Energy Choice Matters

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Schumer Box Required for "Every" N.Y. ESCO Agreement

ESCO sale agreements in New York will have to include a "Schumer box" type disclosure chart, while the PSC moved to close a "loophole" related to ESCO credit standards, under modifications to be made to the current Uniform Business Practices (07-M-1514 et. al., Matters, 4/18/08).

A written order from the PSC is not expected for some time, but Staff discussed the essential elements of the new rules at yesterday's regular session, and the PSC also issued a press release with general elements of the changes.

Per the Commission's press release, "**every** sales agreement" (emphasis supplied) will require a "Consumer Disclosure Statement" on its first page detailing the most important terms of the ESCO agreement, such as the contract's rate, term, and termination fee provisions. Market participants will have to await the final order to see if the release's description is accurate, and whether the mass market disclosure statements will differ from those (if any) required for customized, negotiated contracts with large C&Is. A hotly contested issue during the case was what customer classes would be covered by the revised customer protection standards and how to define customer classes. The Commission also gave no indication as to the form, location, size, and language of the Schumer Box, which was the larger question in the case, as many ESCOs conditionally supported an appropriately designed disclosure table (Matters, 5/26/08).

Staff also said the order will address several utilities' concern regarding ESCOs' ability to avoid posting necessary credit with the utility by placing a minimal amount of customers on utility consolidated billing with POR. In particular, ConEd has complained of ESCOs satisfying credit

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Nstar, National Grid File Initial POR Proposals

Although transferring the ownership of supplier receivables to the distribution utility appears straightforward, the mechanics involved are "fairly complex," Nstar said in a filing with the Massachusetts DPU in which it detailed its plan to institute POR for residential and C&I customers.

Buried in Section 60 of the Green Communities Act is the requirement that distribution companies purchase the receivables of suppliers using complete (utility consolidated) billing without recourse.

Nstar has initiated a business process study to identify accounting and customer information system changes to implement POR. When that process is completed Nstar will propose a timeline for implementation, though Nstar did not indicate when its study would be concluded.

Nstar said it does not currently track or collect receivables of suppliers, which means its systems are not currently configured to treat those amounts as the company's own receivables.

The purchase price Nstar will use to discount receivables will include bad debt, IT costs, financial risk costs and "other reasonable operating costs."

Bad debt is to be based on the most recent 12-month average bad debt percentages for a customer class. The bad debt component will be fixed for three months for large C&Is, and six months for small C&Is and residential customers, consistent with timing of basic service price changes.

Nstar proposed an operating cost adjustment of 0.15 percent to collect costs of running the program, including dispute resolution costs which may be necessary to resolve issues between suppliers and Nstar.

Receivables will be paid to suppliers based on the average payment period for each customer class, reset at three-month intervals for large customers and six-month intervals for mass market

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N.Y. PSC Keeps Most Retail Access Programs, Shifts Costs to ESCOs for Some

New York utilities lacking an ESCO Referral Program are to develop one in "short order," while existing referral programs at other utilities are to be maintained, under an order to be issued by the New York PSC (07-M-0458).

While a written order was not issued, the Commission at its regular session found ESCO Referral Programs to provide a good opportunity to increase mass market participation in the competitive retail market, and backed the programs in a docket originally opened to determine what, if any, "subsidies" ESCOs were receiving from ratepayers through numerous policies implemented to jumpstart the market.

ESCOs will have to pick up the tab to implement Referral Programs at utilities currently lacking them, such as KeySpan and National Fuel Gas. Ongoing costs of the programs, such as the cost of utility customer service reps, will continue to be paid by ratepayers via utility charges, the Commission said.

The Commission ordered that the use of EDI, Purchase of Receivables, Utility Consolidated Billing and unbundled billing be continued. It is also appropriate for utilities' outreach and education plans to include information about retail choice.

Utilities are authorized, but not compelled, to continue Market Expos, Market Fairs, and Market Match programs. Should a utility desire to continue any of those programs, costs would be borne by ESCOs.

Any remaining financial incentives paid to utilities for either reaching a certain number of migrated customers, or certain levels of satisfaction or awareness of choice in customer surveys, will be discontinued as that utility's current rate plan expires. Most of the incentives have already lapsed, the Commission said.

PUCT Staff Issues Final POLR Designations

PUCT Staff have released their final POLR designations for the 2009-2010 term, which give added responsibility to Constellation NewEnergy and Sempra Energy Solutions.

The final designations, available in docket 35630, can now only be challenged in a contested case proceeding, and the contested status of any appeal will not delay the selection of non-volunteering POLR providers.

The final designations include two changes from the most recent preliminary filing (Matters, 10/8/08).

Staff has assigned Constellation NewEnergy to be a non-volunteer POLR for the small non-residential class at CenterPoint, replacing StarTex Power which had said it did not meet the criteria for such designation (Matters, 10/14/08). CNE also remains a non-volunteer POLR for small commercial customers at AEP Texas North and Texas-New Mexico Power despite CNE's objections.

Staff designated Sempra Energy Solutions as a non-volunteer POLR for the large non-residential class at CenterPoint to replace Champion Energy, which previously reported that it would no longer be serving large commercial customers in ERCOT.

There were no changes to designations in the residential or medium non-residential classes.

N.Y. Provides Added RPS Funding to Keep Market Going While it Conducts Review

The New York PSC is providing an additional $42.6 million in grants to assist residential and commercial consumers with installation of solar panels and other types of behind-the-meter generation under its RPS program, but not without considerable debate about the appropriateness of the supplemental funding in light of the Commission's current comprehensive review of the RPS (03-E-0188, Matters, 9/4/08).

Per a PSC news release, some $20.6 million is being made available to install solar photovoltaic systems while $7.6 million is being made available to install anaerobic digester biogas systems. The funds are meant to keep existing RPS programs running as the Commission conducts its review of RPS. Bridge funding is needed, Chairman Garry Brown said, to ensure that the renewable industry, including manufacturers and installers, does not leave New York in the interim as the Commission considers the future direction of the program.

Commissioner Maureen Harris, however, was hesitant to dedicate more funds to programs which may be deemed inferior to new alternatives developed in the Commission's RPS review. Harris particularly noted that larger-scale, commercial development of solar may be more cost effective than customer-sited solar, and did not want to tie up funds in a program which may be drastically altered in a few months.

With the additional funding, more than 90,000 MWh of annual generation is expected to be achieved, the Commission said.

Briefly:

Bad Debt Steady at MXenergy

Bad debt levels at MXenergy are in line with historic levels, and were less than 1% of total sales for fiscal 2008, executives reported on an earnings call yesterday, though the reporting only covers the period through June 30, 2008 (Matters, 10/15/08). MXenergy told investors it was weighing the current economic climate and adjusting its holdings in anticipation of higher bad debt as needed. CEO Jeffrey Mayer also highlighted the two KeySpan LDCs in New York, and the Massachusetts electric market, as targets for growth since those markets will soon be instituting POR. Noting that MXenergy has completed three acquisitions this year (GasKey, Catalyst Natural Gas, and Commerce Energy's gas book at BGE), Mayer told investors he remains "interested" in acquisitions. However, the ERCOT market, which produced several acquisition opportunities earlier this year as volatility squeezed out marginal players, has been "tamed" a bit, Mayer said. MXenergy said it was still assessing the impact of Hurricane Ike on its earnings.

Hess Adds Carbon Product to its Suite

Hess Corporation launched a carbon-neutral energy program dubbed "C-Neutral" in response to, "growing interest from commercial and industrial customers to reduce [their] carbon footprint." The service covers electricity, natural gas and fuel oil, and calculates a customer's carbon footprint so it can be mitigated with Green-e offsets. "Demand from customers for environmentally responsible energy solutions has never been stronger," Gene Kutcher, Hess Energy Marketing vice president of sales, said. The new offering follows Hess's foray into demand response earlier this year.

EDF Won't Pursue Constellation

EDF has bowed out of the running for Constellation Energy, citing the "difficult credit market" as not being conducive to presenting a new offer. EDF still said it wished to develop at least four European Pressurized Reactors in the U.S. in partnership with one or several American players.

Verdes Solaris Power Gets REP Certificate

The PUCT granted a REP certificate to Lahey & Partners, LLC d/b/a Verdes Solaris Power. Verdes Solaris is also developing a 100-MW concentrated solar photovoltaic facility in West Texas (Matters, 9/11/08).

Michigan Gas Market May See Boost from Zurvita Choice by MXenergy

MXenergy’s network marketing strategy (Matters, 10/15/08, 6/16/08) may boost a thinly contested Michigan gas market as its network marketing partner Zurvita Choice by MXenergy aggressively develops a sales force. Universal Gas & Electric has been the only seriously active gas marketer in Michigan for the past year, and is enrolling about 4,200 new customers every quarter. Now Michigan real estate holding company Mona View Holdings has signed on with Zurvita Choice as an affiliate to market MXenergy fixed-price gas contracts. Zurvita has been attempting to lure network marketers away from competing multi-level marketers Ambit Energy and Ignite (Stream) by touting a larger service area for its MXenergy product, initially New York (gas/electric), Texas (electric), Georgia (gas), Ohio (gas) and Michigan (gas), with the intent to expand to all of MXenergy’s 14 markets.

Arc Energy to Turn in REP Certificate

Arc Energy requested to relinquish its REP certificate to the PUCT. Arc Energy has never served customers since receiving its license in 2004. Arc had been developed by entrepreneur Irma Tuder, Sean Cyprian Wright, who helped launch Choice Energy Services, and William Spijkerman, who led e'prime's (Xcel Energy) Georgia business, among other competitive marketing ventures.

PUCO Accepts Dominion East Ohio Rate Case Stipulation

PUCO approved a Stipulation (Matters, 8/26/08) among Dominion East Ohio and stakeholders in DEO's rate case that, among other things, extends from 14 to 30 days the period in which DEO must remit payments to natural gas marketers for the purchase of receivables billed from DEO's Customer Care System (CCS). DEO is to remit 100% of the value of supplier receivables, less any unpaid supplier balances, by writing a check or executing a wire transfer weekly for accounts billed from the CCS, and monthly for accounts billed from the Special Billing System (SBS). Such payments shall be made approximately 30 days after the accounts have been billed. DEO is to also evaluate the feasibility of providing adjusted bill due dates to allow customers the option of having the due date on the bill coincide with the time when they are most capable of paying the bill.

Rendell Renews Call for Rate Mitigation

Despite previously touting the passage of a bill containing portfolio default service procurement and conservation measures as addressing Pennsylvania's move to market-based rates (HB 2200, Matters, 10/9/08), Gov. Ed Rendell quickly returned to pushing for rate mitigation in the 2009 legislative session. "[W]ork remains to avoid the punishing blow our families and businesses are facing once rate caps expire," Rendell said in signing HB 2200, expressing disappointment that a rate mitigation proposal was not enacted this year.

Pa. PUC Sets Date for Second Wholesale Hearing

The Pennsylvania PUC set for Nov. 6 a second special en banc hearing to discuss trends in the wholesale electricity markets. The first hearing is on Oct. 23 (Matters, 10/8/08).

TXU Rolls Out Online Efficiency Calculator

TXU Energy launched a new online tool, called the HERS Index (Home Energy Rating System), that lets homeowners simulate how a variety of home energy improvements could impact their home energy efficiency and the impact on their energy bill. The HERS Index is a rating system that estimates the energy efficiency of any home using predetermined values.

Comverge Unveils PowerPortal Home Monitoring Unit

Comverge yesterday rolled out the PowerPortal Home in-home display that provides customers with current energy usage, energy price information and utility messaging. PowerPortal is designed for ZigBee and is AMI-ready. Comverge said research has shown that consumer energy savings of up to 15% can be realized with the use of a device, such as the PowerPortal Home, that allows the end user access to real-time energy usage data.

EIA Mulls Changes to Storage Report Release After Attacks

The EIA is considering changing the method of disseminating weekly natural gas storage reports due to the increased use of automated "robots" and other strategies to access the online data immediately upon release and, in some cases, deny access to the commercially sensitive data to other market participants. EIA likened the increased use of automated retrieval programs which clog its servers to, "prescheduled denial-of-service attack[s]," and asked market participants whether the actions amounted to a cyber security attack. The EIA recognized that small time differences in market participants' access to data has commercial implications and asked for input on other methods to release the data, whether a registration system should be implemented, and whether the use of robots should be prohibited.

N.Y. UBPs ... *from 1*

obligations to the utility by placing a few customers on POR, which, under the current UBPs, absolves the ESCO of further collateral postings, with the ESCO then dual billing the majority of their customers. Other than that change, the Commission concluded current ESCO credit standards are adequate.

The Commission also adopted marketing standards for ESCOs built upon the voluntary standards developed in 2006 in a collaborative initiated by Strategic Energy.

Elements beyond the current voluntary standards include training marketing representatives so that they possess:

- Knowledge of the applicable provisions of the Home Energy Fair Practices Act that pertains to residential customers;

- Knowledge of ESCO rates, payment options and the customers' right to cancel, including the applicability of an early termination fee; and
- The ability to provide the customer with a toll-free number from which the customer may obtain information about the ESCO's mechanisms for handling billing questions, disputes, and complaints.

In-person solicitations, other than at an ESCO's place of business, require ESCO representatives to, among other things, identify the ESCO which they represent as an independent energy marketer, and identify themselves as a representative of that specific ESCO.

"During the sales presentation, the marketing representative must also state that if customer purchases natural gas and/or electricity from the ESCO, that the customer's utility will continue to deliver their energy and will respond to any leaks or emergencies. This requirement may be fulfilled either (a) by an oral statement by the ESCO marketing representative, or (b) written material left by the ESCO marketing representative," the Commission said. Further, ESCOs that are affiliates of distribution utilities should not describe or disclose their relationship to the distribution utility unless such information is specifically requested by the customer.

ESCO marketing representatives are to provide the customer with written information regarding ESCO products and services immediately upon request, which shall include the ESCO's name and telephone number for inquires, verification and complaints.

"Where it is apparent that the customer's English language skills are insufficient to allow the customer to understand and respond to the information conveyed by the ESCO representative or where the customer or another third party informs the ESCO marketing representative of this circumstance, the ESCO marketing representative shall either find a representative in the area who is fluent in the customer's language to continue the marketing activity in his/her stead or terminate the in-person contact with the customer. The use of translation services and language identification cards is permitted," the Commission said.

Telephonic solicitations require similar disclosures regarding the nature of ESCO versus utility service, and also require that the marketer, "State the purpose of the telephone call," although the Commission's press release is silent as to what language qualifies as meeting that requirement. While it seems reasonable to expect that the new rule means that sales reps are required to inform the customer that the call is regarding a "switch" to or "enrollment" with an ESCO for energy supply, we have seen some suppliers in other jurisdictions with similar purpose-of-the-call requirements attempt to claim that the purpose of the call is to "save the customer money" or "reduce the customer's energy bill" in order to avoid having to say a harder word to sell to customers, like "switch," during the call.

Along with requirements prohibiting deceptive and misleading practices, the modified UBPs require ESCOs to, "Ensure that any product or service offerings that are made by an ESCO contain information written in plain language that is designed to be understood by the customer." Plain language is not defined, but we wouldn't expect the boiler plate legal language in many agreements (force majeure, etc.) to qualify, nor would some esoteric termination fee disclosures. This requirement essentially duplicates an existing New York General Business Law (which has been enforced by the AG against certain ESCOs), although the law only applies to residential sales.

The revised UBPs also explicitly give the Commission remedies to deal with ESCOs violating the UBPs in addition to license revocation, including a limitation on new enrollments or limitation on service in certain utility territories.

Several issues were kicked to Phase II of the proceeding, including review of the years-old petition of Accent Energy to allow customers to access their utility account numbers remotely (to facilitate enrollment at event/mall kiosks), and the petition of U.S. Energy Savings to institute a "contest period" that would permit an ESCO to prevent a customer believed to have been slammed from being switched, upon customer verification. The Commission's discussion was also silent as to the size of termination fees, which became an issue in the case.

Phase II is to also include review of ESCO consolidated billing, the timeliness of utility supply price reporting, and utility affiliate rules, all of which were raised by stakeholders in comments.

The Commission rejected the tariff filing submitted by National Fuel Gas Distribution Corporation to institute its own, LDC-specific door-to-door solicitation and marketing rules.

Staff concluded that ESCOs are subject to the Public Utility Assessment (PSL §18-a), and recommended making such finding in the written order, and then delegating the issue of whether to collect the assessment to the Chairman.

Commissioner Maureen Harris, however, objected to that process, as she was uncomfortable voting on an order that simply delegates a duty to the Chairman. Staff said its finding did not have to be contained in the order itself, and rather could be separately addressed.

The assessment, a fee used to run the PSC, is currently only levied on utilities, and ESCOs have cautioned that imposing the fee on ESCOs would result in a double-assessment on ESCO customers, since they would also pay an assessment through their delivery service rates, absent any protracted unbundling process.

Mass. POR ... *from 1*

customers.

National Grid proposed a similar method to implement POR, but included a specific provision which has gained the attention of suppliers.

Grid would only allow suppliers to use one billing method per customer class -- either complete billing with POR, or pass-through (dual) billing.

"Without this requirement, Suppliers could 'cherry pick' the best paying customers and exempt them from the PoR Program," Grid told the DPU. Suppliers, Grid claimed, would have an economic incentive to use pass-through billing for the most creditworthy customers, where there is a high probability of collecting 100% of the billed charges, while reserving the POR program for less creditworthy customers, since the supplier would receive a guaranteed payment from Grid, less the discount based on the class average uncollectible rate.

As in the case of other markets where suppliers must place all customers in a class on POR in order to use it, retailers were not receptive to the proposal, and doubted such arbitrage would occur. As Chris Kallaher, Director of Government & Regulatory Affairs for Direct Energy Services, told us, the decision to use complete or pass-through billing is driven by the complexity of a particular product as well as customer preference.

Grid would also only adjust the POR discount factor annually, rather than twice a year or quarterly as Nstar would.

Grid's POR discount would be based on the average of commodity-related bad-debt cost for the participating service classes, and would include program development and operating costs such as administrative and collection costs. Individual discount factors would be calculated for the residential, commercial and industrial customer classes and reconciled on an annual basis to account for actual experience.

Grid intends to implement each year's new POR discount on November 1, coincident with the implementation of new basic service rates. Assuming an annual November 1 implementation, Grid would file its proposed POR discount by May 1 of each year in order to provide suppliers with adequate notice of the change in each year's discount.

As is the case in several New York territories using POR, suppliers using Grid's POR would be required to notify their complete bill customers that National Grid will have the right to disconnect service to customers who fail to pay the supplier's generation service charges on the complete bill.

Grid also said it wishes to retain the right to purchase accounts receivable through an affiliate, as it is possible that the such a sale may facilitate the implementation of the program, reduce administrative costs, and allow Grid's other utility affiliates to use the same approach.

Other than saying it was prepared to enact POR within a "reasonable" timeframe after Department approval of its plan, Grid did not specify an implementation timeline.