

Energy Choice Matters

April 22, 2009

Agway Asks N.Y. PSC to Compel NiMo to Accept Tax Rates Submitted by ESCOs

Agway Energy Services sought relief from the New York PSC to compel Niagara Mohawk to use sales tax rates submitted by Agway when issuing consolidated bills on behalf of Agway. Agway alleged NiMo's incorrect application of tax rates to its customers has resulted in the undercollection of taxes, with the state's Department of Tax & Finance holding Agway liable for about \$342,000 in uncollected funds and penalties.

Under current practices for consolidated bills, NiMo unilaterally determines the specific tax rate that will be applied to each customer's bill, Agway said.

Agway reported that in reviewing customer bills, it began to notice that in many instances, the consolidated billing program apparently failed to apply the correct sales tax rate. The errors occurred for several reasons, including treating a commercial customer as a residential customer, or incorporating an inaccurate school tax component.

"Agway's efforts to both communicate this information and correct this situation have been continuously rebuffed by National Grid," Agway said.

Agway said attempts to provide NiMo with the correct sales tax rate through both EDI and direct communications were rejected.

A recent audit by the state's Tax & Finance department has underscored, "the pervasive errors

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Texas Senate Passes Distributed Solar Bill, Sets Price for REP Purchase of Excess Generation

The Texas Senate passed SB 545 which would establish a distributed solar generation incentive program, including requirements for the purchase of excess solar generation by REPs at set prices.

Under the distributed solar program, REPs would be required to purchase (or credit) excess generation at or above a PUCT-determined fair market value, or, for residential customers only, the real-time price for energy. REPs would be compelled to offer service to customers with distributed solar generation.

The bill empowers the PUCT to determine a methodology for setting the fair market value, although by statute the fair market value may not be less than an amount equal to 80% of the customer's applicable retail rate minus any nonbypassable charges.

For residential customers, REPs would be given the option of paying for surplus electricity at the local market clearing price for energy at the time of day the surplus electricity is made available to the grid. Such real-time pricing for surpluses would only apply to distributed generation 50 kW or smaller in size, that is constructed primarily to serve the residential customer's own usage.

Until the PUCT provides the methodology for determining a fair market value price, REPs shall pay a price for surplus electricity that is not less than 5¢/kWh.

Customers with distributed solar generation within ERCOT would be given the option to be

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Orange & Rockland Defends Proposed Level for Retail Access Outreach

New York PSC Staff's proposal to "arbitrarily" cut Orange & Rockland's already reduced request for Retail Access Outreach and Education funding risks underfunding necessary educational programs, O&R said in reply testimony in its gas rate case (08-G-1398).

Consistent with the PSC's October retail access order, O&R applied to reduce spending on retail access outreach and education from the current \$300,000 level to \$100,000, to reflect the end of ratepayer support for promotional, rather than educational, activities (Matters, 12/2/08). However, Staff has argued the funding for retail access education should be further trimmed to \$50,000.

Staff based its calculation on the fact that in Rate Year Two of O&R's current rate plan, 50% of retail access educational activities actually served as promotion of choice. However, O&R noted that for Rate Year One, about 75% of the outreach funds were spent on educational and not promotional activities, including O&R's "Back to Basics" campaign, attendance at Home Shows and community events where O&R representatives respond to customer inquiries regarding retail choice, and preparation and dissemination of informational materials on retail choice.

Regardless, O&R said historical percentages cannot be used to determine funding levels needed going forward, especially since terminating funding for "promotional" programs, such as PowerSwitch (ESCO Referral) and eBids (market match), will likely increase the need for general funding on the availability of retail access and how it works, since promotional materials served educational purposes as well. PowerSwitch, O&R noted, was designed to serve as an introduction to retail choice and, as such, the promotion of PowerSwitch plays a role in explaining retail choice to customers. "The Company is concerned that eliminating this form of outreach will simply necessitate increased

outreach of a more general nature to explain retail choice," O&R said.

Unanticipated marketplace changes, such as recent revisions to the Uniform Business Practices and the adoption of ESCO Standards of Conduct, also prompt O&R to spend money on retail access education that it otherwise has not forecast. For example, the UBP amendments resulted in O&R engaging in education efforts to inform customers of the important changes -- a function that would not ordinarily be undertaken by any other industry participant. O&R said it is not able to predict the types of similar events in the future that will necessitate a response, justifying a higher level of retail access outreach funding than what Staff offered.

O&R also objected to Staff's recommendation to defer consideration of O&R's petition to end its rollover option for imbalances for service under SC 11. Currently, Qualified Sellers have the option of settling their monthly imbalance volumes through a rollover option or a cash-out option.

The rollover option carries imbalances to the next month, through an adjustment to Aggregated Daily Contract Quantity, and results in imbalances being reconciled through delivered volumes up to three months after the fact. In a volatile market, the price of gas may vary greatly over these three months, O&R noted, creating a "significant" mismatch risk. Such risks could negatively impact sales customers, O&R has said.

However, Staff was concerned that ESCOs have not been given enough notice about the change. Staff reported that as of December 2008, only 3 of 15 ESCOs, representing 3% of 51,000 SC 11 customers, were using the cash-out option.

O&R countered that the rollover elimination was first proposed in its previous rate case, during which time all but three of the ESCOs currently utilizing the rollover balancing option participated or were invited to participate in multiple telephone conferences and meetings regarding the proposed elimination of the rollover option.

Furthermore, O&R held a meeting with ESCOs in March in which the rollover

elimination was discussed. Although a few clarifying questions were posed during the meeting, O&R said ESCOs did not voice any objections. O&R noted the Small Customer Marketer Coalition submitted an interrogatory in the rate case regarding the proposed rollover elimination, indicating that ESCOs are active in the case and aware of the proposal. No ESCOs have filed any testimony in the rate case to date.

O&R also said eliminating the rollover option would not impose any administrative burdens on ESCOs relating to imbalances. For ESCOs using utility consolidated billing, which includes eleven of the fifteen ESCOs on the rollover balancing option, the monthly cash-out credits and debits would be applied to the payments made to ESCOs. Two of the eleven ESCOs utilizing the Company's consolidated billing option already use the cash-out balancing option and receive a report each month on the imbalance credits or debits applied to their remittances each month, O&R said. The remaining ESCOs who do not utilize utility consolidated billing would receive a wire transfer or invoice for the monthly cash-out amounts, as opposed to receiving an adjusted gas delivery quantity in a future month.

Pa. Suppliers Oppose Change to Columbia Telephonic Enrollment

A proposed change to telephonic enrollment requirements submitted as part of Columbia Gas of Pennsylvania's voluntary Purchase of Receivables plan should be rejected, Interstate Gas Supply, Shipley Energy Company and Dominion Retail said in joint comments to the PUC.

Though not discussed by Columbia in its POR filing (Matters, 4/6/09), the joint suppliers said the accompanying tariff sheets indicated that Columbia has proposed requiring suppliers enrolling customers telephonically to record the customer reciting their four-digit zip code extension. The four-digit zip code requirement would be in addition to the current requirements for

telephonic enrollment, which include customer recitation of their name, account number, service address, mailing address, date of enrollment, and confirmation of the customer's intent to switch.

The competitive suppliers said that the Commission's rules do not require the use of a four-digit zip code in customer enrollments, and that the requirement is not in Columbia's current tariff. Suppliers argued Columbia thus has no basis to include the new zip code requirement in its proposed tariff.

Overall, suppliers applauded Columbia's POR proposal, while listing some areas for improvement. In particular, the suppliers called Columbia's unbundling of its uncollectible rate, with the commodity-related portion of uncollectibles applied to the supply charge, a model for other LDCs. The base POR discount under Columbia's plan is equal to the uncollectible commodity rate.

However, suppliers also noted that, consistent with an earlier settlement on which the POR program is based, Columbia said that any further unbundling requirements beyond the agreed to unbundling of the uncollectible rate would permit Columbia to withdraw the POR program. Noting that the PUC has opened an investigation to unbundle all procurement-related costs from base rates (Matters, 3/27/09), the suppliers asked for clarification from Columbia and the PUC about the impact of the rulemaking on the filed POR program.

ABATE Seeks to Apply Detroit Edison CIM Refunds to C&Is

The Association of Businesses Advocating Tariff Equity opposed Detroit Edison's request to refund to residential customers all of its \$20 million increase in non-fuel revenue due to decreased choice sales, arguing that changes in residential customer choice sales did not produce the excess funds under the Choice Incentive Mechanism (U-14838-R).

Though Edison said the allocation of such Choice Incentive Mechanism funds to residential customers was consistent with a prior settlement (Matters, 4/6/09), ABATE argued that the settlement only covered prior

excess funds under the mechanism, and does not require future balances to be refunded in the same manner. The settlement required that the funds be applied to reduce the unrecovered regulatory asset balances related to the Regulatory Asset Recovery Surcharge (RARS) mechanism, but the entire RARS balance has been paid off for non-residential customers. Thus, Edison asked to apply the funds wholly to the residential RARS balance.

However, ABATE noted that the residential class gave rise to an "extremely small" portion of the excess Choice Incentive Mechanism funds. ABATE estimated that residential retail access customers purchased less than 10 MWh from January 2008 through April 13, 2008 (the Choice Incentive Mechanism period in question).

"It is clear that the residential [retail access] purchases were infinitesimal when compared to the purchases of the commercial and industrial classes, and any attempt to allocate the full amount of the refund to the residential class is unfair and will certainly raise the cost of service to the commercial and industrial classes," ABATE said.

ABATE recommended that the Choice Incentive Mechanism refund should be allocated to the choice customer classes based upon their relative percentage of total choice purchases during the period January 1 through April 13, 2008.

Briefly:

FirstEnergy Solutions to Supply Barberton, Ohio Aggregation

FirstEnergy Solutions said it has signed a contract to supply the City of Barberton, Ohio's, opt-out aggregation pool. The supply agreement calls for a 10% discount on residential rates starting in August 2009 relative to the applicable Ohio Edison default service rate, which will be determined in a future auction. The discount will drop to 6% in 2010, 5% in 2011 and 4% through the end of the contract in May 2012. Participating commercial customer discounts will begin at 7% and drop to 3.5% in 2010 and 2011 and 2.5% in 2012.

Nstar Says Basic Service Prices to Fall

Nstar said it has submitted basic service rates to the Massachusetts DPU for the period starting July 1. The basic service price for all residential customers will drop by 27%, from 12.71¢/kWh to 9.22¢/kWh, Nstar said.

Quest Energy Solutions Registers as Maine Gas Broker

Kevin J. Cobb & Associates Inc., d/b/a Quest Energy Solutions, registered with the Maine PUC as a retail natural gas aggregator/broker. The firm recently organized to serve as an energy broker in Rhode Island as well.

Ohio Industrials Seek Suspension of AEP Security Plan Rates

Industrial Energy Users-Ohio petitioned PUCO to require the AEP Ohio utilities to cease and desist billing and collecting any rates that may currently be on file with the Commission as a result of PUCO's recent order on AEP's electric security plan. The industrials argued that AEP stated it has not waived its right to withdraw the ESP as permitted under law, and further contended AEP's rehearing request makes clear that AEP believes the Commission's modification of the filed ESP plan is unlawful (Matters, 4/20/09). While not yet accepting the ESP as final, AEP's Ohio utilities are billing customers under the ESP rates. "In other words, AEP-Ohio is currently taking the benefits of the Order while contesting its reasonableness and lawfulness," IEU-Ohio said. The industrials argued that such a result runs contrary to Ohio law, and claimed that so long as AEP-Ohio is reserving judgment to withdraw and terminate its proposed ESP as a result of modifications made by the Commission, Section 4928.141 of the Revised Code requires the prior rate plan to continue (i.e., rates before the ESP order).

N.Y. PSC Approves ConEd Delivery Rate Order

The New York PSC approved a one-year electric distribution rate order for Consolidated Edison. A final written order containing all provisions was not available yesterday, though the only contested retail access issue

was the amount of funding for retail choice education and outreach. A recommended decision allocated only \$8,000 to retail access education (Matters, 1/9/09).

Peevey Denies Appeal of DWR Working Group Formation

In an assigned Commissioner's ruling, California PUC President Michael Peevey denied an appeal from the Consumer Federation of California regarding the membership of a working group dealing with Department of Water Resources contract novation. CFC had objected to the participation of advisory Staff in the working group, but Peevey dismissed such concerns, stating advisory Staff is not a party to the proceeding, and will only be facilitating the procedural process. The novation process has been undertaken to remove DWR from its supply role, as part of a potential return to direct access.

Ventyx Acquiring Structure Group's Software Assets

Ventyx said it has entered into a definitive agreement to acquire the software assets of The Structure Group, including its nMarket software suite for transaction management and settlements in the deregulated power and natural gas industry.

Agway ... from 1:

prevalent in the National Grid's [sic] sales tax billing practices, and the significant financial exposure now faced by Agway due to the Company's erroneous practice."

After Tax & Finance conducted an audit of Agway's commodity billings, the department informed Agway that the sales tax rates billed and charged to certain customers in the NiMo service territory were, in many cases, incorrect, and that a higher rate should have been applied. Tax & Finance told Agway it is liable for a tax liability in the amount of \$342,108 due to the errors.

Tax & Finance's determination has made it clear that NiMo is systematically applying erroneous sales tax rates when preparing consolidated bills, with over 1,000 Agway

customer affected, Agway claimed.

Agway told the PSC it has attempted to resolve the matter with NiMo since July 2008, but has reached an impasse. According to Agway, NiMo believes that the accounts which Tax & Finance deemed to have been erroneously taxed were, in fact, billed correctly. However, Agway called Tax & Finance the final arbiter of tax liability, and called the department's findings with respect to the applicable rates indisputable.

Agway petitioned the PSC to compel NiMo to accept and use the tax rates offered by Agway for consolidated bills. Agway also requested that NiMo reimburse Agway for the \$342,108 assessed on Agway due to the NiMo errors.

Agway sought expedited relief under the Uniform Business Practices dispute resolution process.

Texas Solar ... from 1:

equipped with an advanced meter, and the option to be settled on their real-time energy usage instead of a load profile.

REPs would be required to show the credit or payment for surplus generation on bills, and be required to carry excess credits to subsequent periods, or pay customers for the excess credits.

The PUCT would post the fair market value prices on its website. The Commission would also post REP offers to buy surplus generation (and contractual terms), and REC marketer offers to buy RECs, on the Power to Choose website. REPs would be compelled to provide on publicly accessible websites information on purchase price offers per kilowatt-hour for surplus electricity, and information instructing customers with distributed solar generation on how to request and obtain the purchase rates offered.

SB 545 would allow REPs or other third parties to own the distributed generation and lease it or sell its output to a customer, or (in the case of third-party ownership) the customer's REP. Such owners of distributed generation would not be considered an electric utility, and would not be required to register with the PUCT as a power generation

company or self generator unless the Commission determines that such registration is necessary to maintain the reliability of the distribution grid. The Commission may establish appropriate reporting and other requirements for distributed generation owners to be eligible to earn renewable energy credits.

Additionally, a customer owning distributed generation whose output is less than or equal to the customer's estimated annual electric energy consumption would not be considered a power generation company, or required to register as such.

The bill would also establish rebates for installation of distributed solar generation, with rebates set at the following levels unless adjusted by the PUCT:

(1) \$2.40 per watt for installations on residential buildings;

(2) \$1.50 per watt for installations on commercial buildings; and

(3) \$1 per watt for installations at industrial facilities.

The rebates would be funded through surcharges of:

(A) 20¢ per month for residential customers;

(B) \$2 per month for commercial customers; and

(C) \$20 per month for industrial customers.

The bill now moves to the House

Other Bills

The Texas House passed HB 2421, which would change the ERCOT Board of Directors to include nine, rather than five, members unaffiliated with any market segment, and eliminate the requirement for representatives from six market segments (Matters, 4/17/09).

The House also passed HB 1783 which requires free internet broadcasts of PUCT and ERCOT meetings. The bill allows the PUCT to impose an assessment to cover the costs of the broadcasts on REPs with more than 250,000 customers, power generation companies owning more than 5,000 MW in Texas, public utilities, and certain river authority affiliates.

The House State Affairs Committee also voted out of committee, unchanged, the Senate's version of a bill (SB 547) to delay

the transition to competition at SWEPCO (Matters, 4/3/09).