Energy Choice Matters

April 17, 2009

Pa. PUC Approves PECO Default Service Settlement, Cawley Cautions on Reconciliations

The Pennsylvania PUC approved a settlement to establish PECO's default service plan for the post-rate cap period of January 1, 2011 through May 31, 2013, but Commissioners expressed various concerns about some of the provisions, though they agreed not to alter the result of stakeholders' bargaining (Matters, 3/11/09).

Under the approved settlement, PECO will serve 25% of residential load (dubbed the PECO share) on blocks of competitively procured power. PECO will 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 will be served by competitively procured full requirements, load-following contracts. Two-year full requirements contracts will make up 45% of the total residential portfolio, with such contracts laddered. One-year full requirements contracts will make up the remaining 30% of the portfolio.

For small commercial customers (under 100 kW), all supply will be procured through load-following, full requirements contracts. About 70% of small commercial load will be bought on one-year contracts, with 20% on two-year contracts, and 10% bought on contracts containing day-ahead hourly pricing.

Medium commercial customers (100-500 kW) will also be served completely on load-following,

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FERC Grants Capacity Release Waivers to Asset Managers with Retail Obligations

An LDC releasing interstate pipeline capacity as part of a state-approved retail access program may release such capacity directly to a marketer's asset manager, without being subject to bidding and tying requirements, as long as the asset manager has an obligation to supply gas to the marketer that is equivalent to the marketer's obligation to supply gas to the releasing LDC, FERC said in clarifying new capacity release requirements in Order 712-B (RM08-1).

National Grid and National Fuel Gas Distribution filed similar petitions at FERC for such a clarification. Grid had said that some smaller marketers wish to effectuate the release of capacity in such a manner so that the designated asset manager, not the marketer, will be required to meet the releasing pipeline's creditworthiness requirements (Matters, 12/25/08).

In response, FERC said that, "the exemptions from bidding and the prohibition against tying for releases to marketers participating in state-regulated retail access programs apply to any release where the marketer replacement shipper is obligated to use the capacity to provide the gas supply requirement of retail consumers in the program."

"Even if the marketer does not itself make sales directly to the subject retail consumers, this condition can be satisfied so long as the marketer has a contractual obligation to use the full amount of the released capacity to supply gas to the retail access marketer and the retail access marketer is, in turn, obligated to supply that gas to the retail consumers pursuant to a state-regulated retail access program," FERC held.

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Michigan Opens Review of Gas Choice Tariffs

As contemplated by a settlement between Staff and Universal Gas and Electric (see related story), the Michigan PSC yesterday opened docket U-15929 to commence a contested case to review various provisions of the current gas customer choice tariffs.

The Commission said the review will include Sections F2 (Residential Customer Protections), F3 (Solicitation Requirements), F4 (Supplier Registration and Code of Conduct), and the Minimum Term paragraph of Gas Customer Choice Rate CC of Section F (Customer Choice Program).

Among several differences in interpretation between Staff and Universal, was a disagreement on whether the tariff holds that competitive suppliers can prevent customers from returning to bundled service if the customer has not paid their contractual termination fee, or whether the tariff even allows a customer to request a return to the utility before the initial contract period ends. Staff and Universal will brief the issue before the Commission.

The PSC directed Consumers Energy, Michigan Consolidated Gas, Michigan Gas Utilities Corporation, SEMCO Energy Gas Company, and the Staff to participate in the case, and welcomed other affected parties.

Pa. PUC Approves Use of RFP for Duquesne Medium C&I Rates

Duquesne Light will implement a competitive RFP to procure load-following contracts to serve medium C&I customers from July 1, 2009 through December 2010 under a settlement approved by the Pennsylvania PUC yesterday (Matters, 3/18/09).

Rates will remain at 2008 levels for the first six months of 2009 under the stipulation, which emerged from Duquesne's application to revise the Market Index adjustment currently used to set medium C&I rates, applicable to customers on Rate Schedules GS/GM and GMH with demands between 25 kW and 300 kW.

Under Duquesne's POLR IV plan, rates for medium C&I customers were to be set by a Market Index adjustment at six-month intervals beginning January 1, 2009. Although base 2008 generation rates reflected energy and capacity, the Market Index was based solely on changes in energy prices at the PJM Northern Illinois Hub (NIHUB). While, at the time of its original filing, Duquesne said energy prices have remained relatively the same, Duquesne noted that capacity prices resulting from the Reliability Pricing Model (RPM) have increased substantially.

Duquesne argued that by not reflecting such capacity costs in the Market Index, the index failed to reflect the intent of parties in the POLR IV proceeding that default service rates for medium C&I customers are to change to reflect market prices. Furthermore, by not reflecting changes in capacity pricing, the indexed-based default service rates could damage the competitive market and prompt migration to default service from competitive supply.

Under the approved settlement, the Market Index will be eliminated starting July 1, 2009, with a competitive RFP used to solicit supplies and set prices from July 1, 2009 through December 31, 2010.

The staggered RFPs will procure full requirements, load following contracts including energy, capacity, transmission and distribution losses, grid management costs, congestion and congestion management costs, Alternative Energy Credits, and other services or products required to provide default service.

Procurements will be staggered according to the following schedule with a mix of one-year and five- to seven-month contracts:

Procurement Date	Delivery Period	% of Supplies
May/June '09	7/1/09 – 12/31/09	100%
May/June '09	1/1/10 – 12/31/10	50%
Nov. '09	1/1/10 – 5/31/10	50%
April '10	6/1/10 – 12/31/10	50%

Duquesne Light will adjust rates semi-annually for medium C&I customers, on July 1, 2009, January 1, 2010 and July 1, 2010, to reflect the most recent projections of default service prices (grossed up for taxes and losses) for the applicable six-month period and reasonable administrative costs associated with the RFP process.

Duquesne said that the RFP process will allow default service rates to reflect market prices, and will remove the uncertainties of the market multiplier mechanism on a prospective basis. The settlement also mitigates the migration of customers to POLR service from competitive supply due to "improper" pricing that would not have captured changes in capacity costs, Duquesne said.

BG&E Reports Incorrect TOU Prices for Summer 2009

Baltimore Gas and Electric has discovered an error used to set previously filed summer 2009 Time of Use (TOU) electric prices for the small commercial TOU class (GS) and residential TOU class (RL), the utility reported to the Maryland PSC (Case 9064).

BGE said that LMP data used from the summer of 2008 to shape retail TOU prices was incomplete. The error was in deriving the retail prices from wholesale bids, and does not impact the wholesale SOS bids approved by the PSC, BGE said.

Furthermore, the corrected prices reflect an anomaly in the residential TOU class, in that the intermediate price is slightly above the off-peak price (see following chart). BGE theorized that the abnormal result could have been caused by higher usage during off-peak hours such as weekends, driven by higher temperatures and attendant residential air conditioning use.

Arguing that inverted rates will cause customer confusion and may make appropriate behavior conditioned on a lower off-peak rate (such as load shifting) uneconomic, BGE petitioned the PSC to allow it to blend the intermediate and off-peak rates on a load-weighted basis for the residential TOU class in order to develop a single price for both periods (see next page).

Rate RL	Original Price	Corrected Price	Corrected/ Blended
On-Peak	16.357	15.024	15.024
Intermediate	9.009	10.100	10.279
Off-Peak	9.923	10.342	10.279

Type I GS	Original Price	Corrected Price
On-Peak	18.521	16.775
Intermediate	10.932	11.557
Off-Peak	9.517	10.384

All prices in ¢/kWh

Michigan PSC Tweaks, Approves Universal Settlement

The Michigan PSC approved, with modification, a settlement that resolves the Commission's investigation into the marketing practices of Universal Gas and Electric. Though the changes do not impact the major tenets of the stipulation, the settlement between Staff and Universal does hold the settlement may be withdrawn upon modification by the PSC (U-15577).

As only reported in Matters (Matters, 3/20/09), the settlement states Universal, on a voluntary basis, will only offer contracts for one year with a $50 termination fee and two years with a $100 termination fee, for a period of twelve months. The provision does not limit the termination fee that Universal may charge commercial accounts using more than 2,000 Ccf per year. Staff will review marketing materials related to the new contracts.

Universal, which had entered the Michigan market offering its five-year product, had already scaled back the length of its offerings as it found U.S. consumers had a greater appetite for shorter-term deals.

The stipulation requires Universal to amend its telephonic verification calls to separately ask customers whether they received a copy of the contract together with the New User Guide, which contains terms and conditions.

Over 1,000 Universal customers identified by Staff will be given the option to either terminate their contracts without penalty, or receive a $50 credit if they remain with Universal. The offer to terminate will remain open for 90 days from the date of Universal's notification to the affected customers.

Going forward, all Universal customers will be permitted to cancel their contract over the phone, rather than being required to submit notice in writing.

Universal will also pay the state of Michigan $300,000 for the indeterminate costs of the investigation.

The settlement calls for case U-15509, Staff's original investigation docket which now houses quarterly Universal marketing reports, to be closed. However, the PSC ordered the case to remain open to house semi-annual marketing reports required for two years under the settlement, and to address other implementation matters.

Additionally, the Commission addressed Universal's ownership of Commence Energy, which currently holds an electric license in the state and serves load, but which is not an alternative gas supplier in Michigan.

The settlement holds that if the Commission approves an alternative gas supplier license application for Commerce, without additional conditions beyond those currently attached to Universal's AGS license, Commerce will be bound by the terms of the settlement.

The PSC said that the record is not clear on what the business relationship between Universal and Commerce is, and said that if or when Commerce applies for an AGS license, Commerce shall affirm the obligations set forth in the settlement agreement.

LECG Study Says APPA Reforms Tried, Failed in Past

The American Public Power Association's latest proposals to reform organized electric markets, "resurrect flawed approaches already considered and rejected, or tried and failed," said LECG principal John Chandley, who co-authored a new analysis with Harvard professor William Hogan on the APPA market design (Matters, 2/23/09). The study was released by the Compete Coalition.

"APPA's proposals to reform RTO markets have changed, but they center on restricting access to spot markets while forcing suppliers into contracts more favorable to buyers ... Our study examined the evolution of electricity markets in various regions of the country and found various reforms embraced by APPA have been tried and discarded in the past," Chandley said.

The thrust of APPA's plan is to replace day-2 RTO markets with balancing markets relying on cost-based pricing.

APPA's proposal for a mandatory optimization (balancing) market, in which offers are administratively set at short-run marginal costs, would undermine short-run reliability and long-run resource adequacy, the LECG study said. Suppressing spot prices would reduce incentives for resources to be available during shortages and keep total revenues below levels needed for adequate investment, the analysis argued.

Hogan and Chandley criticized APPA's "inconsistent" framework which would suppress spot prices, but would also prohibit capacity markets to recover so-called missing money. Such policies would prevent investors from pursuing new generation, leading to resource adequacy shortages, the LECG study said. However, APPA's proposal ostensibly solves this problem by recommending that default service providers build their own generation to serve incumbent customers.

According to Hogan and Chandley, APPA's complaint is not that bilateral contracts aren't possible and fully accommodated by today's RTOs -- they are used extensively in today's RTOs, as APPA has conceded -- but rather that suppliers won't agree to terms APPA's members prefer.

"APPA claims this is because suppliers can always sell into RTO spot markets, and spot prices are inflated by excessive supplier offers setting the clearing prices. But RTO Market Monitors have periodically evaluated and rejected these claims, and FERC has agreed," Chandley and Hogan observed.

FERC Says Tariff Must Include MISO Capacity Auction Mitigation Measures

FERC directed the Midwest ISO to develop specific provisions to be included in its tariff to govern market monitoring of its Module E voluntary capacity auction, ruling that a compliance filing which included a monitoring plan but lacked tariff language for monitoring was insufficient (ER08-394-007, Matters, 12/5/08).

The tariff provisions must contain sufficient detail for market participants to understand how the Market Monitor will monitor for withholding in the voluntary capacity auction, when a market participant will be subject to mitigation, and what mitigation will be applied.

Specific mitigation measures must also be included in the tariff, FERC said. These measures may include automatic mitigation for economic withholding, and sanctions when necessary for physical withholding. FERC did not agree with the Market Monitor's proposal to simply refer potential exercises of market power to the Commission; the tariff must contain provisions to address and mitigate potential exercises of market power at the Midwest ISO level, FERC said.

Likewise, the tariff must provide "clear guidance" regarding when a decision not to offer capacity into the capacity auction will not be considered an exercise of market power. FERC noted that the Market Monitor has explained that it would not find physical withholding to be evidence of an exercise of market power when: (1) the decision is economic, e.g., the capacity is not receiving its going forward costs and is therefore retiring; (2) the decision would not raise market prices; or (3) the amount of unoffered capacity is below a stated quantity threshold. However, such exceptions must be clearly set forth in the tariff, the Commission held (Matters, 12/26/08).

MISO must also address Duke Energy's concern regarding how the market monitoring plan could result in volatile prices for capacity. "While the existence of volatile prices by itself does not indicate that the capacity market design is unjust and unreasonable," FERC pointed out that it appears that PJM, the New York ISO and ISO New England have all modified their capacity markets in part to incorporate "stabilization factors," such as a demand curve and/or forward procurement. FERC directed MISO to address whether, in light of the monitoring and mitigation plan, it expects capacity prices will provide sufficient revenues for resources needed to maintain reliability to remain in the market, and thus whether "stabilization factors" are necessary.

FERC also clarified that, while section 50.2 of the MISO tariff generally precludes the monitoring of bilateral markets, including the bilateral capacity market, that section does not prevent the Market Monitor from examining how bilateral contracts may impact the capacity auction. Under section 50.2, the Market Monitor may periodically assess the effects of the bilateral markets on the markets administered by the Midwest ISO, the Commission explained.

Turning to the issue of penalties in the Module E resource adequacy construct, FERC said MISO's compliance filing has justified using an annualized $80,000/MW initial value for the Cost of New Entry (CONE). MISO's revised penalty structure also complies with FERC's directive, the Commission held.

After FERC ruled that assessing the full CONE value of $80,000/MW for all LSE resource adequacy deficiencies was improper, MISO changed the penalty mechanism to only apply the annualized CONE value of $80,000/MW to the first deficiency. Subsequent deficiencies by LSEs will be charged less depending on whether the deficient month is a peak or off-peak month, which complies with FERC's order to recognize different supply-demand situations in different months of the year (full discussion in Matters, 11/20/08). For repeat deficiencies, the full annualized CONE value will only apply to the incremental amount exceeding the maximum monthly deficiency from prior months.

The revised Midwest ISO Module E penalty proposal, "appropriately balances the interest in ensuring that LSEs have sufficient incentive to comply with their resource adequacy requirements with the interest in avoiding gross incentives to overbuild capacity," FERC found.

In its order on compliance, FERC also denied several rehearing requests related to Module E. Among them, FERC affirmed its decision to bar MISO from procuring capacity in the voluntary auction on behalf of deficient LSEs.

FERC disagreed with parties who asserted that, because the Midwest ISO will not procure capacity on behalf of deficient LSEs, suppliers will seek to sell their capacity and associated energy outside of the Midwest ISO. "[W]e believe that the financial settlement charge and scarcity pricing provide sufficient incentive for LSEs to meet their resource adequacy requirements by procuring sufficient capacity from suppliers," FERC said.

The Commission reiterated that the auction is a last-resort measure to procure incremental amounts of capacity one month ahead of time, if available, and should not be construed as a substitute for the need of LSEs to arrange for long-term capacity.

While, as noted above, FERC ordered the MISO to submit specific tariff language to govern voluntary capacity auction market monitoring, the Commission declined requests from state regulators to require a separate market power study of the entire Midwest ISO capacity market.

"[W]e continue to find that the exercise of market power is unlikely based on the structure of the Midwest ISO's resource adequacy program in Module E, as well as the seller-specific market-based rate analyses conducted by the Commission," FERC said.

FERC: Financial Players Caused High 2008 Natural Gas Prices

Supply and demand factors alone cannot explain the dramatic swing in natural gas prices in 2008, which were ultimately caused by financial players using the commodity as an investment vehicle, FERC Staff said in a state of the markets report.

Although FERC Staff cited several discrete issues which supported higher gas prices (a cold January, fewer imports, and a shutdown at the Independence Hub), Staff stressed that there were no major disruptions to supply during the first half of 2008 that would explain the historic increase in prices. The supply/demand balance through June 2008 was not significantly more bullish than the five-year average balance, except in January, and there was not an exceptional surplus of gas supply in July when prices started to fall dramatically, Staff noted.

Staff observed that gas storage levels did fall to the five-year average by the end of March, a level relatively lower than storage quantities in the recent past. Staff conceded that such relatively low storage affected market perceptions and explains some of the increase in prices during the first three months of 2008. However, the level of the price increase was unprecedented relative to recent experience, Staff stressed.

"In summary, while physical market fundamentals, particularly storage levels, can explain why natural gas prices rose during the first six months of 2008, none of the market fundamentals were extreme enough to explain why spot Henry Hub prices reached $13.31/MMBtu by July 3," Staff concluded.

Rather, a global increase in many commodity prices drove large pools of capital into various financial instruments that essentially turn commodities like natural gas into investment vehicles, Staff said.

"Ultimately, we believe that financial fundamentals along with the modest tightening in the supply and demand balance for gas during the first part of 2008 explains natural gas prices during the year," Staff found.

FERC Staff also concluded that, "natural gas is not scarce," given the physical factors that drove prices down in Q4 2008 and Q1 2009 -- factors which have the potential to, "fundamentally change the natural gas markets over the next few years."

In particular, Staff reported unconventional gas production (such as shale formations) represented 51% of total natural gas production in 2008, growing 14% while conventional production declined 3%.

While unconventional gas plays have become economic due to innovations in horizontal drilling and fracturing technology, Staff said there is limited information available on prices needed to cover operating and capital costs, including a reasonable return on investment. Estimates for break-even prices range from $3.30/MMBtu to $5/MMBtu on the low end to $5/MMBtu to $7/MMBtu on the high end. Thus, current pricing is below most estimates to sustain drilling activity in most unconventional basins, which is borne out by the dramatic plunge in the gas rig count during the fourth quarter of 2008, from a peak of over 1,600 in early September to less than 900 currently. "If sustained, the slowdown in drilling will likely lead to much lower production growth or even production declines, which could in turn lead to much higher prices when industrial gas demand rebounds," Staff observed.

FERC also noted the dramatic decline of financial marketers in the energy markets since the tightening of credit markets last fall.

Briefly:

National Utility Service Receives Pa. License

The Pennsylvania PUC granted National Utility Service a license as a broker/marketer of electric generation supply for commercial and industrial customers with loads greater than 25 kW.

Pa. Grants License to Keystone Energy Consulting

Keystone Energy Consulting was awarded an electric generation supplier license as an aggregator and broker/marketer by the Pennsylvania PUC, for commercial and industrial customers above 25 kW. Keystone Energy Consulting is a joint venture between Three Rivers Energy Consulting and Keystone Holdco LLC. The principal owners of those companies also have active investments in broker GSE Consulting and Keytex Energy, a FERC authorized power marketer. Various Keystone Energy Consulting backoffice functions will be outsourced to GSE Consulting.

FERC OKs Second New England Capacity Auction

FERC accepted results from ISO New England's second Forward Capacity Auction conducted in December 2008, which resulted in only one Capacity Zone for the entire New England region, with a capacity clearing price of $3.60/kW-month (ER09-467). Based on the results of the auction, the Cost of New Entry for the third auction will be $4.918/kW-month. FERC found comments from FirstLight concerning depressed CONE values to be outside the scope of ISO-NE's filing and appropriately addressed through the stakeholder process.

Texas Opt-Out Aggregation Push Continues

Advocates for municipal opt-out aggregation in Texas again stepped up efforts to gain traction on the issue, with the sponsor of the House bill (HB 2780) for opt-out aggregation likening the proposal to retail warehouse clubs such as Sam's Club. Opt-out aggregation, which subjects a customer to receiving power from a city-selected provider absent sending in an opt-out notice, will allow municipalities to create, "electricity buying clubs on behalf of their residents," Rep. Jim Keffer said. While Keffer said the buying pool would primarily apply to those consumers who have not yet chosen an electric provider, the bill would define such choice as customers with a current contractual relationship with a REP. Ostensibly, the aggregation would thus include not only customers making an affirmative choice to remain on the legacy incumbent product without signing a contract, but could also be interpreted as including other customers not on a current contract, such as customers on no-obligation plans, or customers who default to monthly plans at the expiration of a current contract who have not elected to renew or switch. Both the House and Senate opt-out aggregation bills remain in committee; the Senate version has not yet been scheduled for a hearing.

Mich. PSC Gives Competitive Suppliers More Time to File Net Metering Plans

The Michigan PSC adopted a recommendation from the State Office of Administrative Hearings and Rules to push back the deadline for alternative electric suppliers to submit net metering program plans to the earlier of June 30, 2009, or within 30 days of the effective date of the rules which are now before the Joint Committee on Administrative Rules (U-15787, Matters, 3/19/09). Retail suppliers are compelled to provide net metering customers with electric service at nondiscriminatory rates that are identical, with respect to rate structure, retail rate components and any monthly charges, to the rates non-net metering customers are charged. For distributed generation over 20 kW, the rules require suppliers to compensate customers for excess generation at a monthly average LMP, or the supply rate in their customer contracts, discussed more fully in our 3/19 story.

Bill to Expand ERCOT Board Advances

The Texas House of Representatives passed to engrossment after a second reading HB 2421, which would change the composition of the ERCOT Board of Directors to include nine, rather than five, members unaffiliated with any market segment (Matters, 4/8/09). The bill now moves to a third reading, which is the final action for passage. On second reading the bill was amended to add a provision requiring the Sunset Advisory Commission to conduct a special-purpose review of ERCOT as part of the commission's review of the PUCT for the 82nd Legislature. The sunset commission's report must include an assessment of the governance, management, and operating structure of ERCOT and ERCOT's compliance with the duties and requirements placed on it by the legislature and PUCT. HB 2421 would also eliminate the requirement that the Board include six market participants elected by their respective market segments to represent independent generators, investor owned utilities, power marketers, retail electric providers, municipally owned utilities, and electric cooperatives.

Pa. PUC Issues Draft to Expand Tier I AEPS Sources

The Pennsylvania PUC has proposed procedures and guidelines to expand the definition of Tier I resources under the Alternative Energy Portfolio Standards Act of 2004 to include Pennsylvania-based low-impact hydro-power facilities and generators utilizing by-products of pulping and wood manufacturing processes, consistent with legislation in 2008.

FERC to Create Innovation Office

FERC will create an Office of Energy Policy and Innovation, effective May 4, Chairman Jon Wellinghoff said yesterday, to focus on improving the efficiency of the nation's energy infrastructure, including smart grid, renewables and demand-side resources. Jamie Simler, Deputy Director of FERC's Office of Energy Market Regulation since 2005, will lead the new office.

Michigan Approves License Withdrawals

The Michigan PSC approved the application of Constellation NewEnergy-Gas Division to relinquish the alternative gas supplier license of its subsidiary Cornerstone Energy, as Cornerstone was "collapsed" into Constellation NewEnergy-Gas Division in February as part of a simplified corporate structure. Constellation NewEnergy-Gas Division retains its own retail license, and all of the Cornerstone customers have accepted assignment to Constellation NewEnergy-Gas Division.

The PSC also approved Metro Energy's application to withdraw its alternative electric supplier license, as Metro Energy no longer serves customers.

Mich. PSC Approves Marketer Renewable Plans

The Michigan PSC accepted the renewable energy plans of CMS ERM Michigan LLC, Commerce Energy, Constellation NewEnergy, Direct Energy Business, FirstEnergy Solutions, Integrys Energy Services (jointly with Quest Energy), MidAmerican Energy, Sempra Energy Solutions, Spartan Renewable Energy, and Wolverine Power

Marketing Cooperative. The PSC also found BlueStar Energy Services, CMS Energy Resource Management Company, and Direct Energy Services to be in compliance with the renewable energy law; those three suppliers did not have to file renewable plans as they have no Michigan load.

Calif. PUC Sets Smart Grid Symposium

The California PUC scheduled a symposium to discuss issues related to the development of a smarter electric grid for April 21.

PECO ... from 1:

full requirements contracts. About 85% of load will be bought on one-year contracts, with the remainder bought at day-ahead hourly prices. Large commercial customers (500+ kW) will be served on day-ahead hourly prices, although PECO will offer an optional, one-year fixed price for the class for the calendar year 2011. A proposed minimum stay on the fixed option has been eliminated.

Vice Chairman Tyrone Christy criticized the settlement for falling short of the "fundamental changes to procurement" required under Act 129 of 2008. PECO's plan is the first default service plan filed after the Act's effective date to come before the Commission.

Arguing PECO's plan largely represents “business as usual,” Christy objected to the inclusion of only a single "token" five-year purchase of a 50-MW energy block for the residential class, despite the Act's language requiring least cost procurement supply on a long-term, short-term and spot market basis.

"I believe that the full requirements approach to obtaining power supply for PECO’s customers will not lead to a good result, and that a managed portfolio plan would be a better approach to obtaining reasonably priced electricity," Christy added.

Chairman James Cawley raised concerns about another aspect of the settlement, specifically the default service reconciliation mechanism.

According to the tariff, shopping customers can be billed for some residual default service costs after switching service to a competitive provider, Cawley noted.

Comparing the mechanism to the existing natural gas choice provisions that often delay recovery of some natural gas costs for a year or more, Cawley reported that, "[t]hese types of retroactive charges distort and confuse customer shopping decisions, and they have been a consistent source of customer complaints."

"I am disappointed that PECO has included this provision into its plan, because it is a reversion to past bad policy that we are only now getting around to correct on the natural gas side of the business," Cawley added, in encouraging utilities to avoid such types of retroactive billings to shopping customers for default service costs going forward.

The settlement requires PECO to file a revised Purchase of Receivables program to be effective by January 1, 2011. The POR program is to 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 also be mandatory for suppliers using PECO consolidated billing.

The settlement includes an opt-in, competitively neutral rate mitigation plan for small customers.

Order 712-B ... from 1:

The New York State Energy Marketers Coalition (NYSEMC) had opposed the LDCs' requests, arguing that it would allow marketers for whom the release benefit is intended to avoid meeting the pipeline's creditworthiness requirements, increasing the risk of default in the market (Matters, 2/23/09).

FERC rejected such reasoning.

"If a retail marketer is unable to satisfy these [pipeline credit] standards, the replacement shipper supplier will be required to satisfy the pipeline’s creditworthiness criteria. If no party can meet these standards then the pipeline does not have to allow the release," FERC said.

The Commission also addressed other requested clarifications of Orders 712 and 712-A regarding capacity release. FERC reiterated that the asset manager's delivery/ purchase obligation must apply to the full contract demand under each capacity release in the transportation chain. In other words, each release to an asset manager is a separate capacity release that must have its own delivery/purchase obligation in order to qualify as an asset management arrangement.

In response to a petition from several wholesale marketers, FERC granted clarification and said that the asset manager's delivery obligation at the releasing shipper's city gate need only be up to the contract demand of the released capacity on the downstream pipeline that interconnects directly with the releasing shipper's city gate. The fact that the releasing shipper may have also released to the asset manager capacity on an upstream pipeline or pipelines with total contract demand exceeding the released capacity on the downstream pipeline does not increase the asset manager's required delivery obligation at the releasing shipper's city gate on the downstream pipeline, FERC said.

While a releasing shipper may release capacity to an asset manager on an upstream pipeline that exceeds the released downstream capacity, the asset manager must have a delivery obligation under each such upstream capacity release up to the contract demand of that release, FERC added.