Energy Choice Matters

March 11, 2009

PECO Default Service Settlement to Produce More Market Reflective Rates

PECO filed with the Pennsylvania PUC a settlement to establish a 29-month default service plan supported by PUC Staff, the Office of Consumer Advocate, the Retail Energy Supply Association and other parties, which would produce more market reflective pricing that PECO's original proposal.

The settlement would establish default service procurement from January 1, 2011 through May 31, 2013, one year shorter than PECO's September proposal (Matters, 9/11/2008). Default service customers would be divided into four classes: residential, small commercial (under 100 kW), medium commercial (100-500 kW) and large commercial (above 500 kW).

PECO would serve 25% of residential load (dubbed the PECO share) on blocks of competitively procured power. PECO would buy blocks for 80% of the PECO share on a forward basis, comprised of a mix of one-, two- and five-year contracts for a mix of 24-7, on-peak and off-peak blocks. The remaining 75% of residential load would be served by competitively procured full requirements, load-following contracts. Two-year full requirements contracts would make up 45% of the total residential portfolio, with such contracts laddered. One-year full requirements contracts would make up the remaining 30% of the portfolio.

For small commercial customers, all supply would be procured through load-following, full requirements contracts. About 70% of small commercial load would be bought on one-year contracts, with 20% on two-year contracts, and 10% bought on contracts containing day-ahead

Continued Page 5

Mass. DPU Draft to Give Utilities Discretion on Cost Recovery for Long-Term Renewable PPAs

The Massachusetts DPU issued draft rules to implement the Green Communities Act's requirement for long-term contracting between utilities and renewable generators, giving distribution companies the option of using a nonbypassable surcharge to recover PPA costs, or applying the PPAs to basic service customer obligations (Matters, 11/24/08).

Under the proposed rules (08-88), distribution utilities would solicit 10- to 15-year contracts for renewable supplies at least twice between July 1, 2009 and June 30, 2014. Utilities could also voluntarily solicit additional proposals.

While distribution companies would be required to "consider" participating in a Department of Energy Resources renewable solicitation process prior to conducting their own solicitations, utilities would be given discretion to conduct public solicitations, individual negotiations, or other methods. Only renewable generation with a commercial operation date after January 1, 2008, would be eligible for the contracts.

Contracts could be for energy, RECs, or a combination of both. Long-term contracts executed by the distribution companies are to be filed with and approved by the DPU before they become effective.

Utilities would have discretion on how to treat the contracts. Distribution companies could

Continued Page 6

Md. PSC Approves POR/ Proration for Electric Utilities, Defers Action on Gas Rules

The Maryland PSC approved as published RM17, requiring electric utilities to either implement Purchase of Receivables or pro-rate partial payments, but deferred action on gas market rules in RM35 due to concerns about their applicability to transportation-level customers (Matters, 3/10/09).

Under RM17, electric utilities have the choice of either implementing POR or proration of partial payments, meant to correct the current disadvantage competitive suppliers suffer in the payment processing order. The new rules will be published in the next available publication of the state register, and take effect 10 days thereafter. The rules are no longer subject to review by the Joint Committee on Administrative, Executive, and Legislative Review (AELR). Utilities are required to file compliance plans within 45 days of the rules taking effect.

The next battle will be implementation deadlines, as Baltimore Gas & Electric in particular has said implementing POR would take 18 months (Matters, 1/21/09), and has further said electric POR should be implemented in conjunction with gas POR, to reduce system costs. As noted above, action on RM35, which includes an option for gas POR, has been delayed. During yesterday's rulemaking, Chairman Douglas Nazarian expressed skepticism of the need for a prolonged implementation period, and said the PSC would hold evidentiary hearings, if necessary, to investigate and verify claims about timing.

For RM35, the Commission was persuaded that the rules need to be scrubbed to see if the various provisions should apply to all customers, or only smaller, non-transportation customers. As reported previously, Columbia Gas of Maryland has opposed applying various enrollment and billing rules for general transportation service customers because of the different nature of choice for large customers (which was developed much earlier than mass market retail access programs). BGE threw its support behind that position during the rulemaking, despite not addressing its shared concerns in several rounds of comments and stakeholder meetings. Stakeholders will meet to review the rules and make any revisions, if needed, to distinguish between provisions applicable to small versus large customer choice.

N.Y. Assembly Passes Bill Limiting ESCO Termination Fees

The New York Assembly unanimously passed a bill which would limit ESCO termination fees while requiring the PSC and LIPA to develop an ESCO consumer bill of rights (A01558). A similar bill passed the assembly in 2008 but died in the Senate. The bill applies to residential customers and all customers that are solicited via door-to-door sales.

Under the bill sponsored by frequent ConEd critic Michael Gianaris, D-Astoria, ESCO termination fees would be limited to either $100, or twice the estimated bill for energy services for an average month. To charge a fee greater than $100 under the second option, an ESCO must provide the customer, at the time that the contract is offered, with an estimate of the average monthly bill that the customer would be charged.

Material changes would be prohibited to ESCO contracts, absent express customer consent. The measure would cover renewals as well. ESCOs could continue to use auto-renewals, but customers would be permitted to exit the renewed contract without penalty up to three business days after their first bill under the renewal if they did not affirmatively consent to the new contract.

The bill would also prohibit "prepayment" for energy services. The PSC has said prepaid service is already prohibited under HEFPA for residential customers, and it's unclear if deposits would be considered prepayment.

ESCO contracts and collateral materials would be required to list all variable charges clearly and conspicuously.

ESCO sales representatives would have to identify themselves as an ESCO agent, and explain that they do not represent a distribution utility. Sales reps would be required to provide customers with a copy of the ESCO consumers bill of rights to be developed by the PSC and LIPA.

RESA Says Conn. Limit on REC Banking Would Inhibit Renewable Development

The Retail Energy Supply Association objected to a proposed limit on REC banking in draft Connecticut DPUC rules that would establish banking procedures, arguing that the limit would inhibit the goal of stabilized REC prices (08-09-01).

As only reported in Matters, (Matters, 2/12/09), the DPUC proposed to permit an LSE to bank RECs for up to two years, but only if the LSE has never used the alternative compliance payment (ACP) to meet its RPS obligation.

RESA noted that both Connecticut Light and Power and United Illuminating, as well as several suppliers, have used the compliance payment in meeting RPS obligations, as is legitimately permitted under legislation.

Thus, since several entities would already be disqualified from REC banking, despite no warning that the compliance payment would carry such a penalty, the proposed REC banking rules would not foster renewable energy as intended, RESA said.

REC banking can stabilize REC prices and foster renewable energy development because banking facilitates bilateral contracting, which smoothes out the volatility of REC prices when the market supply is overabundant or deficient, RESA noted. A stable price, in turn, promotes renewable energy development as it provides a more predictable revenue stream to support the project.

However, a number of LSEs that would be interested in bilateral renewable contracts would be constrained by the DPUC's proposal, since several LSEs could not bank credits from the PPAs. "This number likely will grow in the future in light of the anticipated shortage in renewable resources available to meet the region-wide Class I standards and other factors," RESA said.

RESA stressed that Connecticut statutes do not treat the alternate compliance payment as a penalty, and that LSEs should not be disadvantaged for using a legal compliance mechanism.

"[P]rohibiting REC banking for LSEs that have paid ACPs prior to 2009 when they had no knowledge that such action would disadvantage them later departs from fundamental principles of notice that traditionally underlie the Department's rulemaking proceedings," RESA said.

RESA further noted that banking rules for Massachusetts, Rhode Island and Maine, on which the DPUC modeled its proposal, do not restrict banking for LSEs using the alternative compliance payment in past years.

MISO: Lack of Data Prevents Use of RSG "Redesign" Proposal in Retroactive Charges

The Midwest ISO "redesign" proposal to more appropriately assign Revenue Sufficiency Guarantee costs based on cost causation cannot be applied on a retroactive basis due to a lack of needed data, MISO said in response to a suggestion from the independent market monitor (IMM).

The redesign proposal considers the following when assigning RSG costs: (1) the reasons why units are committed during the Reliability Assessment Commitment (RAC) process; (2) the location of constraints; and (3) the provision by Market Participants of advance notice of their planned schedule changes (EL07-86, Matters, 2/24/09).

The IMM has recommended that a variation of the redesign proposal, with a netting provision, be used to resettle RSG charges dating back to 2007. Using a modified redesign proposal would better track cost causation than the current "interim" method used for resettlement, which consists of simply removing the restriction in the current tariff that limits RSG costs to entities physically withdrawing energy, the IMM told

FERC.

The interim RSG allocation methodology over-allocates RSG costs to real-time deviations in general, even though the commitments of resources in the RAC process are also caused by several other reasons unrelated to deviations, the IMM has noted. Unlike the interim method, the redesign proposal captures these other causes.

According to the IMM, the interim methodology over-allocates RSG costs to virtual supply by assigning virtual supply offers 40% of RSG costs from September 2007 through December 2008, even though virtual supply likely contributed to about 11% of those costs. Consistent with the IMM data, MISO also reported that under the interim method, virtual suppliers will bear a 38.5% share of such costs during the period from September 2007 through December 2008, at a cost as high as $131 million.

Nevertheless, MISO reiterated that several limitations preclude use of the superior redesign proposal for calculating retroactive RSG charges. The redesign proposal's methodology relies substantially on system and operational data that was not monitored or captured on a settlement-quality basis under the Energy Markets Tariff, and such data cannot be reconstructed reliably and economically, MISO said. For example, the tariff did not require the Midwest ISO to track whether previous schedule deviations or unit commitments were associated with constraint management, and the Midwest ISO does not have the historical data to retroactively calculate constraint management charges used in the RSG redesign proposal.

While the IMM has raised concerns about less price convergence due to a steep decline in virtual trading due to FERC's RSG decision (virtual supply is almost 60% lower than fall 2008 levels), Wisconsin Electric told FERC that actual price convergence remains the same, or has slightly increased, citing an IMM January report. Wisconsin Electric attributed the consistent level of convergence, despite the decrease in virtual activity, to increased commitment of combined cycle generation, as virtual supply is no longer displacing such units. Price sensitive demand bids could also be contributing to consistent convergence levels, Wisconsin Electric said, contending that so long as price convergence remains unaffected, FERC should not revise the current RSG protocols due to its impact on virtual trading.

Briefly:

Md. PSC Fines Ohms Energy $500/Day

Stating that, "Enough is enough," the Maryland PSC imposed a civil penalty of $500 per day against retailer Ohms Energy, starting from yesterday until Ohms has fully complied with Commission orders directing customer refunds related to Ohms' default in the summer of 2007. In February 2008, the PSC approved a plan for Ohms to refund to customers amounts collected by Ohms through consolidated billing with Baltimore Gas and Electric after its default. Although Ohms told the PSC it had sent customers their refund checks in June, customers complained to the PSC that they had not yet received their refunds. At a subsequent PSC hearing in November 2008, Ohms could not provide requested documentation of the payments, while Staff said at least 86 customers were owed a total of $9,000. A subsequent review in February led Staff to conclude that Ohms still owes customers $6,000. In assessing the civil penalties, the Commission said Ohms' "blatant" disregard for prior PSC orders amounted to a "serious violation," compounded by the length of time that has elapsed. Furthermore, Ohms' misrepresentations and lack of good faith reporting warrant substantial penalties, the PSC said, though the amounts were tempered by the Commission's desire that customers are still able to be paid their refunds.

Boralex Signs PPA with New Brunswick Power Generation

Boralex said it has signed a two-year PPA with New Brunswick Power Generation Corporation for the output of its Fort Fairfield generating station in Maine. Coincident with the announcement, Boralex withdrew its objections to the Maine PUC's decision to award New Brunswick Power Generation the Standard Offer supply contract for the residential/small non-residential and medium non-residential customer classes at Maine Public Service. The Fort Fairfield plant's output had previously been sold to Integrys Energy Services to meet Integrys' Standard Offer supply obligations. Boralex had said in its now withdrawn petition that plant would be forced to retire due to the PUC's decision to award the Standard Offer contracts for small and medium MPS customers to New Brunswick Power Generation (Matters, 2/23/09).

Four Texas Competition Advocates Create Ad-Hoc Coalition

Driven by the need to produce a consistent message on competition, the Alliance for Retail Markets, Texas Energy Association for Marketers, Texas Competitive Power Advocates, and Texas Electricity Professionals Association have combined to form an ad-hoc group dubbed the Electric Competition Coalition (ECC). The coalition, comprised of REPs, generators, wholesale marketers and brokers, will primarily focus on legislative activities. Aside from synthesizing a host of recent studies regarding the benefits and savings from ERCOT competition, ECC reported that both the lowest month-to-month and one-year offers currently on Power to Choose are 7-30% cheaper than the inflation-adjusted regulated rates from December 2001, depending on TDSP area. In the load centers of Dallas and Houston, the lowest one-year offers from REPs were each 10% cheaper than the 2001 inflation-adjusted rates.

Green Mountain Signs Texas Bookstore Chain

Green Mountain Energy said it has signed a three-year, 100% wind power supply contract with Texas-based retail chain Half Price Books, covering 11.3 million kWh annually. The contract, covering 37 facilities, was awarded through a competitive solicitation run by GSE Consulting.

Exelon Energy Offering Emission Free Certificate

Retailer Exelon Energy launched a new product called an Emission-Free Energy Certificate which is to be offered as part of a pilot to current C&I customers of Exelon to help them quantify and claim credit for emission free power. Initially, Exelon will issue the emission free certificates to customers at no cost to allow customers to gain understanding of the certificates. Pending the pilot, Exelon expects to offer the certificates as part of its regular product offerings to the marketplace later this year. The credits, representing power that does not directly produce any emissions of sulfur dioxide, nitrogen oxide or carbon dioxide, will be tracked via PJM GATS. Exelon said its affiliated nuclear fleet is the primary source for certificates, which will be supplemented by RECs.

CPS Tuttle Units Not Needed for Reliability

ERCOT said that the three Tuttle units which CPS Energy intends to retire are not needed for reliability, and will not be offered Reliability Must Run agreements (Matters, 2/26/09).

PECO ... from 1:

hourly pricing. Originally, 40% of small commercial power would have been bought on two-year contracts.

Medium commercial customers would also be served completely on load-following, full requirements contracts. About 85% of load would be bought on one-year contracts, with the remainder bought at day-ahead hourly prices.

Large commercial customers would be served on day-ahead hourly prices, although PECO would offer an optional, one-year fixed price for the class for the calendar year 2011. Customers on the optional product would be transferred to hourly pricing January 1, 2012. A proposed minimum stay on the fixed option would be eliminated, and customers could leave the optional product for competitive supply at any time.

All generation and administrative costs of default service supply would be recovered through the Generation Supply Adjustment (GSA), which would be reconciled quarterly for customers under 500 kW and monthly for customers about 500 kW. Each rate class would also have a unique price to compare, which would include the GSA plus PECO's retail electric transmission rates and the alternative energy portfolio standard charge.

Procurements would be conducted via RFP, with suppliers subject to a 65% load cap. The cap would be administered separately for the full requirements supply and residential block supply. RFPs would begin in June 2009 for residential customers, and the fall of 2009 for commercial customers, with a series of solicitations held through 2009-2012. Each default service class would be served on five-month "stub" contracts at the start of the program on January 1, 2009, to align the delivery year with the PJM planning year starting June 1.

Wholesale suppliers would be responsible for alternative energy portfolio standards (AEPS) compliance, though the amounts required may be reduced by applying banked credits currently held by PECO to their obligations. PECO would be responsible for AEPS compliance for the PECO share residential blocks, through separate procurements. All AEPS costs would be reflected in the price to compare.

PECO would offer a competitively neutral deferral program to mitigate the first year of market-based rates. The program would be open to residential and small commercial customers under 25 kW, and would only apply if bill increases exceed 25%.

A revised POR program to be effective by January 1, 2011, would be filed by PECO under the stipulation, either as part of a rate case or as a stand-alone program. The POR program would be non-recourse, if PECO is allowed to treat competitive receivables as utility receivables for purposes of disconnection. The 90-day reversion to dual billing for uncollectibles under the current POR program would be eliminated. POR would be mandatory for suppliers using PECO consolidated billing.

PECO would establish a collaborative to address three retail market issues: the residential Market Share Threshold program (which has been dormant after earlier use due to rate caps and rising market prices); alternative customer aggregation proposals (such as a proposal by Direct Energy for a low-income aggregation program), and a direct mail customer referral program. PECO is to also appoint a retail choice ombudsman.

The settlement would gradually phase out the declining block structure of several rate classes.

Mass Green *... from 1:*

choose to sell the energy to their basic service customers, and retain RECs for the purpose of meeting the applicable annual RPS requirements.

Alternatively, utilities could sell the energy into the wholesale electricity spot market, and sell the purchased RECs through a competitive bid process. In such a case, utilities would be required to establish a nonbypassable surcharge to collect above-market costs of the PPAs, or credit to pass below-market costs to all customers. Utilities could also propose alternative cost allocation and recovery methods.

The rules for the Green Communities Act contracts would not limit consideration of other short- or long-term contracts for power and/or RECs submitted by a distribution company. The rules would also permit utilities to voluntarily execute long-term contracts to meet applicable annual RPS requirements apart from the Green Communities Act, subject to the Department’s approval.

Utilities would not be obligated to sign PPAs for renewable energy in excess of 3% of the total annual energy demand of all their distribution customers, but would not be prohibited from contracting for levels above 3%.