

# Energy Choice Matters

December 10, 2008

## ESCOs Say Change in KeySpan POR Plan Adds Recourse to Program

Removing the credit and collections (CC) cost as part of the POR discount under filed programs at KeySpan Energy Delivery New York and KeySpan Energy Delivery Long Island would have the effect of improperly transforming the POR program from a "without recourse" to a "with recourse" program, the Small Customer Marketer Coalition said in comments on the two plans (Only in Matters, 10/10/08).

Originally, the two National Grid LDCs filed a POR discount rate of 3.30%, comprised of a historical uncollectible rate of 1.48%, a program development recovery rate of 0.40%, and a credit & collection rate of 1.42% (06-G-1185).

However, the KeySpan LDCs amended their filings by removing the credit & collection component from the POR discount. Instead, the LDCs developed a unitized dollar per dekatherm credit & collections charge for each gas adjustment clause (GAC) year (12-months starting Sept. 1st). The charge would initially be set at \$0.1045/DTH and would be collected from ESCOs participating in the POR program as well as from bundled sales customers through the Merchant Function Charge.

The credit and collections rate would be further adjusted annually on January 1 to reconcile the difference between the annual rate and actual expenses.

Such reconciliation makes ESCOs liable for the actual revenues received by the LDCs, thereby creating a "with recourse" program, SCMC said.

Allowing a true-up via recourse would, "impair the competitive viability of ESCOs marketing in the Companies' service territories," SCMC argued, which contended the KeySpan LDCs committed to

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## REP Coalition Sees Market Damage from PUCT Tampering Ruling

The Retail Electric Provider Coalition filed an amicus curiae brief in a customer complaint docket at the PUCT, which involves underbilling and meter tampering, concerned that the case could set precedent that could negatively impact retailers. The Coalition includes TXU Energy, First Choice Power, and members of the Alliance for Retail Markets and Texas Energy Association for Marketers.

In the case, the Commission reversed an ALJ's finding that underbilling experienced by a Reliant Energy customer in the CenterPoint Energy area was the result of meter tampering attributable to the customer. The ALJ had based the decision on the Texas penal code, noting the economic beneficiary of the tampering is presumed to have tampered with the meter. But the Commission ruled that it is inappropriate to apply the penal code in cases before the Commission.

Absent the presumption of meter tampering under the penal code interpretation, the Commission found Reliant and CenterPoint failed to present evidence sufficient to establish the customer was responsible for the tampering.

In a rehearing request, Reliant argued that not applying the presumption that the economic beneficiary of meter tampering is presumed to have knowingly tampered with the meter will ultimately raise costs to other customers. Proving meter tampering will be more difficult as TDSPs will have to somehow catch the culprit actually tampering with the meter in order to prove guilt, Reliant said. "Even fingerprints on the meter won't be enough as a customer could easily argue that he or she was simply reading or inspecting the meter to determine usage," Reliant noted.

The REP Coalition agreed, suggesting meter tampering cases will now require, "evidence akin to

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## IPPNY Warns Energy East Fossil Divestiture Plan Needs Work to Succeed

Certain elements of Energy East's New York fossil generation divestiture plan will discourage bidding, detract from the value of the assets, and ultimately thwart the sale of the assets, the Independent Power Producers of New York told the New York PSC in comments on the plan.

Divestiture of fossil generation was a condition imposed in the PSC's approval of the Iberdrola-Energy East acquisition, to ease vertical market power concerns (Matters, 9/4/08). The five units to be sold include the Russell Station (which has ceased operations), the RGE Allegany Station, the 63-MW Carthage Energy station, and two small RGE Peaking Units.

Under Energy East's plan, a two-stage auction process would be held, starting with an initial, non-binding auction stage. Since Energy East intends to offer all five plants as a bundle, the plan requires in Stage 1 that bidders submit a single non-binding indicative bid for all the assets, with a break-out of the bid for Carthage. A bidder may submit alternative indicative bids for one or more of the assets along with an explanation of why that bid is being provided.

In consultation with PSC Staff, Energy East will evaluate the bids submitted in Stage 1 and determine how the assets will be bundled in Stage 2 of the auction. The results of the Stage 1 bidding will also be used to determine which bidders will be qualified to continue in Stage 2, which is financially binding.

Under either stage, the auction process will be suspended if the results do not produce anticipated revenue that is greater than the net book value of the combined fossil generation assets, pending further action by the Commission.

IPPNY argued that the net book value of the assets must include certain adjustments to produce an apples-to-apples comparison. For example, under the plan bidders must express an intent to rehabilitate or demolish the structures on the Russell Site, "within a reasonable time period following closing." Although IPPNY objects to the condition, if the proviso is allowed to stand, the net book value of the Russell Site must be adjusted to reflect the

costs RGE would incur under such remediation absent a sale. Thus, when comparing the bids against the net book value, a reasonable approximation of such demolition and permitting costs must be included in the cost column for the net book value, IPPNY said.

Furthermore, requiring bids to be greater than the net book value does not take into consideration true market conditions or new requirements placed on the potential future owner, IPPNY argued. For example, several of the facilities are small natural gas, combined-cycle units that were originally operated under a PPA. Without the PPA, the actual market value versus the book value of these facilities could be substantially different, IPPNY noted. "The auction process that is designed can not blindly ignore this fact," IPPNY said.

IPPNY also objected to suspending the bundled auction if the net book value is not met due to the lower valuation of some of the assets, when other assets receive bids above their individual net book value.

The provision for remediation of the Russell Site within a "reasonable" amount of time will likely discourage bidders, because merchant developers will only go forward with a new project at the site when market conditions justify it, IPPNY observed.

"Based on current market conditions, it may be a number of years before it is economic to build a new facility at the site, and thus, a number of years before remediation and demolition of the existing structures is warranted," IPPNY said. Due to the countless environmental and other requirements placed on the Russell Site by a Consent Judgment that RGE executed with the Attorney General in February 2008, the Russell Station site may simply be too unattractive to potential bidders, IPPNY suggested.

In the event the auction of the Russell Station site is not successful, and RGE and the Commission ultimately determine that a new generating plant on the Russell Station site in lieu of transmission upgrades is necessary for reliability, RGE must be required to issue an RFP to build the new plant as an alternative regulated solution, rather than a self-build project, IPPNY urged.

## Md. PSC Staff Suggest Filling Open SOS Blocks in January Procurement

Currently unfilled SOS tranches at Baltimore Gas and Electric and Delmarva Power would be added to the regularly scheduled January 2009 Type II procurement event, under a proposal from PSC Staff to fill the unserved load (Only in Matters, 11/17/08).

The October Maryland SOS solicitation, and a November reserve auction, were plagued by high risk premiums associated with the current turmoil in the financial and credit markets, ultimately producing prices that did not pass the Price Anomaly Threshold and leaving 17 BGE residential blocks and 2 Delmarva combined residential/Type I blocks unfilled (Matters, 10/28/08).

Staff favored rolling the unserved load into the previously scheduled January 2009 procurement because it would ensure a healthy number of bidders for the blocks, and would be administratively efficient when compared to conducting a stand-alone procurement event. A stand-alone event in December, for example, would likely fail to attract numerous competitors due to the short time-frame and small load available. Previously qualified bidders for the October procurement should not need to re-qualify for the January procurement, Staff said.

Staff also recommended that it, the Commission's bid consultant, utilities and the Office of People's Counsel review the Price Anomaly Threshold before the January 2009 procurement, to make any needed changes to refresh the estimation approaches. The Price Anomaly Threshold should not take short-term market disruptions into consideration, Staff said.

The unfilled load is for June 2009 delivery, so there is ample time to conduct an additional procurement. However, if problems persist, the Commission's SOS rules hold that unfilled load is to be served by PJM market purchases.

That prompted OPC to recommend that utilities start work now on a potential backstop procurement method, should the January procurement produce similar results to the prior two auctions. All the SOS procurement "eggs" are in the full-requirements contracting "basket" at this point, OPC said, leaving customers

exposed to spot market pricing if the next procurement fails. OPC proposed that the utilities report on the requirements for entering into other types of contracts (such as monthly and longer on-peak and off-peak block contracts), and develop a timeline for meeting those requirements.

Staff rejected the proposal, noting such analysis would not be productive given the current SOS review in Case 9117, and because of the short time to develop a backstop prior to the January procurement.

### ***Briefly:***

#### **DPUC Denies Adding Components to UI Bypassable FMCC**

The Connecticut DPUC denied United Illuminating's request to recover Generation Services Charge-related nonhardship uncollectible expenses, DPUC regulatory commission expenses, and working capital in the bypassable Federally Mandated Congestion Charge (FMCC), consistent with an earlier draft (08-08-01, Matters, 11/28/08). Such costs are currently recovered in nonbypassable delivery rates. The denial was based on the DPUC's current review of additional costs that may be recovered through the bypassable FMCC in Docket No. 97-01-15RE02, and UI's rate case in Docket No. 08-07-04. The Department may allow additional costs to be added to the bypassable FMCC depending on the outcome of those cases.

#### **NYISO to Adjust Aspect of TCC Credit Formula**

The New York ISO submitted a request to FERC to revise the formula for calculating the Transmission Congestion Contract mark-to-market credit requirement. Under the change, NYISO would calculate the credit requirement daily based on a rolling 90-day average of the net congestion rents, instead of monthly based on the average net congestion rents for the prior three months. The proposed revisions will allow the NYISO to better manage credit risks in the TCC market by providing the NYISO with more timely information about fluctuations in the amount and direction of congestion, thereby facilitating more timely margin calls to cover collateral deficiencies, NYISO said.

## **FERC Grants PJM Waiver on Certain 15-Minute ATC Evaluations**

FERC granted PJM a waiver to excuse the RTO's limited inability to fully comply with the Available Transmission Capability (ATC) evaluation timing requirements applicable to hourly Non-Firm Transmission Service under its OATT, effective through December 31, 2009 (Matters, 10/12/08). PJM asked for the waiver, which will allow PJM to evaluate ATC for hourly service requests under a 30 minute deadline instead of 15 minutes, because of the exponential growth in the number of ATC evaluations for hourly Non-Firm Transmission Service requests, and because a permanent solution won't be implemented until the end of 2009. Since 2007, PJM has seen the number of such ATC evaluations grow from 200 per month to 24,000 per month.

## **FERC Appoints Settlement Judge for RPM Changes**

FERC granted PJM's request for a settlement judge to facilitate stakeholder negotiations regarding changes to the Reliability Pricing Model to be implemented prior to the May 2009 auction (Matters, 12/8/08).

## **PPL Shelves Holtwood Hydro Expansion**

PPL has cancelled plans to expand its Holtwood hydroelectric plant in Lancaster County, Pa, by 125 MW, stating the project is no longer economically justifiable under current economic conditions. Specifically, high costs of capital had pushed the project's estimated construction costs to \$440 million. PPL had previously announced it would trim 2009 capital expenditures by \$200 million due to illiquid capital markets and the general economic climate (Matters, 11/5/08)

## **D.C. PSC Approves Added Disconnect Protections at WGL, Pepco**

The Washington D.C. PSC adopted additional winter customer protections at WGL that have been used in past years to ensure customers are not disconnected, and directed Pepco to implement similar measures (Matters, 9/29/08). The PSC's order (FC 1043) requires longer deferrals for payment of security deposits and reconnection fees, expanded budget billing eligibility, and similar measures. The PSC

denied the Office of People's Counsel request to make such protections permanent for each winter season (Matters, 10/15/08).

## **Reliant Pays \$35 Million to Cancel First Reserve Financing**

Reliant Energy, which had earlier decided to forego its previously announced financing arrangement with First Reserve Corp. (Matters, 11/27/08), reported yesterday that it paid a \$35 million termination fee to terminate the agreement. Originally, Reliant was to issue \$350 million of convertible preferred stock to the private equity firm.

## **KeySpan POR ... from 1**

implementing a POR program that was "without recourse."

Under all the New York POR programs currently in effect, the utility establishes on a prospective basis the discount rate that will be in effect for all receivables purchased in the upcoming 12-month period, and those discount rates include the credit and collections cost, SCMC noted. ESCOs are not liable for any deviation in actual credit and collection costs compared with what is prospectively set in the discount rate.

"If the utility were permitted to make up prior period shortfalls in revenues collected from the Discount Rate in subsequent period charges to the ESCO, the program would in effect and in reality become a 'with recourse' program because the Company will be able to manipulate the subsequent period Discount Rate to make up shortfalls in the earlier Discount Rate revenues; in essence, the ESCO would now be required to reimburse the Company for amounts that were not paid by the customer," SCMC said.

ESCOs, SCMC noted, have no means to collect such additional costs from customers, whose rates are designed using the prospective POR discount rate.

SCMC added that removing the credit and collections charge from the discount rate will reduce transparency, and reiterated its concern that, under the LDCs' original filing, the credit and collection costs were virtually identical to the uncollectible rate. Credit and collection costs only make economic sense when such costs are lower than the level of uncollectibles, SCMC

pointed out.

Given the original filing placed the uncollectible rate at 1.48%, and credit and collection costs at 1.42%, KeySpan may be better off simply writing off the uncollectibles and eliminating its credit and collection activities, SCMC suggested. SCMC found the 1.42% credit and collections rate to be unreasonable for this reason. Changing the charge from a percent rate to a unitized dollar per dekatherm charge makes comparison of collection costs with uncollectibles is more difficult, SCMC added.

U.S. Energy Savings objected to the "stringent" requirements in the LDCs' Billing Services, Purchase of Accounts Receivables and Assignment Agreements, which compel ESCOs to grant a first priority security interest over certain ESCO assets, and allow the LDCs to take title to the ESCO's accounts receivable prior to the point when the LDCs bill the customer for the ESCO's charges (unbilled account receivables). Such requirements result in the LDCs' over-collateralization of ESCO assets, Energy Savings argued. Furthermore, it is confusing as to how an ESCO can grant a lien over the unbilled accounts receivable if the LDC's Billing Services Agreement states that the ESCO no longer has title to that asset, Energy Savings noted.

### ***Meter Tampering ... from 1***

that required in a full-fledged criminal investigation such as fingerprint analysis, hidden camera video, or other evidence tying a specifically identified individual to the tampering."

"This obligation is so onerous that it is virtually impossible and could not be conducted without the aid of a full law enforcement investigation," the REP Coalition said.

REPs such as Reliant are innocent bystanders in the process, since they have no control over the meter, the Coalition added.

Thus, the Coalition suggested that, should the Commission not reverse its stance on the presumption question, it should hold in a conclusion of law that Reliant Energy should not be responsible for corrected charges billed by CenterPoint to Reliant Energy for a period beyond 150 days from the date the meter error was discovered in accordance with PUC Subst. R. 25.214.

Otherwise, Reliant Energy may be responsible for paying three year's worth of TDSP charges (as CenterPoint proved meter tampering existed) while only being able to bill six month's worth of charges to the customer (because CenterPoint did not prove the customer tampered with the meter), the Coalition noted.

Reliant also contended that it has no ability to provide demonstrative evidence of meter tampering, and that it is completely dependent on the TDSP to prove that tampering occurred.

The REP Coalition endorsed Reliant's argument, adding that REPs are not required to carry the burden of proof of meter tampering in accordance with PUC Subst. R. 25.126(b), which states, "The burden of proof of meter tampering, bypass, or diversion is on the electric utility."

The definition of "Electric Utility" in PUC Subst. R. 25.5 specifically excludes a retail electric provider. Therefore, REPs should not be responsible for proving a customer has tampered with a meter, the REP Coalition said.

The Coalition urged the Commission to remove, from its findings of fact, the reference to Reliant Energy as being a party that has failed to present evidence sufficient to establish that the meter tampering was attributable to the customer, so that the order does not imply that a REP has a duty to present evidence of meter tampering.