

# Energy Choice Matters

*April 20, 2009*

## **Massachusetts Retailers Urge Up-Front Selection on Long-Term Contract Cost Recovery**

Massachusetts electric distribution companies (EDCs) should be required to elect up-front the manner in which they recover costs for long-term renewable contracts, and be compelled to adhere to that selection for the life of the contract, competitive suppliers said in comments on draft rules permitting long-term renewable contracting (08-88).

Under proposed regulations from the Department of Public Utilities, distribution companies would have the option of using a nonbypassable surcharge to recover renewable PPA costs, or applying the PPAs to basic service customer obligations (Matters 3/11/09). Solicitations of long-term renewable contracts are required by last year's Green Communities Act.

If the method of cost recovery for the contract is not selected up-front and maintained for the life of the contract, EDCs could engage in anti-competitive gaming behavior as market prices rise and fall relative to the contract prices, to the detriment of competitive electricity providers and their customers, the Retail Energy Supply Association said. If the form of cost recovery is mutable, the EDC could switch the cost recovery mechanism to benefit basic service customers.

"This arrangement would amount to giving basic service customers a 'free option' on the energy and RECs procured through a particular long-term contract, an advantage clearly not intended by or consistent with Section 83 of the Act. It would allow EDCs to shift generation and

***Continued Page 5***

## **SMECO to Rescind Order Preventing Demand Response Registration**

"Late research" has led the Southern Maryland Electric Cooperative to concede that it is "more reasonable" to conclude that the Maryland PSC, and not SMECO's Board, is the "relevant electric retail regulatory authority" for the purpose of defining retail customer participation in RTO demand response programs, SMECO said in a PSC filing (Case 9183).

In accordance with this new interpretation, SMECO reported that its Board will rescind its December order which had required curtailment service providers to receive Board approval for each customer's participation in PJM load response programs.

Under FERC Order 719, relevant electric retail regulatory authorities may prohibit customer participation in RTO demand response programs. Despite Order 719's plain language defining the relevant retail authority as the body which, "establishes the retail electric prices and any retail competition policies for customers," both of which SMECO does not do, SMECO's Board in December asserted itself as the relevant retail regulatory authority and passed a resolution preventing customer participation in PJM demand response programs absent board approval. After a complaint from EnerNOC, the PSC issued a show caused order demanding that SMECO justify its action (Matters, 4/15/09).

Although SMECO ceded such authority to the PSC, it urged the PSC not to allow gaps in the regulation and oversight of curtailment service providers, and asked the PSC to delineate what steps it will take to, "protect SMECO's customers against potential harm," from customer

***Continued Page 6***

## **BGE Smart Pricing Pilot to Drop Dynamic Peak Pricing**

Baltimore Gas Electric intends to only offer a Peak-Time Rebate plan in its 2009 smart energy pricing pilot, BGE reported to the Maryland PSC in seeking approval of the 2009 plan.

In the 2008 pilot, BGE offered a Peak-Time Rebate as well as a Dynamic Peak Pricing option, and said the peak energy reduction from each were similar. Since dynamic pricing exposes customers to greater risk while achieving the same results as the Peak-Time Rebate program, BGE requested to only offer the Peak-Time Rebate in 2009.

BGE filed to offer a \$1.50/kWh rebate under the Peak-Time Rebate program, which would be expanded to include small commercial customers in addition to residential customers. In addition to the use of the Ambient Energy Orb as an in-home peak event notification device, BGE will also test the Aztech In-Home Display, which provides near real-time usage and billing data in addition to a visual cue that a peak event has been called. Smart thermostats will also be included in the 2009 pilot, which weren't available in the 2008 pilot.

The pilot is to include 1,000 test customers with an additional 425 customers in a control group.

## **BlueStar Casts Doubts on Adoption of Proposed Illinois ABC Rules**

As expected, BlueStar Energy Services, American Energy Solutions and Affiliated Power Purchasers International filed a joint motion to dismiss BlueStar's complaint against the two brokers, after reaching a settlement (Matters, 4/10/09).

BlueStar and Lower Electric also filed their replies regarding summary judgment of the remaining complaint, while Illinois Commerce Commission Staff also filed its view of the ABC law without taking a position on summary judgment.

Staff, explaining the language of a

proposed decision to implement the ABC law, said only agents, brokers, and consultants that attempt to procure or sell retail electric service are covered by the requirements. In the draft decision, an attempt to procure is tied to a customer contracting with an ABC for the ABC to purchase supply on the customer's behalf.

Lower Electric again argued that under such a definition, it is not an ABC under the law, since it had no authority to procure on behalf of the customer.

BlueStar, however, noted the chief sponsors of the ABC law have filed a letter (Matters, 2/26/09) regarding the proposed definition of "attempts to procure," which BlueStar said, "raises substantial doubt as to whether those rules will ever be adopted."

Regardless, BlueStar contended that Lower Electric fell under the "attempts to sell" provisions of the ABC law in the complaint at issue, and was thus required to disclose expected remuneration to the customer.

## **N.Y. Utilities File Smart Grid Pilots**

Several New York utilities filed smart grid and related programs with the New York PSC, in response to the Commission's request about plans to apply for federal stimulus funding.

National Grid submitted a plan for a smart meter pilot covering 81,000 customers in the Syracuse and Albany regions. As part of the demonstration projects, customers would be offered rate alternatives including Critical Peak Pricing, Peak Time Rebate, and Hourly Pricing.

Central Hudson Gas & Electric outlined an advanced meter pilot covering 13,500 AMI endpoints deployed in two phases, with about 1,000 Home Area Networks included in each phase. Central Hudson proposed offering pilot customers hourly pricing, which is currently limited to only SC2, SC3, and SC13 customers. Central Hudson will also explore additional rate options such as Time-of-Use and Critical Peak Pricing throughout the pilot.

Consolidated Edison, Orange and Rockland, NYSEG and Rochester Gas & Electric also filed various smart grid and

advanced meter pilots to take advantage of stimulus funds.

## **Industrials Seek Rehearing of AEP Ohio POLR Charge**

Industrials and other large customers objected to PUCO's decision to allow the AEP Ohio utilities to dramatically increase POLR charges in the Commission's recent electric security plan order, arguing in rehearing requests that the charges are unjustified (Matters, 3/19/09).

In its order, PUCO affirmed that the POLR charges are to be bypassable to shopping customers agreeing to return to AEP at market-based rates, and granted AEP 90% of its requested POLR revenues (Matters, 3/19/09). POLR revenues were set at \$97.4 million for Columbus Southern Power and \$54.8 million for Ohio Power.

Kroger noted the decision results in a 947% increase in the POLR charge at Columbus Southern Power, and a 197% increase at Ohio Power.

An industrial customer on rate schedule GS-4 using 6 million kWh per month paid a POLR charge of \$2,827 per month to Columbus Southern Power under the rates in effect prior to the electric security plan, Industrial Energy Users-Ohio said. Now that same customer will pay a POLR charge of \$26,757, or about 10 times higher.

IEU-Ohio argued that AEP has not shown that it has POLR risk; or that, assuming it has such risk, that the risk cannot be mitigated through options.

The industrial group noted AEP has elected to meet its PJM capacity obligations through the Fixed Resource Requirement for a period of five years. By making such an election, IEU-Ohio said AEP has committed to being the sole load-serving entity for retail load within the AEP zone to meet the resource adequacy requirements specified by PJM, even for customers on competitive supply.

AEP, industrials said, receives benefits associated with its FRR election as opposed to participating in PJM's Reliability Pricing Model auction process. IEU-Ohio pointed to

Staff testimony indicating that there is a significantly large cost advantage as a result of the difference between RPM and FRR that could be as much as the difference between RPM and the depreciated book value of AEP's generating capacity. Additionally, AEP has the opportunity to sell and has sold generating capacity into RPM.

"In other words, AEP voluntarily assumed the risk of customer switching through its FRR election in PJM and is being adequately compensated through the PJM process with the option to do better through sales opportunities in the PJM markets," IEU-Ohio argued.

The Ohio Manufacturers' Association urged that the POLR charge be waived for customers willing to agree not to shop during the term of the electric security plan, since these customers would not pose a POLR risk.

IEU-Ohio also contended that PUCO used an inflated market generation price when comparing the electric security plan with a potential market rate offer. PUCO estimated the market rate of generation at \$74/MWh in the AEP case, but IEU-Ohio noted that a similar figure (\$75) was considered excessive in determining a market-price test in FirstEnergy's electric security plan application, with the Commission reducing the estimate downward by about \$8/MWh. Market prices have unquestionably decreased, IEU noted, making the market rate offer more attractive.

The Ohio Consumers' Counsel was among several parties protesting the retroactive nature of the electric security plan. Though PUCO clarified that the new rates won't apply to billings before April, the new annual revenue requirements set in the ESP case will be applied in total, meaning the revenue AEP would have received during an interim period of January through March will still be collected going forward. OCC said such application of the full year's rate increase is unlawful, and filed action at the state Supreme Court to block the increase.

For its part, AEP argued that PUCO cannot legally modify the filed electric security plan if it is determined that the filed plan is already superior to the market rate offer. Modification is only allowed to make the ESP

more favorable than market rates, AEP said. Among other things, AEP objected to PUCO's decision to deny its requested annual 3% (CSP) and 7% (OP) increase in base generation rates, and the calculations used to set the base level of the Fuel Adjustment Clause.

AEP also opposed the Commission's decision to defer consideration of AEP's request to prevent customers from participating directly in PJM's load response programs. The deferred decision, AEP warned, will not only allow current registrants to continue through the middle of 2010, but will also allow new registrants to participate, as FERC has extended the registration deadline to May 1, 2009.

## **Calif. PUC Denies PG&E Home Services Plan**

The California PUC denied Pacific Gas and Electric's request to offer a Home Services Program, which would have offered customers products such as electric and gas line protection plans, home equipment warranties (i.e., water heaters, A/C units, etc.) and related home services.

Products would have been offered by either PG&E or a chosen third party. In its application, PG&E said the services may be advertised by a brochure put into the customer's billing envelope, and through information on PG&E's website. PG&E also applied to include the service costs as a line item on the utility bill where available.

The billing insert advertisement was among the reasons for the PUC's rejection of the program. The Commission noted third-party bill inserts raise complex statutory issues, including affiliate issues, to which the Commission would have to devote substantial time through a rulemaking. Consistent with prior decisions on similar programs, the PUC said it wishes to conserve the Commission's resources for more significant regulatory efforts.

The PUC did say it intends to issue a rulemaking in 2009 for the purpose of reviewing Non-Tariffed Products & Services (NTP&S) such as PG&E's home services

plan. The rulemaking will not include a review of the Affiliate Transaction Rules.

The Commission was also "concerned" about the effect on competition of providing billing services for the selected vendor to the exclusion of all other market incumbents.

"This is a service that is apparently to be limited to PG&E's chosen vendor. The use of the utility billing system and customer service personnel to collect money exclusively for the vendor gives that vendor an advantage unavailable to its competitors, thus interfering with competition in the market," the PUC said. Billing services provided by PG&E also raises cross subsidy concerns, the Commission held.

Additionally, the PUC found that PG&E had not shown any pressing need for the program, though the Commission encouraged utilities to find ways to maximize use of existing utility resources and capacity by offering new services.

## ***Briefly:***

### **AEP to File Texas Smart Meter Plan Soon**

AEP's ERCOT distribution companies plan to file an advanced metering system plan with the PUCT around April 20, the companies said in applying to use potential customer refunds to mitigate any AMS surcharge. Due to a recent FERC decision (which is still subject to rehearing), AEP was directed reallocate trading margins from 2000 through 2006 between its AEP East and AEP West companies, with refunds due to customers in AEP West, including customers at Texas North Company and Texas Central Company. As TNC and TCC no longer have retail customers, AEP suggested that the refunds due to its Texas customers within ERCOT should be applied to reduce any potential AMS surcharge which may result from its smart metering plan.

### **Pa. Staff Offers No Modifications to NFG, Columbia POR Plans**

The Pennsylvania PUC Office of Trial Staff said it has no modifications to the voluntary Purchase of Receivables programs filed by National Fuel Gas Distribution, Columbia Gas,

and T.W. Phillips Gas and Oil Co. NFG's proposed plan would include partial recourse for suppliers, as well as a ban on small customer door-to-door marketing in its service area (Matters, 4/6/09). Trial Staff also said they did not object to T.W. Phillips' petition to abate consideration of its plan until the PUC rules on file regulations for mandatory POR programs, to prevent expending effort implementing something which may need to be changed under the new rules.

### **Allegheny Pa. Solicitation Approved**

The Pennsylvania PUC has approved the results from Allegheny Power's accelerated default service procurement, which was for a portion of residential supplies for the period starting January 1, 2011 (Matters, 3/13/09). The awarded contracts represent approximately 2 million megawatt-hours of generation supply, or about five percent of the purchases authorized by the Commission for periods following the expiration of rate caps on December 31, 2010. The three 17-month and two 29-month contracts have an average weighted retail generation supply price of \$72.80/MWh. If the average prices of the remaining auctions are the same, residential bills would increase about 8.5% when rate caps expire. Seven bidders participated in the solicitation.

### **Mass. PPAs ... from 1:**

generation-related costs from basic service customers to all customers, including customers of competitive suppliers, when those costs are above market, and retain the benefit of the same contracts when the prices are below market," RESA said.

The Cape Light Compact agreed that RESA's proposal would minimize the potentially unfair results from long-term contracting.

The Green Communities Act also allows utilities to be compensated for entering into the long-term green contracts, with such remuneration equal to four percent of the annual payments made to the counterparty under a contract. Since such remuneration is

simply an additional contracting cost, RESA recommended that the subset of customers paying for such remuneration be tied to the form of cost recovery for the contract. If the contract is only applied to basic service customers, only basic service customers should pay for the remuneration. If the contract is applied to all distribution customers through a nonbypassable surcharge, then the remuneration would also be paid by all customers.

The draft regulations would permit EDCs to solicit long-term contracts for RECs, or RECs bundled with energy. RESA urged that if a contract bundles RECs and energy, and is meant to be used to supply basic service, then the Department should require the use of competitive bidding and apply a more exacting cost-effectiveness review of the chosen contract to be in harmony with the basic service statutes requiring competitive solicitation.

The current DPU proposal, however, would allow utilities to contract using public solicitations, individual negotiations, or other methods. The state's Attorney General favors a standard EDC contract, with a uniform statewide solicitation. Conectiv Energy Supply cautioned that if the Department approves a solicitation method consisting solely of individual negotiations, "then the risk of the solicitation yielding a discriminatory or a non-competitive result is particularly high."

The Conservation Law Foundation recommended that EDCs be required to solicit proposals for bundled energy and REC contracts, since bundled contracts allow developers to balance energy and REC market risks against each other. Constellation Energy Commodities Group, however, said contracts should be limited to RECs only.

Nstar and National Grid offered no comments on either the proposed form of contracts or cost recovery, though Grid stressed the final rules should continue to grant EDCs flexibility. Most EDC comments focused on the remuneration regulations, as well as cost effectiveness hurdles for contracts.

Nstar further urged the DPU to protect the

confidentiality of solicitation results, even though in Nstar Green (07-64), the Department held that such data must be released to intervenors to protect their due process rights, even if such intervenors have a competitive interest. Nstar recommended that parties seeking to intervene in the contract review process who are participants in the competitive market, or are a trade group of market participants, should be required to show the "substantial and specific" impact that would be imposed on the participants from the case, and provide a basis for intervention other than their ability to compete. Entities not able to show an interest in the case other than their ability to compete should have limited intervention rights, Nstar said.

Noting that the Green Communities Act establishes a goal to meet at least 25% of electric load with demand-side resources by 2020, RESA urged placing a limit on the use of long-term PPAs that could be included in the EDCs' basic service portfolios, in order to preserve basic service price signals needed for such demand-side management.

The Department should also consider confining the basic service use of long-term renewable contracts to residential and small commercial customers, RESA said.

### ***SMECO ... from 1:***

participation in RTO demand response programs. SMECO says it remains concerned that RTO demand response participation may result in potentially adverse economic, reliability or safety impacts on its customers.