

# Energy Choice Matters

January 29, 2009

## Maryland PSC Approves Bilateral Contracts for Unfilled SOS Load

The Maryland PSC approved bilateral contracts negotiated by Baltimore Gas & Electric and Delmarva Power for all unfilled blocks of mass market SOS load left unserved after three recent RFPs.

The PSC, after holding a hearing yesterday, determined that the contracts resulted in a price for each block that would have been accepted if the price had been bid during the January 12, 2009 solicitation. Accordingly, it approved the contracts to fill 17 blocks of BGE residential load and two blocks of Delmarva combined residential and Type I commercial load. In each of the RFPs, the Price Anomaly Threshold had rejected all bids for the blocks.

Delmarva reported that for its two 50 MW blocks, participating bidders were not aware of the identity or number of other participating bidders.

## Mass Energy Urges Action on Renewable Retail Access Plans

The Massachusetts Energy Consumers Alliance (Mass Energy) urged the Massachusetts DPU to take action on the renewable energy retail access plans filed by the state's investor-owned utilities, which have been pending at the Department since September (08-52 et. al.).

The renewable retail access plans were mandated by last year's Green Communities Act, which directed utilities to file plans to provide retail access for suppliers of renewable energy and RECs. Although it held a hearing and accepted a round of comments, the DPU has not ruled on the scope of the proceedings to review the filed plans, or taken any other substantive actions on the plans (Matters, 11/11/08).

Given the lack of complexity in the cases, Mass Energy told the DPU it should expedite its review of the plans, so renewable energy suppliers can access utilities' billing systems and compete on equal footing with distribution utilities. While the statute did not set a deadline for DPU action, it required utility plans to be filed within 60 days of passage, indicating that lawmakers intended retail access for renewable providers should be completed as soon as practicable, Mass Energy said.

Mass Energy also supplemented its comments on each of the individual utility plans.

Nstar's plan mostly tracks a Memorandum of Understanding approved in the Nstar Green case that would promote REC suppliers through bill inserts and on Nstar's website, and would provide customer data to REC suppliers via EDI. However, consistent with the Nstar Green decision, Nstar would not offer REC suppliers the ability to include a line-item on Nstar bills for their RECs, due to what the DPU considered the high costs of necessary backoffice changes.

Nstar argued that since it does not offer a REC-only product, the lack of billing access to REC suppliers does not give Nstar a "market advantage" in selling renewable energy, which is prohibited under the Act. However, Mass Energy noted that the Nstar Green product allows Nstar customers to buy RECs bundled with Nstar default supply energy, which "may constitute a market advantage." In light of Nstar Green, Nstar's retail access plan should be the subject of "special review," Mass Energy said, advocating that REC suppliers be given access to the Nstar bill.

Mass Energy similarly argued Unitil's program must offer REC suppliers access to the utility bill. As proposed, Unitil would list REC suppliers' information on its website and provide customer lists to renewable suppliers, but would have customers independently enter transactions with REC suppliers

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## Pepco, Delmarva File Type II Rates

Pepco and Delmarva filed updated Maryland Type II rates effective March 1, 2009 through May 31, 2009:

### Pepco - Generation Service Charge

#### Rate MGT LV II

On Peak	\$0.09682/kWh
Intermediate	\$0.09840/kWh
Off Peak	\$0.09354/kWh

#### Rate MGT 3A II

On Peak	\$0.09546/kWh
Intermediate	\$0.09701/kWh
Off Peak	\$0.09223/kWh

### Delmarva - Energy Rate

#### All Type II Rate Classes

All Hours	\$0.086660/kWh
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(Pricing did not produce a differentiation for rates with peak/off peak hours)

## UGI Energy Services Reports Lower Earnings Despite Gas Marketing Success

UGI Energy Services' first quarter 2009 net income fell to \$10.7 million from \$13.9 million a year ago, as generation outages and higher coal prices masked "very good success" in competitive retail gas marketing.

UGI Energy Services' total margin for the quarter decreased \$1.5 million primarily due to the aforementioned outages and coal prices affecting its generation assets, particularly its Conemaugh and Hunlock facilities.

UGI told investors that its other two energy service lines of business -- gas marketing and asset management -- did well.

Natural gas marketing to small commercial customers, which began in 2008, performed particularly well, executives said, and UGI Energy Services now serves a broad range of small commercial accounts on LDCs in seven states. "We are finding that in today's economic environment, these small commercial accounts are very responsive to energy services' product service offerings for natural gas customers," UGI Corp. COO John Walsh said during an earnings call.

Revenues at the energy services unit were \$359.1 million for the quarter, versus \$365.3 million a year ago. Energy Services' first quarter operating income was \$18.2 million, down from \$23.7 million a year ago.

Executives said that UGI Corp. sees potential acquisition opportunities across the broad spectrum of its businesses, including energy services and marketing.

Parent UGI Corp. reported quarterly net income of \$114.9 million, up from \$80.0 million a year ago, mostly on gains in its propane businesses.

## Smitherman Calls Prohibition on All Contract Changes Too Restrictive

The current PUCT Staff customer disclosure proposal (35768), which would not allow any changes to the terms and conditions of a REP contract that is longer than 31 days, "is too restrictive for REPs," Chairman Barry Smitherman said in a memo in advance of today's open meeting.

Smitherman agrees with the intent to preserve the term and price for a term contract -- conditions which should not be changed at all by a REP. But for other conditions which may be of lesser importance to customers, the REP should have the ability to change such conditions with proper notice, Smitherman said.

If the condition changed is important to the customer, language elsewhere in the rule would allow the customer to not accept the change and switch without penalty, potentially to another provider, Smitherman noted, which would protect the customer while giving the REP the ability to make any necessary changes to its service.

During several open meetings at which the rule was discussed at length, Commissioners debated whether certain aspects of a contract may be out of the control of a REP, and thus subject to change on appropriate notice to customers. For example, if a REP has a rewards program with an airline, and the airline either discontinues the program, or ceases to operate, the REP could obviously not offer the program as stipulated in the contract

Staff also filed several clarifications and corrections to its latest proposal, including

clarifying in §25.475(c)(2)(G) that for a variable price product, REPs are required to disclose the one-year price history to residential customers only (Matters, 1/26/09).

## **Anderson Recommends PUCT Seek Comment on Slamming Protections due to Proposed Postcard Elimination**

While PUCT Commissioner Kenneth Anderson supports accelerating the ERCOT switching window, and intends to vote to publish a proposed rule for comment at today's open meeting, Anderson identified two "potentially serious" issues which the proposed rule fails to address, and intends to seek comments on both. Staff's proposal would eliminate the ERCOT postcard and accelerate switches to within seven days (Matters, 1/27/09).

Among the issues, Anderson said in a memo, is how to deal with the problem of slamming after the elimination of the ERCOT postcard "safety valve." On average, approximately 2,000 retail customers a month have used the postcard process to reverse a switch, Anderson noted -- a "significant" number of customers. "It raises the issue of whether the Commission's rules or staff can adequately deal with the potential increase in the volume of complaints," Anderson said. The second and related potential problem is how to deal with any resulting increase in inadvertent gains.

Anderson proposed asking for stakeholder comments on what additional customer protections need to be added to PUCT rules to address the removal of the ERCOT postcard, and what rules or protocol changes are needed to address slamming and a speedy switch back to the original REP at no additional cost to the retail customer.

## **SCE Says DWR Reserves Policy May Mean Fewer Benefits from Novation**

A California Department of Water Resources memorandum indicating that DWR may not release funds from the operating reserve account as supply contract novations occur should prompt the California PUC to revisit its

analysis of the costs and benefits associated with the expedited replacement of DWR supply contracts (needed to reinstate direct access), to confirm that potential benefits to ratepayers are still sufficient to justify the expedited negotiation of replacement agreements, Southern California Edison said in comments on the novation process.

In comments to the PUC, DWR said that, "novation of a contract, or a set of concurrent novations, in and of itself may not require DWR to revise the Operating Reserve Account Requirement or the revenue requirement."

"Thus, it is now unclear whether, and to what extent, the novation of any one or a number of DWR contracts would result in a return of operating reserves or when that return of operating reserves would occur," SCE argued.

Given that DWR also seems to indicate that there is not a specific amount of reserves associated with each contract, and that DWR may not release any of the operating reserves as contracts are novated, the primary benefit of novation to ratepayers is, at best, "greatly diminished," SCE said.

In other comments, Reliant Energy contended that novation of the DWR contracts should not be an avenue by which the IOUs have the ability to circumvent the Commission-approved Long Term Procurement Proceeding (LTPP). While extending the term of the supply contracts as part of the novation process may be appropriate in certain circumstances, Reliant feared using novations to supplant the typical Commission review process for IOU long-term procurements. Reliant suggested that the Commission limit any negotiated term extension of a DWR contract pursuant to the novation process to five years, at most.

Reliant also noted that the Commission has grandfathered the Resource Adequacy (RA) countability for the DWR contracts.

"The IOUs should not be given an unfair advantage in fulfilling [their] RA obligations by greatly extending the term of the DWR contracts during the novation process where the capacity ('megawatt') under contract has decreased substantially in the replacement contract," Reliant said. Reliant recommended that capacity and/or volumetric changes in the replacement contracts should be limited to +/- 15%. Such limits are consistent with guidelines

already established for the IOUs' short-term procurement process, Reliant noted.

## **Universal Alleges Process Used in Mich. Database Discovery "Illegal"**

The method used to extract parts of a PSC complaint database for discovery in the Michigan PSC Staff's complaint against Universal Gas & Electric was unreliable and "illegal," Universal alleged in a motion for access to Staff's complete database (U-15577).

At issue is Universal's access to Staff's "Goldmine" database, which houses all complaints and other customer contacts. Universal has argued that access to the complete database is vital because Staff witnesses are relying on the database to present testimony as to Universal's and other suppliers' customer complaints.

An ALJ ruled that Staff would only need to produce information in the database from April 6, 2006 through October of 2008, and only the information relating to Universal, all of the alternate energy suppliers, and the regulated electric utilities and gas utilities. As a result, an extraction of the relevant data occurred on December 16, 2008, with Chad Smith, of Plain English CRM, conducting extraction on behalf of Staff, with Universal's representative Adam Kelly, a certified computer examiner, present.

Perhaps the "most troubling" aspect of the entire process is that, as alleged by Universal, Smith acknowledged to Kelly that Smith is not a licensed private investigator in the State of Michigan and his employer is not a Michigan licensed private detective agency. Universal said Michigan law requires that the retrieval of computer data for use as evidence only be conducted pursuant to a license under the Professional Investigator Licensure Act, 1965 PA 285. "[B]ecause Mr. Smith was not acting under a professional investigator license, Mr. Smith's computer forensics collection of the data on Staff's Goldmine database was illegal," Universal alleged. The Legislature deemed such licensure to be important enough that performing such an investigation without an appropriate license is a felony in Michigan, Universal reported.

Universal alleged Smith used the software

tool Goldbox - SQL, "even though this tool belonged to another of Mr. Smith's clients, and was licensed to ABB, Inc." Although Staff stated that the State of Michigan had purchased the product and not yet received its license, "the fact remains that Mr. Smith used improperly licensed software to conduct the extraction procedure," Universal alleged. Universal also made various allegations regarding the unreliable nature of the extraction procedure, due to files deleted by Staff, and the lack of a copy-and-paste method which would have allowed validation.

### ***Briefly:***

#### **PUCT Staff Moves to Dismiss Texas Utility Solutions Transmission Complaint**

PUCT Staff moved to dismiss a petition from QSE and competitive metering provider Texas Utility Solutions, which had requested that the Commission direct CenterPoint Energy to offer wholesale transmission service to Texas Utility Solutions (Matters, 1/19/09). Staff's motion to dismiss was based on the fact Texas Utility Solutions has not pursued alternative dispute resolution as required by PUCT rules, nor has it shown that CenterPoint's denial of Wholesale Transmission Service would inhibit the ability of Texas Utility Solutions to provide continuous and adequate service to its customers, which is required for bypassing the dispute resolution process. Staff did not comment on the merits of Texas Utility Solutions' request for transmission or whether it is entitled, as a QSE, to receive wholesale transmission service from CenterPoint under PURA.

#### **Texas House Moves Utility Issues to State Affairs**

The Texas House of Representatives yesterday approved new rules that disband the Regulated Industries committee and move all utility related issues, including electricity, to the State Affairs committee. Members opted not to split utility issues among several committees, as originally proposed by Rep. Burt Solomons, R-Carrollton, due to the complex nature of the issues (Matters, 1/27/09). Consumer advocates had also argued that splitting issues among several committees would favor industry interests due to their greater resources to cover more committees.

### **Duke Files Rider FPP Rates**

Duke Energy Ohio reported that for the period April 2009 through June 2009, its proposed bypassable Fuel, Purchased Power and Emission Allowances Rider (PTC-FPP) for standard service offer electric customers will be 1.9763¢/kWh for residential customers, 1.9169¢/kWh for non-residential customers, and 2.1167¢/kWh for voltage reduction customers.

### **JJR Power Defaults on MISO Agreement**

The Midwest ISO is suspending any and all services received by marketer and energy trader JJR Power LLC under its Service Agreements and Market Participant Agreement, effective today, due to a default. As of close of business on January 27, 2009, MISO determined that JJR Power was not in compliance with the credit provisions of the MISO tariff, due to failure to cure a Total Potential Exposure violation. In addition to suspending JJR Power's access to the Energy and Operating Reserve Markets and FTR Auction, MISO will seek to terminate JJR Power's Market Participant Agreement at FERC. It's the second such default in the MISO market this month, after Olde Towne Energy also defaulted on its credit obligations (Matters, 1/13/09).

### **FERC Declines to Specify Possible Sanctions in NYISO Circuitous Scheduling Probe**

FERC denied a request from several New York transmission owners that FERC, as part of its investigation into circuitous scheduling around Lake Erie in the New York ISO, "clarify and confirm that disgorgement of profits back to the NYISO customers by malfeasant parties is a remedy that will be fully considered in addressing any conduct that is determined to have violated the [Federal Power Act]." FERC's Office of Enforcement is conducting a non-public investigation into the circuitous scheduling (ER08-1281), and the Commission, "sees no reason to opine at this time as to what remedies, if any, may ultimately be appropriate."

### **PJM Pegs Carbon Cap Costs in Billions**

A PJM study shows that leading legislative proposals to reduce carbon dioxide emissions from fossil-fuel generation plants could increase wholesale electricity prices anywhere from

\$7.50/MWh to \$45/MWh in 2013. The study, "Potential Effects of Proposed Climate Change Policies on PJM's Energy Market," also noted that at those prices, the annual market-wide increase in the cost of power would range from \$5.9 billion to \$36 billion. "We're not trying to influence or shape policy," said PJM CEO Terry Boston, though with such price spikes expected in an already weak economy, it is not surprising a Pew Research study recently found global warming ranked dead last among the 20 top priorities for Americans.

### ***Mass. Retail Access ... from 1*** with no interaction from Unitil.

With respect to the proposal from Western Massachusetts Electric Company, which would establish a program similar to the green options at sister utility Connecticut Light and Power, Mass Energy opposed a limit on participating suppliers, and worried a focus on price could sacrifice the "quality" of green energy provided.

WMECo's plan would limit competitive green options to two suppliers, with pre-determined prices and percents of renewable energy offered. Mass Energy argued that if a "flawed" bid evaluation formula which emphasizes price is used, customer choice could be limited to suppliers bidding "lower quality national RECs," rather than Massachusetts RPS-eligible and in-state RECs. Mass Energy further said that if the number of participating suppliers is limited, the DPU, not WMECo, should choose suppliers on a criteria that is broader than just price and renewable energy mix, such as past track records, marketing plans, and local presence.

Mass Energy also argued that a statewide standard for renewable retail access would promote green energy more than a "crazy quilt of individual distribution company standards."