Energy Choice Matters

June 8, 2009

Supplier Receivables Not an Adequate form of Security, Pennsylvania LDCs Say

Purchased supplier receivables are not an adequate form of security to protect natural gas LDCs and their ratepayers, several LDCs told the Pennsylvania PUC in a rulemaking on supplier security requirements (Matters, 6/5/09).

Among other things, the PUC's proposed rules would allow suppliers to use accounts receivable pledged to an LDC or sold by a supplier participating in a LDC purchase of receivables program as a form of security.

However, Equitable Gas Company said that purchased receivables are not adequate to cover risks imposed on LDCs. In particular, Equitable noted that in a rising price environment, receivables from the prior month may be inadequate to cover the cost of replacement gas that would be required should a supplier fail.

Furthermore, purchased receivables cannot be collected and converted into cash as quickly as other forms of security can be, PECO added, noting the lag may place the LDC at risk.

Philadelphia Gas Works argued that using purchased receivables as security places an administrative burden on LDCs, as the receivables may also be pledged to multiple creditors, and LDCs will need to file various documents to maintain their first-in-line status.

National Fuel Gas Distribution Corp. contended that since the receivables have already been sold by the supplier to the LDC, they cannot be used as a form of security. While receivables may be used as an offset and may lower security requirements, they cannot act as security itself, NFGDC

Continued P. 5

Residential Price in Allegheny Power Second Pennsylvania Procurement Slightly Lower

West Penn Power's (Allegheny) second Pennsylvania residential default service procurement for the period starting January 1, 2011, produced a weighted average retail generation price of $71.64/MWh, while the initial procurement for non-residential load produced a weighted average retail generation price of $75.40/MWh.

Included in the average weighted retail generation price are energy, capacity, Pennsylvania gross receipts taxes, line losses, renewable energy requirements, ancillary services and other provisions.

	Residential	Small and Medium Non-residential
Average weighted retail generation price ($ per MWh; estimates)	$ 71.64	$ 75.40
Amounts included in prices shown above ($ per MWh; estimates)		
Gross receipts taxes and line losses	$ 9.01	$ 9.47
Capacity (excludes shaping)	$ 4.61	$ 5.37
Energy and all other components	$ 58.02	$ 60.56

For residential service, eight 17-month contracts and three 29-month contracts were procured. For non-residential supplies, two 17-month contracts were procured.

Allegheny's residential procurement included accelerated purchases of blocks under a plan

Continued P. 6

Latest Conn. REC Banking Draft Retains ACP Provision

An updated draft regarding the banking of RECs by Connecticut load serving entities retains a provision in earlier drafts that only allows the banking of RECs by LSEs who have never used the alternative compliance payment mechanism to comply with the RPS (08-09-01, Matters, 3/11/09).

The DPUC has filed the proposed revisions to Section 16-245a-1 of the Regulations of Connecticut State Agencies with the joint Energy and Technology Committee as well as the Connecticut Law Journal as required before final adoption.

The Department says that its proposed REC banking procedures would be the, "same banking provisions, including the same restrictions, as used in other New England states."

"The establishment of uniform REC banking provisions throughout New England promotes investment in renewable energy generation by ameliorating REC price fluctuations," the DPUC said.

However, the Retail Energy Supply Association has noted that Massachusetts, Rhode Island and Maine (the other New England states with REC banking) do not prohibit LSEs that have used the alternative compliance payment in past years from banking RECs.

As several retail suppliers and both of the distribution utilities have used the alternative compliance payment in the past, RESA has said that the DPUC's prohibition will likely inhibit bilateral contracting between those LSEs and renewable generation developers, since LSEs cannot bank any RECs associated with any PPA.

That, in turn, will counteract the intended result of banking, which is to support renewable development by encouraging more LSEs to contract for RECs, RESA noted

Aside from the alternative compliance payment provision, banked RECs would also be limited to meeting 30% of the mandate for each class of renewable energy in a given year. Banking would be permitted for all three classes, and RECs could be banked for up to two years.

Currently, the only flexibility in RPS compliance available to Connecticut suppliers is a concept called "borrowing," which allows a supplier to borrow RECs from the first quarter of Year 2 to comply with the REC requirement in Year 1.

Mich. PSC Staff Cites Authority Over Gas Choice Tariffs

Michigan PSC Staff countered Michigan Consolidated Gas Company's motion to dismiss a generic proceeding to review several consumer protection provisions of the LDCs' choice tariffs, as Staff argued that statute empowers the Michigan PSC to order changes to the tariffs if it finds changes are warranted (U-15929).

MichCon contended that the Commission lacks statutory authority over the gas choice tariffs, since gas choice is a voluntary program offered by the LDCs (Matters, 6/3/09). The Commission has opened a contested case to review whether any clarifications, revisions, or additions should be made to tariff 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).

Staff, however, noted that the Commission derives its authority from section 9 of the MPSC Act. Specifically, Section 9 prohibits utilities and alternative gas suppliers from enrolling a customer without authorization (slamming), from adding optional services to a customer's service package without authorization (cramming), and from engaging in deceptive marketing. In addition to these prohibitions, the Act states that the Commission "may issue orders" ensuring that utilities and suppliers do not violate these sections, Staff said.

"These subsections grant the Commission authority to amend each tariff that it opened for review in its Order initiating U-15929 because the tariffs it opened for review either protect customers from slamming or cramming or establish standards for the form and content of disclosures," Staff said.

While MichCon had argued that previous tariff filings were done voluntarily to provide an opportunity for feedback from the PSC, which the LDCs were free to accept or reject, Staff said that the Commission has made changes to utilities' customer choice programs in the past that the utilities were not free to adopt or reject. Staff cited an October 2000 order in case U-12550 (establishing uniform terms and conditions for the provision of voluntary gas customer choice programs) as an example where the Commission ordered changes to the choice tariffs which the LDCs were not free to reject.

Staff also dismissed MichCon's argument that a contested case is an improper forum to review the tariffs, as Staff noted that contested case hearings are not limited to ratemaking proceedings and rate investigations as MichCon suggested. Staff also said MichCon's motion for dismissal was one day late.

Brodsky Attacks "Unconscionable" Returns of N.Y. Generators

A new report by McCullough Research shows that estimated pre-tax returns on equity for 13 New York power plants in 2008 ranged from 31% to 186%, which frequent deregulation critic Assembly Corporations Committee Chairman Richard Brodsky called, "unconscionable," ratcheting up criticism of the New York ISO market.

"Since profitability is seldom estimated on a plant level in standard financial reports, many assumptions are made in the course of calculating these estimates," the McCullough report said, which compared revenues to capital investment. Revenues were taken from FERC Electric Quarterly Reports. When the EQRs omitted data or did not identify the specific plant, revenues were allocated on the basis of output taken from either the Environmental Protection Agency emissions reports or the Energy Information Administration monthly generation data.

Capital costs were taken from financial statements or press coverage. The McCullough paper assumed a 20-year straight-line depreciation schedule for all plants. In several cases, McCullough allocated the capital costs to the plants on the basis of capacity.

Using that technique, the pre-tax returns for 13 plants were estimated as follows:

Estimated Pre-Tax Return on Equity

	50/50 Capital Structure	100% Equity
AES Cayuga	186%	99%
AES Somerset LLC	112%	61%
Astoria Generating Station	122%	67%
Athens Generating Plant	44%	27%
Bethlehem Energy Center	40%	23%
C R Huntley Generating Station	155%	81%
Danskammer Generating Station	85%	46%
Dunkirk Generating Station	154%	81%
Indian Point 2	51%	28%
Indian Point 3	114%	60%
Nine Mile Point Nuclear Station	102%	54%
R. E. Ginna Nuclear Power Plant	72%	39%
Ravenswood	31%	19%
Weighted Average:	**93%**	**50%**

OCC Seeks Refund of Ormet Delta Revenues at AEP

The Ohio Consumers' Counsel and several large customers petitioned PUCO to order Columbus Southern Power and Ohio Power to cease collecting delta revenues associated with discounted power to Ormet, and to refund such delta revenues already collected in 2009.

OCC claimed that the collections violate the AEP utilities' electric security plan, which has its economic development rider (which is to be used to collect delta revenues) set at $0. Joining OCC in the motion were the Ohio Hospital Association, the Ohio Manufacturers' Association, Kroger, and the Ohio Energy Group

In December 2008, Ormet and the AEP companies filed for a temporary unique arrangement to replace an agreement expiring at the end of 2008. Under the temporary arrangement, Ormet would pay $38.43/MWh for generation, transmission, and distribution, versus $50/MWh under the expiring arrangement. PUCO approved the temporary arrangement, "inasmuch as AEP Ohio's ESP application is still pending before the Commission and there is a need to establish interim rates for Ormet pending current ongoing negotiations between the parties," OCC stressed.

Subsequently, PUCO approved a modified version of the AEP companies' electric security plan, which included a provision for an unavoidable economic development rider to be used to recover delta revenues associated with unique arrangements. The AEP utilities filed tariffs to implement the electric security plan, with the economic development rider set at $0.

OCC said that the language of PUCO's electric security plan order indicates that the Commission was not ruling upon any of the companies' economic development arrangements, let alone the Ormet temporary arrangement.

"In particular, the Commission rejected OCC's arguments (that customers should not fund 100% of delta revenues) as 'unnecessary at this stage.' This ruling pointed OCC and other parties to a future 'stage' or opportunity (e.g. on a case-by-case basis) to make such arguments," OCC said.

Additionally, the electric security plan order did not determine the reasonableness of the Ormet unique arrangement, which OCC claimed was required before PUCO permitted the companies to collect increased rates from customers as a result of the arrangement.

However, "[i]t now appears that, despite the economic development rider being set to zero, and the fact that the Commission never ruled that the Ormet temporary arrangement was reasonable and in the public interest, the AEP utilities are collecting Ormet delta revenues from customers," OCC said, calculating that the AEP companies' tariffed rates contain $6 million per month in Ormet delta revenue collections.

"The collection of the Ormet delta revenue appears to be one of the primary reasons there is the now much-discussed large disparity between the revenues approved in the ESP Order and the rate increases imposed upon customers," OCC noted, stating that absent PUCO action, the AEP companies will collect $54 million in Ormet delta revenues during 2009.

OCC argued that the collection of such revenues is unlawful because the electric security plan order did not make any finding as to the reasonableness of the Ormet arrangement, and because the revenues are being collected in base rates, and not the economic development rider.

Briefly:

Bloomberg Budget Would End ESCO Sales Tax Exemption

A budget agreement between New York City Mayor Michael Bloomberg and City Council Speaker Christine Quinn would impose the full city sales tax on the commodity sales by ESCOs, potentially ending one of the benefits of ESCO service compared with bundled service. The change, which must be approved by the state legislature and governor, would generate $83 million. A news release issued by Bloomberg's office said that the shopping customers currently not paying the tax, "are primarily large, commercial customers," though January 2009 shopping statistics show some 490,000 (electric) and 125,000 (gas) residential shopping customers at Consolidated Edison, compared to 101,000 (electric) and 26,000 (gas) non-residential shopping customers. Residential shopping customers also well outpace non-residential shoppers at both KeySpan LDCs, though the percent of migration (and associated load) is highest among large non-residential customers at all three utilities.

New England Gas & Electric Receives Conn. Electric License

The Connecticut DPUC granted New England Gas & Electric an electric supplier license to serve all classes of customers. New England Gas & Electric is a start-up founded by former Commerce Energy COO Michael Fallquist (Matters, 4/14/09). Under its standard contract filed with the DPUC, New England Gas & Electric intends to offer a monthly variable product, with no residential deposit or termination fee if the customer provides 30 days' written notice of cancellation.

America Approved Energy Services Seeks Md. Broker License

America Approved Energy Services applied at the Maryland PSC for an electricity broker license to serve commercial and industrial customers at the four investor-owned utility territories.

Milagro Power Company to Acquire TexRep3 Certificate

Texas retailer TexRep3, LLC has filed for an amendment to its certificate to reflect a change in ownership from Energy Services Group (which created the REP to complete the ERCOT test flight) to start-up Milagro Power Company. Milagro Power President William Wydler currently runs a group of companies under the Milagro name which were initially formed in the year 2000 with the purpose of providing services to the Hispanic Community of America. Among them is Plaza Milagro, which is an exchange providing home owners with a one-stop shop for professionals in the fields of real estate, home financing, home building, home protection, and home ownership.

St. Regis Mohawk Tribe to Leave National Grid

The St. Regis Mohawk tribe approved a measure under which the tribe will leave National Grid and create its own electric utility. The move will see some 30,000 megawatt-hours and 11,000 residential customers exit National Grid's New York distribution system.

NRG Sets Annual Meeting

NRG Energy announced that it will hold its 2009 annual meeting of stockholders on July 21. Exelon, which is pursuing a hostile acquisition of NRG, has nominated its own slate of directors to NRG's board and has proposed expanding the board from 14 to 19. NRG opposes Exelon's expansion proposal and nominees.

MISO Withdraws Default Notices

The Midwest ISO withdrew its notice of default and/or request for termination of market participant status against several financial marketers due to FERC's recent ruling that MISO shall not collect Revenue Sufficiency Guarantee charges on virtual supply offers prior to November 10, 2008, reversing a prior directive for refunds dating back to August 2007 (Matters, 5/7/09). Included in MISO's withdrawal notice were Core Energy Services, The AI Funds, Energy Endeavors, ALEA Power LLC, DJGW LLC, Apex Energy Trading LLC, Flat Earth Energy LLC, Global Energy Investments Group LLC, and PEAK Capital Management. MISO also withdrew its notice of default regarding Lehman Brothers Commodity Services, though the withdrawal was not related to RSG resettlement.

Pa. Security ... *from 1*

said.

NFGDC also opposed the use of escrow accounts as a proposed form of security, due to administrative costs, suggesting instead that suppliers post cash with the LDCs.

There was also consensus among many of the LDCs that a change in supplier volume should trigger a change in supplier security requirements. The Commission's draft would only require an adjustment due to a 25% increase in customer count, but not in volume.

Philadelphia Gas Works and Equitable Gas Company both said a 10% increase in volume should trigger additional security requirements, while PECO suggested an increase of 25%. NFGDC recommended a security adjustment for changes in volume as well as commodity prices, but did not suggest specific thresholds.

In addressing the Commission proposal, NFGDC said that, "The Commission must walk a fine line when reducing ratepayer protections in the sole interest of competition. NFGDC believes that several of the additions to the security requirements in the proposed rulemaking cross that line and expose both the [LDC] and their end-users to unnecessary risk."

Under the current security rules a supplier, "with any amount of financial wherewithal had no problem operating and meeting the applicable security requirements," NFGDC added.

NFGDC protested that many of the PUC's proposals are backwards-looking, and would not allow an LDC to make any security adjustments until after harm to the system or ratepayers has already occurred, thus defeating the purpose of security.

For example, the current rules allow an LDC to require a change in the amount of supplier security due to changes in a supplier's recent operating history on the LDC's system. The PUC draft would amend that provision by limiting security adjustments only for changes, "that have materially affected [LDC] system operation or reliability."

Predicating a change in the level of security on a change that materially impacts operations or reliability potentially subjects all customers to risk that could be prevented if the supplier were required to post additional security before any such material event occurred, NFGDC argued. LDCs may receive an early warning of potential trouble from a pattern of behavior prior to any change that materially impacts reliability, NFGDC said, and LDCs should be allowed to adjust security for any such behavior.

NFGDC also sought to give LDCs discretion in defining a change in a supplier's demonstrated capability to provide the volume of natural gas necessary for its customers' needs that materially affects LDC system operation or reliability, which triggers a change in security requirements. Adding a "materiality" test to various regulations triggering a review of security also benefits potentially unreliable suppliers, NFGDC added.

An LDC should be allowed to change a supplier's security requirements based on the supplier's actions at other LDCs in addition to its own system, Philadelphia Gas Works added, as a supplier encountering financial difficulty will most likely experience trouble at one LDC before problems spread. Waiting to impose new security requirements until an LDC sees such behavior in its own territory will be too late to avoid negative customer impacts, PGW said.

The Commission should eliminate the proposed limit of one security adjustment every six months, NFGDC said, arguing that greater flexibility will benefit both LDCs and suppliers. If an LDC knows it cannot change a security requirement for six months, it will be hesitant to lower the security requirement (such as for the summer), for fear that the supplier may acquire new volumes during that six-month timeframe thus raising its risk, with the LDC unable to properly securitize such additional volume.

If the PUC declines to adjust the six-month limitation, NFGDC argued that LDCs should be allowed to restrict the enrollment of new customers with a supplier, to ensure that the supplier's load does not exceed its security.

Allegheny ... from 1

approved by the PUC, to take advantage of currently low market prices. Allegheny's first accelerated residential procurement in April produced a price of $72.80/MWh. The blended residential price from the two auctions is $72.24/MWh.

If the average prices of Allegheny's remaining auctions were to be the same as the first two auctions combined, a typical Pennsylvania residential customer's bill in 2011 would increase on average about $9.62, or 10.6 percent over 2010 levels, assuming usage of 1,000 kilowatt-hours per month.

Nine competitive bidders participated in the recent auction. Allegheny Energy Supply Company reported that it won two non-residential contracts (the entire non-residential load available) to deliver a total of approximately 700,000 MWh over a 17-month period beginning January 1, 2011. Allegheny estimates that the contracts won by Allegheny Supply in the auction will result in an increased energy margin of approximately $16 per MWh (pre-tax) for 2011 compared to 2010.