Energy Choice Matters

December 2, 2008

Texas Rates Lower Under Competition When Adjusted for Fuel, Inflation

Retail generation rates have fallen 13% on an adjusted basis in the Dallas and Houston areas since the start of competition, a new report from Intelometry says.

The study, commissioned by the Alliance for Retail Markets, examined residential electric rates in the Oncor, CenterPoint Energy, and AEP Texas Central regions since 1995, adjusting for fuel prices, inflation, and changes in distribution and other regulated charges. When examining generation-only rates adjusted for these factors, Intelometry determined supply rates have fallen nearly 14% at CenterPoint, 13% at Oncor, and nearly 3% at AEP Texas Central.

Residential Generation Supply Prices

Adjusted for 1995 Fuel Costs, Inflation and Regulated Rate Changes

(1995 cents/kWh)

	CenterPoint	Oncor	AEP TCC
1995-2001	6.67	6.55	5.75
2002-2006 Price to Beat	6.78	6.46	6.78
2002-2008 CREP/REP Offers	5.75	5.69	5.59
Post Retail Competition Price Decrease	13.87%	13.07%	2.67%

For the study, generation supply costs were extracted from bundled utility rates prior to 2002, using a combination of a Functional Cost of Service Model and a Regulated Fuel Cost Model. The Functional Cost of Service Model was developed utilizing the public filings of each of the three Texas

... Continued Page 5

O&R Proposes Shorter Timeframe for POR Discount; Elimination of Rollover Imbalance Option

Orange & Rockland proposed changes to the calculation of the gas POR discount and elimination of ratepayer funding for its ESCO Referral Program as part of a gas rate case filed with the New York PSC (08-G-1398).

O&R is seeking to change the POR discount from encompassing uncollectibles over a 36-month period ending June 30 to a 12-month period ending June 30. The modification, O&R said, will more accurately track uncollectible expenses in today's turbulent financial environment.

Under O&R's application, the gas POR discount rate would also be tweaked to be consistent with the electric discount rate, by adding a credit and collections component to the gas POR discount rate. Such costs are currently embedded in a Merchant Function Charge (MFC) applicable to retail access gas customers served under POR. With the movement of such charges to the POR discount itself, O&R would eliminate the MFC for retail access customers, similar to recent changes on the electric side of the company (Matters, 7/25/08).

O&R testified it is "amenable" to continuing its PowerSwitch ESCO Referral Program and "eBids" market match program, but is uninformed as to whether ESCOs wish to fund them. Under the Commission's recent retail access order (Matters, 10/16/08), ESCOs must fund ongoing costs of such programs.

eBids' costs are limited to ongoing promotional costs, such as bill inserts, and shared costs of maintaining a server hosting the market match program. PowerSwitch costs include promotion of the referral program and administration costs, including enrollment, imputing the discounted price into the

... Continued Page 5

RESA Recommends Shorter Contracts for D.C. SOS

SOS for mass market customers in the District of Columbia should be bought on rolling contracts lasting 12-months, with hourly pricing for large customers, the Retail Energy Supply Association said in comments on a PSC rulemaking which would codify many of the existing SOS provisions.

The D.C. PSC's NOPR calls for mass market SOS to be 40% filled via contracts of at least three years in length, with the remainder filled on one-to-two year contracts. Contracts shorter than one year would be prohibited (Matters, 11/4/08).

Under RESA's proposal, SOS procurement for mass market customers would be based on rolling, 12-month full-requirements contracts, executed twice annually. Two 12-month supply contracts would be procured each year, and each contract would meet 50% of residential/small commercial requirements. In other words, a new 12-month contract (for 50% of the load) would become effective every October and July, similar to the effective dates of the current structure's two-year contracts. Each 12-month contract would have two seasonal prices, with two price changes per year.

The rolling 12-month contracts would provide relative price certainty while leading to the creation of a sustainable competitive retail market for mass market customers, RESA said.

Additionally, shorter-term procurements would reduce risk premiums associated with longer-term contracts, which have been exacerbated by the recent financial crisis. Long-term SOS contracts lock in current estimates of fuel prices, interest rates, inflation, volumes, environmental requirements and regulatory environment, and all of these, with premiums, will be included in the cost of the contract and passed through to customers, RESA noted.

RESA pointed to Maryland's October SOS procurement and November reserve auction which produced large premiums and left several tranches of load unfilled due to high prices (Matters, 10/28/08). RESA cited the analysis of the Maryland Commission's bid monitor, which testified that, "it makes economic sense to hedge less" given current premiums seen in the recent SOS solicitations. Shorter-term contracts with lower risk premiums, and increased spot purchases, are even more beneficial in the new credit-constrained financial environment, RESA argued.

Long-term SOS contracts can also lock customers into high prices for an extended period of time, and could deprive customers of cheaper power which may be available upon completion of the Trans-Allegheny Interstate Line (TrAIL) and Potomac-Appalachian Transmission Highline (PATH) projects. Long-term contracts can discourage efficient electricity usage and conservation, RESA added.

For these reasons, adopting a laddered procurement with a 40% carve-out for three-year-or-longer contracts would, "send the wrong message about the future of retail competition in D.C. for mass market customers," and, "represent a significant step backwards for mass market D.C. customers as it would ensure that they remain tied to utility-procured SOS with no viable retail alternatives," RESA said.

RESA further encouraged the PSC to define SOS customer classes by peak load contribution rather than Pepco rate class. Defining SOS classes by peak load contribution would allow for customer groupings that include customers with similar usage characteristics, which would improve transparency. The Commission could also tailor SOS procurement models for each grouping, RESA noted.

SOS for large customers should be hourly priced service, RESA said, with the cutoff at either 500 kW or 600 kW. The Commission proposal would ladder large customer SOS over two years. Customers need to see an hourly price signal in order to know when to reduce their peak electric usage, which enables demand response and greater energy efficiency, RESA observed.

RESA did not offer any concrete demand cutoff to define small or medium customers, but urged the PSC to limit small customers to those with usage characteristics that are similar to residential customers. The current and proposed definitions of small customer, which rely on Pepco rate schedules, likely capture some customers with usage characteristics that are much greater than residential customers, RESA said.

The Commission should delete the proposed rule that subjects non-residential customers to a

12-month minimum stay when returning to Pepco after taking service from a retail supplier, RESA urged. RESA called the minimum stay rule a "significant market development barrier" which is contrary to the language of the Retail Electric Competition and Consumer Protection Act of 1999, which ensures that, "consumers shall have the opportunity to purchase electricity supply from their choice of licensed electricity suppliers."

If the intent of the minimum stay is to reduce the risk premiums that are embedded in the SOS wholesale contracts, the answer is not to restrict choice and hamper the development of the market, RESA insisted. Rather, the answer is to opt for a procurement model that includes shorter-term contracts that are likely to include lower risk premiums, RESA argued.

ABCs Appeal ALJ Ruling in BlueStar Complaint to Full ICC

Citing a, "serious public policy implication of allowing a company engaged in the business of electric supply to initiate complaints against its competitors without the need to show indirect or consequential damages as the basis for the complaint," three brokers appealed to the full Illinois Commerce Commission an ALJ's ruling denying dismissal of a complaint from BlueStar Energy Services brought under the state's ABC law (08-0364).

BlueStar has alleged that American Energy Solutions, Affiliated Power Purchasers International and Lower Electric did not disclose to customers their remuneration for brokering services as required under the new ABC law (Matters, 11/10/08). An ALJ rejected the brokers' motion for dismissal, finding that a supplier acting to protect its own interest against misleading marketing practices of its competitors is advancing competition in the market, which was the goal of the ABC law.

The ALJ's ruling, "effectively eliminates the requirement for standing to initiate complaints before this Commission," American Energy Solutions, Affiliated Power Purchasers International and Lower Electric said in a petition for interlocutory review.

The brokers cautioned the Commission against establishing a rule that grants any gas, electric or telecommunications provider standing to file complaints against their competitors with the simple statement that they have an interest in everyone following the law, noting the "anticompetitive implications" of such a wide open complaint process.

Although the brokers note the ABC law provides that a complainant need not have suffered "direct damages" to bring a complaint before the Commission, "this language does not eviscerate the standing requirement in Commission proceedings."

Rather, the precise statutory language only eliminates the need to allege "direct" damages, the brokers insisted, arguing complainants must still meet the standing requirement of a recognizable injury that is connected to the alleged conduct which is capable of being redressed.

While the ALJ concluded the law's code of conduct requiring remuneration disclosure took effect October 11, 2007, the ABCs again argued that the Commission cannot consider complaints under the law until it adopts rules implementing it. Brokers noted that the law provides it applies to "any person or entity required to be licensed under this Section," and contended that a logical reading holds that ABCs will be "required to be licensed" only after the Commission promulgates the licensing rules.

"Such a reading would be particularly important here, because those rules will define among other things, which entities are subject to and which are exempted from, the licensing requirements," brokers noted.

The complaint should also be dismissed, brokers said, because the only remedy allowed under the Act is the suspension of an existing license. The imposition of that penalty is not possible until the Commission promulgates rules, and the Act's compulsory language precludes the "prospective" suspension of a license, as suggested by BlueStar, brokers contended.

Regarding the marketing materials at the heart of the complaint, which do not list remuneration, brokers again claimed that preliminary documents cannot possibly include remuneration because remuneration will not be known during initial customer solicitation.

The ALJ concluded that the remuneration disclosure requirement arises when an ABC "solicits" someone, and held that solicitation precedes contracting.

But brokers noted that at the early stages of communication with a potential customer, remuneration could be anything from a flat fee, a monthly fee, a savings based fee, a factor or formula, or any other fee arrangement -- the details of which would not be known until much later when the necessary information has been exchanged, needs and desires analyzed, and opportunities explored.

"It is not practical to require disclosure of remuneration when the providers do not know what the actual remuneration will be. Under the ABC law, providers must disclose what remuneration they *will* receive, not what they might have in mind or think they may receive when first soliciting," brokers pointed out.

The brokers further noted BlueStar has provided no evidence that the marketing materials were not directed at an exempt class of customers to which remuneration disclosure is not required, such as those with aggregate billing demand in excess of 1,500 kW.

Md. Utilities Seek Guidance on Volume of Demand Response for Gap Procurement

Any excess revenues from demand resources procured in the Maryland IOUs' gap RFPs should be retained for the benefit of distribution customers, to be used to offset the costs of the RFP, Allegheny Power and Baltimore Gas and Electric urged in a clarification request (Case 9149, Matters, 11/7/08).

The IOUs also requested that any non-performance penalties incurred by the procured demand resources be paid by the demand resources, rather than utility customers.

The utilities asked the PSC to clarify what evaluation criteria should be used in the procurement process, as the IOUs believe it is unclear whether the Commission wants the IOUs to accept all bids or cap the amount of resources procured. In addition to the bid price and the ability to meet obligations, location could be added to the evaluation of bids, which would add complexity, IOUs noted.

The Commission's order holds that resources procured through the RFP may not participate in PJM's economic load response program while providing service to the utilities. BGE and Allegheny are concerned such a measure could raise RFP prices, both from discouraging participation as well as from adding a premium to the price of participating resources which are being asked to forego an alternate revenue stream. The IOUs suggested that resources be permitted to participate in PJM's economic program or other programs so long as such participation does not impact their adherence to the requirements of the RFP.

BGE, Allegheny, Pepco and Delmarva all submitted model demand response contracts to the PSC as well.

Briefly:

Texas, N.Y. Regulators Set Interest Rates

The PUCT set the 2009 interest rate for customer over-billings at 3.21%, and set the customer deposit rate at 2.09%. The New York PSC set the customer deposit rate paid by IOUs and ESCOs at 4.85%, and set the interest rate paid on other customer-provided capital, such as gas supplier refunds, at 6.60% for IOUs and ESCOs.

Md. PSC Re-regulation Report Expected Dec. 10

The Maryland PSC's final report on re-regulation, required under SB 400 and due December 1, is expected to be released sometime around December 10, the PSC said yesterday.

FERC OKs Fortis Sale

FERC approved the acquisition of Fortis Bank S.A./N.V by BNP Paribas, which includes jurisdictional facilities consisting of Fortis Energy Marketing's market-based rates tariff, wholesale power contracts, and related books and records.

Pepco Energy Services Wins Norfolk Efficiency Contract

Pepco Energy Services was selected to provide a comprehensive lighting retrofit and to complete a geothermal system installation at the Norfolk (Virginia) Public School System.

Peevey, Chong Re-Appointed

Gov. Arnold Schwarzenegger re-appointed Michael Peevey and Rachelle Chong to the California PUC. Both appointments require Senate confirmation.

Texas ... from 1

utilities (and their predecessors). The Regulated Fuel Cost Model was based on each utility's FERC Form 1 filings, which included specific operating data on each power plant.

To determine generation costs in competitive prices, Intelometry developed average retail offer prices using historical postings of retail offers obtained from the PUCT's Power to Choose website (not including the Price to Beat rate). The average retail offer prices were developed for each of the three utility service areas, and for each month of the 2002 to 2006 time period. The applicable utility's transmission and distribution rates were subtracted from the retail offer prices to determine the customer's generation supply price.

Although residential customers have nominally paid more for electricity since the introduction of customer choice in Texas, Intelometry determined that retail competition is not responsible for the price increase. Other factors -- notably the dramatic increase in natural gas prices -- have exerted upward pressure on the price of retail electric service in the market in recent years, Intelometry said.

In view of the strong relationship between natural gas and wholesale power prices in ERCOT, a model was constructed that used the historical relationship between natural gas and power prices to project what on-peak power prices would be if natural gas prices had remained at 1995 levels during the 2002 to 2008 time period. Using these adjusted on-peak prices, Intelometry derived retail commodity costs for the analyzed periods assuming natural gas prices had remained at 1995 levels.

O&R ... from 1

billing system, and monitoring bills to ensure the discount is applied -- all manual tasks. A breakdown of PowerSwitch costs will be included in O&R's December 11 filing on the program pursuant to the Commission's retail access order.

O&R said it was unwilling to continue programs over which it does not have promotional control. Continuation of PowerSwitch and eBids will be decided through an ESCO collaborative, O&R said.

O&R would spend $100,000 annually on retail access Outreach & Education, which is the current level. Activities would be limited to general education and explanation of choice, and would not include the cost of promoting PowerSwitch and eBids through bill inserts.

Under O&R's rate plan, the utility would stop conducting surveys of customer awareness of choice. Incentives tied to customer awareness would terminate at the end of its current rate plan, consistent with the Commission's October retail access order.

O&R is again seeking to end its rollover option for imbalances under SC 11. Currently, Qualified Sellers have the option of settling their monthly imbalance volumes through a rollover option or a cash-out option.

The rollover option carries imbalances to the next month, through an adjustment to Aggregated Daily Contract Quantity, and results in imbalances being reconciled through delivered volumes up to three months after the fact. In a volatile market, the price of gas may vary greatly over these three months, O&R noted, creating a "significant" mismatch risk.

The cash-out option, which provides a reimbursement mechanism that reflects market prices at the time of actual imbalance, is "more equitable and economically efficient," O&R argued.

O&R reported that in 2006, ESCOs collectively lost $1.5 million in gas cost differential through the rollover option. The imbalances can swing against O&R's firm sales customers as well, such as in June 2003, when there was an $800,000 differential between the value of make-up volumes delivered in June 2003 and the original value of gas in March 2003 when imbalances occurred.

While O&R customers have not, on balance, been negatively impacted by the rollover option to date, such results do not guarantee future protection, O&R said.

O&R further justified the elimination of the rollover option based on logistical challenges it creates, especially since transportation volumes now account for 50% of load. For example, in May 2007, ESCOs owed nearly 300,000 Dth to O&R, a large amount which O&R said was difficult to mange in shoulder months when gas usage is less and parts of its system are down for maintenance.

O&R is also proposing to close Interruptible

Transportation and Supplemental Sales (SC 8) to new customers effective November 1, 2009, and suggested exploring whether the classification should be modified and/or eliminated in the future for existing customers.

Interruptible transportation customers taking service under SC 8 currently provide limited benefit to O&R, as O&R no longer needs to interrupt SC 8 customers, even on a projected peak day, based on the current configuration of O&R's gas distribution system. SC 8 customers have not been interrupted due to distribution system limitations over the eight-year period ending October 2008.

"Thus, this class of customer is effectively receiving firm service at a much reduced rate," O&R said.

Of the 92 current SC 8 customers, most are relatively small (66 are below 10 mcfh), and individually they do not provide a significant improvement to pressure when interrupted, O&R reported.

The *Energy Choice Matters* Referral Program -

We hope you enjoy your access to the latest and most wide-ranging and in-depth coverage of competitive energy news in the market, and we need your help to get the word out about Energy Choice Matters. And we're offering cold, hard cash to do it -- $100 for every subscriber you refer to us.

Energy Choice Matters is perfect for competitive retailers, merchant generators, wholesale suppliers, restructured utilities, financial marketers, independent power producers, energy law practices, backoffice vendors, independent system operators, regulators, and anyone else who needs to stay on top of everything in competitive retail and wholesale electricity and natural gas markets.

But we can't reach everyone. That's why we're launching the Energy Choice Matters Referral Program to reward you for clueing in others to the best source for competitive energy news. For every subscriber you refer to us, you receive $100.

Here's how it works:

1. Tell your colleagues about Energy Choice Matters
2. Let them know they can receive a two-week free trial by emailing us at info@energychoicematters.com or calling 954-935-1994 and mentioning your name. This way we can make sure to count them as your referrals.
3. Let them know by mentioning your name when asking for a free trial, they become eligible for our promotional rates, including $200 off the list price for any subscription plan.
4. If your referral subscribes to any subscription plan within 60 days of the end of their free trial, we'll send a check made out to you for $100, upon payment for the subscription. Referrals must mention your name for you to receive your $100.

There's no limit on the number of referrals you can collect, but each new subscriber can only credit one referral when signing up. If you have any questions, please call us at 954-935-1994