral and would be open to customers regardless of whether they took default service or competitive supply. The deferral program would defer increases above 25% for customers facing such increases.

Under the filing, PECO would create a retail choice ombudsman, expand customer education and referral options regarding choice, and would support development of a common supplier coordination tariff through a working group. POR would be continued.

PECO's plan also includes various energy efficiency measures.

ABC Complaint ... from 1

Ameren Energy Marketing Company regarding the then-present reciprocity laws (ICC Docket 03-0780).

BlueStar disclaimed personal knowledge of potential violations in its complaint, which the brokers argued, "should weigh heavily against the existence of standing to bring this action."

Brokers also insisted that as an alternative retail electric supplier, BlueStar is in, "direct competition," with ABCs that assist customers with obtaining energy from ARES's other than BlueStar. "It would be reasonable to assume that BlueStar is using the ABC law and its economic advantage to keep AES, APPI, and Lower Electric from its customers under threat of this type of litigation," brokers alleged.

Should the complaint proceed, discovery would be the next phase, brokers noted, potentially providing BlueStar with access to competitors' confidential business materials.

Instituting a complaint before the ICC issues rules to implement the ABC law is premature, brokers argued.

"[T]he resolution of this proceeding would require an interpretation of the Act, and a determination of exactly which companies are subject to its provisions, and when they are subject to its provisions, as well as the means of compliance with its provisions," brokers noted.

Interpretation of the Act is particularly relevant to the allegations against Lower Electric, which is also a licensed ARES. The Act's applicability to ARES's is not clear from the Act, brokers observed.

The materials submitted by BlueStar with its complaint do not demonstrate violation of the ABC law, brokers contended. While each brokers' collateral materials are different, the brokers generally argued that each document did not represent an agreement for electric service or other contractual document that would require disclosure of remuneration. Rather, brokers claimed, the documents are preliminary materials or proposals, and cannot feasibly include remuneration because they are produced generally, and are not specific to individual customer agreements which may carry different remuneration amounts.