

Energy Choice Matters

May 26, 2009

Pa. PUC Staff Says Independent Contractors Must be Licensed as Electric Suppliers

Independent electric sales agents are not required to be individually licensed by the Pennsylvania PUC, U.S. Energy Savings subsidiary Pennsylvania Energy Savings said in response to an inquiry from PUC Staff. Pennsylvania Energy Savings is seeking an electric generation supplier (EGS) license for the Duquesne Light territory.

In its application, U.S. Energy Savings said it will utilize independent contractors/sales agents to market its services.

Staff requested that U.S. Energy Savings identify all agents it intends to use to market its services in Pennsylvania, and list the docket numbers of any agents licensed as electric generation suppliers in Pennsylvania. If any agent is not licensed, Staff requested that U.S. Energy Savings explain how the Commission can license Energy Savings as an EGS when it will apparently utilize one or more agents that should be licensed as an EGS but are not.

However, U.S. Energy Savings does not believe that individuals retained as independent contractor sales representatives are required to be licensed by the Commission.

Staff cited Section 2803 of the Electric Generation Customer Choice and Competition Act to support its position that, as brokers or marketers, each of the potentially hundreds of independent contractors utilized in door-to-door marketing need to be individually licensed as EGS. Under Section 2803, a broker or marketer is defined as "an entity" licensed by the Commission.

U.S. Energy Savings argued that an individual retained as an independent contractor sales

Continued P. 4

Revised RPS Rules for Competitive Suppliers Head to Illinois Governor

The Illinois General Assembly has sent to the governor SB 2150, which revises the compliance obligations of alternative retail electric suppliers with respect to the state's RPS, by adding new section 16-115(d) to the Public Utilities Act.

The bill holds that the required procurement of renewable energy resources by an alternative retail electric supplier shall apply to the supplier's metered electricity delivered to Illinois retail customers pursuant to contracts executed or extended after March 15, 2009.

Overall renewable percentages are unchanged, as suppliers will still be responsible for the RPS mandates in Section 1-75 of the Illinois Power Agency Act (which gradually increase from 4% by June 1, 2009 and 5% by June 1, 2010 to 25% by June 1, 2025). However, competitive suppliers are subject to a 60% carve-out for wind in meeting the RPS goals, and, starting June 1, 2015, a 6% solar photovoltaics carve-out. Default service procurement plans, however, are subject to a 75% wind carve-out (and identical solar carve-out), but only to the extent that such power is available. Competitive suppliers are not subject to requirements to use Illinois-sited renewables as the default service procurement plans are.

SB 2150 holds that alternative retail electric suppliers shall comply with the renewable energy portfolio standards by making an alternative compliance payment to cover at least one-half of the supplier's obligations. The remaining half can be met through owned generation, bilateral contracts,

Continued P. 5

FirstEnergy Ohio Auction Shows Value of RTOs, Generators Say

The lower default service rates resulting from FirstEnergy Ohio's recent descending clock auction were cited by generators and other supporters of competition as one of the tangible benefits Ohio consumers have received from participation in RTOs, in comments on PUCO's inquiry into RTO participation.

The Compete Coalition noted the FirstEnergy utilities' recent auction will lower Ohio residential customer rates between 7.4% to 16%. "Such a successful outcome would not be possible without the features of a well-functioning organized wholesale market like MISO," Compete said. EPSA as well attributed the auction's success to the large pool of bidders that RTO membership enabled.

The PJM Power Providers Group (P3) linked FirstEnergy's successful auction with PUCO's inquiry into whether RTOs are adequately facilitating opportunities for long-term contracting. PUCO could promote long-term hedging by adopting policies in favor of transparently designed procurement auctions and requests for proposals, such as the recent FirstEnergy auctions, P3 said.

P3 further noted that, "[t]he Commission can best promote long-term contracts by stating its support for robust market designs such as those found in PJM."

"Buyers will be less willing to enter into long-term arrangements until it becomes clear that these markets will not be dismantled or changed in ways significant enough to undermine fundamental market design elements upon which price determinations are based," P3 added.

However, the Citizens Coalition, which includes the Neighborhood Environmental Coalition, said residential customers lack adequate information to analyze the performance of RTOs. The Citizens Coalition requested that PUCO extend the comment period in the case for 90 days and provide interested parties, "with the ability to request information from the RTOs and First Energy, either voluntarily or through the discovery process," to allow for an analysis of how much RTOs are costing or saving customers on a per kilowatt-hour basis.

P3 encouraged PUCO to take a long-term view of markets, stating, "[a]lthough at times competitive markets may produce prices that cause political discomfort, that does not mean that markets are broken."

P3 said that the overall benefits and economic value in PJM's cumulative operational efficiencies amounts to approximately \$2.3 billion in yearly savings to customers in the RTO. Reliability savings alone amount to approximately \$80-\$100 million in savings per year, P3 added. Centralized dispatch of resources over a large region results in annual savings of between \$340 million to \$445 million in PJM, Compete added.

Compete noted MISO's operational efficiencies save \$805 million to \$1.1 billion per year.

The Citizens Coalition criticized RTO governance, specifically the "virtually non-existent" representation of residential customer interests.

"Supply-side representation dominates the decision-making processes of RTOs. Because demand-side representation among stakeholders is often split among competing interests, it makes it impossible for demand-side interests, including the interests of residential consumers, to compete against the unified front of supply-side representatives in the RTO decision-making process. The result is that the management of RTOs shifts toward the commercial interests of supply-side market participants, leaving the interests of residential consumers behind," the Coalition said.

The Coalition argued that residential customers should at least have representation on RTO boards equal to 40%, since residential customers pay approximately 40% of the costs of RTO participation.

PUCO should not continue RTO participation without greater consumer representation on RTO boards, the Coalition added. In the alternative, PUCO should pursue an Ohio-only RTO, the Coalition recommended.

EPSA countered that there are no viable, cost-effective alternatives to RTO participation. Utilities would be contractually obligated to pay high exit fees if Ohio were to create an Ohio-only RTO, EPSA noted, while the state would lose the reliability and security that comes from being

part of a larger regional footprint. An Ohio-only RTO would create new seams as well, EPSA added.

Noting that one-third of its members are end-use customers, Compete said that RTO markets, "enjoy broad customer support because they empower customers to better manage their energy supply and usage and thereby lower their costs."

In its comments, P3 argued for the introduction of an Operating Reserve Demand Curve in PJM that would, "provide predictability and stability during time of physical scarcity in PJM." Such a curve, "would allow higher price signals to be sent earlier, giving demand a longer time to respond to keep the system out of emergency conditions and avoiding a harsh switch from non-scarcity prices to much higher scarcity prices," P3 said, in tying the curve to PUCO's interest in facilitating price responsive demand.

Consumers Energy Opposes CNE Proposal for Drops to Bundled Service

Consumers Energy opposed a proposal made by Constellation NewEnergy to allow competitive suppliers to initiate the return of electric customers to full service, instead of the customer, in rebuttal testimony in Consumers' rate case (U- 15645).

Constellation had noted that the current tariff prevents suppliers from dropping customers to full service (except when delinquent), and that only customers may initiate the transaction. The requirement could force suppliers to serve customers beyond the expiration of a contract, CNE had noted, if the customer does not submit a written request to Consumers to return to bundled service (Matters, 4/29/09).

However, Consumers contended that the current design is necessary to avoid a competitive supplier-initiated return to full service, about which the customer did not know or acquiesce.

"One of the Company's priorities is to ensure that customers, not suppliers, are making the selection of their energy provider. A customer returning to Company Full Service from ROA

[Retail Open Access] must make the decision and provide affirmative notice of that decision," Consumers said.

Consumers also argued that the current deadlines for customers returning to full service remain appropriate, even with the 10% choice cap and seasonal rates. Customers face a December 1 deadline to inform Consumers if they will be taking bundled service during the next summer.

Constellation had called the restrictive notice requirement unnecessary in light of the limited load eligible to shop.

Consumers countered that it still enters into firm delivery contracts to serve its projected load, stating that changes in load caused by customers returning or leaving bundled service without advance notice can raise costs.

Constellation's proposal that Consumers provide suppliers with customer information within two business days should also be rejected, Consumers said, due to the significant expense required.

"The Company has been successful in managing the current ten-day turnaround target for fulfillment of information requests through the methods currently in place," Consumers claimed.

"Moreover, energy use information is already available to the end use customer directly on their energy bill, and for many of our customers, through their web based energy account. An ROA Supplier, in need of information faster than the current ten-day guideline always has the option of obtaining it directly from the customer," Consumers added.

Consumers also defended the continued use of the Choice Incentive Mechanism, despite the new cap on competitive load which Constellation says provides certainty to Consumers.

However, Consumers said that shopping levels still remain volatile, reporting that in February 2009, active and enrolled load totaled 377 MW, already on pace to exceed the filed forecast for the 2009 year-end level. As of May 14, 2009, active and enrolled load is 453 MW, well above the year-end 2009 forecast, Consumers said.

United Illuminating Opposes Exception to Stricter ICAP Import Requirements

Echoing comments made by Nstar, United Illuminating opposed an exception in proposed ISO New England rules, that would allow certain contracted ICAP importers to sell into higher-priced external markets, rather than deliver energy as would otherwise be required, in comments at FERC.

As previously reported (Matters, 4/10/09), ISO-NE has proposed changes to Market Rule 1 to require capacity importers to make competitive energy offers and to impose more significant penalties for failure to deliver energy when requested.

However, ISO-NE also proposed that penalties for failure to delivery energy will not apply if a priced energy transaction supporting an ICAP Import Contract is associated with the New York Control Area, and the Market Participant does not deliver energy to the New England Control Area when requested during hours in which the Real-Time Energy Market price at the source location is higher than the Real-Time LMP at the associated New England Control Area external node.

United Illuminating argued that such an exception is not consistent with the underlying purpose of the ICAP Import Contract, i.e., to ensure resource adequacy.

"The most critical element of the ICAP Import Contract is the Market Participant's commitment embodied therein to supply energy when called upon. In proposing the above-described exception to the performance penalty, ISO-NE fails to take into account the value to the New England ratepayers of the committed capacity for which they have paid," UI said.

"Simply put, Market Participants should not be permitted to contract to provide, and to be paid by New England ratepayers for providing, capacity and energy, but then later be able to ignore that commitment and to sell their energy elsewhere at a higher price," UI added.

While UI and Nstar want the exemption removed, the NEPOOL Participants Committee noted that ISO-NE has said revising the rule changes to remove the exemption would prevent it from implementing the reforms by July

1, 2009 as intended, with the region losing any benefits of the changes during the summer.

EnerNOC, GridSolar Enter MOU to Back Distributed Solar Project

EnerNOC and GridSolar have entered into a Memorandum of Understanding to develop a Definitive Agreement, under which EnerNOC will pair its demand response resources with GridSolar's distributed solar generation in sub-regions of Maine experiencing significant load growth.

GridSolar has sought a CPCN from the Maine PUC to develop 800 MW of distributed solar in Central Maine Power's territory as a transmission alternative to CMP's Maine Power Reliability Project. GridSolar is seeking cost-of-service regulation for the sale of energy, capacity and RECs generated by the GridSolar project through a long-term contract with CMP.

The project may also be backed by gas-fired generation in addition to demand response.

GridSolar co-founder Richard Silkman also founded broker-consultant Competitive Energy Services.

Pennsylvania ... from 1

representative can not be a broker or marketer because an individual is not an "entity" under the Electric Competition Act. While the term entity is not defined in Act, U.S. Energy Savings contended that had the General Assembly intended to define broker/marketer as including individuals, it would have done so. Such an explicit definition was used in the Gas Competition Act, Energy Savings noted. Citing Black's Law Dictionary, U.S. Energy Savings added that the term entity cannot generally be construed to include an individual.

Energy Savings further cited five PUC decisions in electric broker applications as providing precedent that organizations, and not individuals, are required to be licensed. Furthermore, the PUC's *Bermex* decision, in which the Commission ruled a utility is not barred from using outside contractors, provides further precedent, U.S. Energy Savings added. In that case, the Commission ruled that utilities are not prevented from using independent

contractors to fulfill their responsibilities, as long as the contractors are subject to the utilities' ongoing oversight and control.

Although not providing a ruling on point, the Commission also did not accept an exception raised by an intervenor, who argued that any outside contractor performing work for a utility must be separately certificated as a public utility by the PUC. The refusal to grant such an exception implicitly holds that independent contractors are not required to be separately certified by the PUC, Energy Savings said.

Chapter 54 of the Commission's regulations holds an EGS responsible for the actions of any of its employees or agents, Energy Savings noted, similar to the requirement in *Bermex* governing the use of independent contractors.

Illinois ... from 1

RECs, or addition compliance payments.

RECs that are not used by an alternative retail electric supplier to comply with a renewable portfolio standard in a compliance year may be banked and carried forward up to two 12-month compliance periods after the compliance period in which the credit was generated. For the 2009-2010 and 2010-2011 compliance periods, an alternative retail electric supplier may use renewable credits generated after December 31, 2008 and before June 1, 2009. The compliance year runs to June 1 through May 31.

The Illinois Commerce Commission will determine a maximum level for alternative compliance payments based on cost caps imposed on the procurement of renewable resources contained in the Illinois Power Agency procurement plan. The compliance payments will accordingly differ by utility service area.

If an alternative retail electric supplier fails to comply with the renewable energy resource portfolio requirement more than once in a five-year period, the ICC shall revoke its license.

The bill also applies the RPS mandates applicable to alternative retail electric suppliers to utilities operating outside their franchise service areas, who otherwise would not be covered by the mandates.

Publication Note: Energy Choice Matters published an issue yesterday, May 25. Stories included:

- Md. Staff Says Hedging Should be Geared to Obtain Lowest Price, Not Limit Volatility
- PPL POR Would Only Cover Basic Supply Service Under Tentative Order
- Texas Market Power Bill Advances, Perry Signs SWEPCO Competition Delay
- Commerce Files for Michigan Gas License
- Illinois Lawmakers Pass Retail Gas Single Billing Legislation