Energy Choice Matters

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ConEd Utilities Back First Priority Security Interest Requirement in KeySpan POR Proposal

No ESCO should be allowed to grant a right or interest to any of its creditors in any account receivable purchased by an LDC that might be construed to arise prior to utility consolidated billing on any customer account, Consolidated Edison and Orange and Rockland said in supplemental comments regarding KeySpan Long Island's pending billing services agreement to implement Purchase of Receivables (06-G-1186).

Under KeySpan's proposal, ESCOs would be required to grant the LDC a first priority security interest in receivables at the point at which gas flows through the customer's meter, as opposed the point of billing, as occurs under other POR programs. Several marketers have objected to the first priority security interest requirement, and associated timing, by arguing that the policy would result in the LDC's over-collaterization of ESCO assets (Only in Matters, 12/10/08).

The prohibition should apply regardless of whether the receivable for the ESCO-supplied commodity arises upon billing, as provided in the ConEd utilities' billing services agreement, or when the commodity flows through the meter at the customer's premises, as provided in the KeySpan billing services agreement, the ConEd utilities said.

"The utility must have an unencumbered right to payment for all such ESCO-supplied commodity. If such right were granted to an ESCO creditor prior to the institution of the utility's [POR] Program, it must immediately upon initiation of the [POR] Program be made subordinate to the utility's interest (and evidence demonstrating such must be given to the utility by the ESCO)," ConEd and O&R said.

If the utility cannot be assured of the right to all amounts due from the ESCO's customers for the ESCO's charges for ESCO-supplied electricity and natural gas, the utility is at risk of not receiving the value of its purchase of the ESCO's receivables, the ConEd utilities added.

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Start-up Verde Energy Savings Seeks to Enter Connecticut Market

Start-up Verde Energy Savings, Inc. filed for a Connecticut electric retail supplier license to serve residential, commercial, and industrial customers.

The new entrant, led by Chairman Lance Lundberg and CEO Thomas FitzGerald, said it had raised $650,000 in private equity to support its start up, and has also secured commitments from debt providers willing to provide a term loan and factoring facility to support growth and credit requirements. The factoring facility is in the amount of $1.5 million, and the company's term loan commitment provides an additional $500,000 to $1 million, to support the retailer's liquidity requirements.

Verde's standard form residential contract will offer a floating rate at least 5% off Connecticut Light & Power's or United Illuminating's "standard generation service rates," and would not have a fixed term length. Its standard commercial contract would also offer a variable rate at least 5% off the applicable standard generation rate, but is for a term of one year, with automatic one-year renewals.

Residential customers may cancel at any time. Commercial customers may only cancel with a

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DPUC Sets Review of Dominion Retail Petition to Clarify Termination Fee Rules

The Connecticut DPUC has acknowledged and set a comment date regarding Dominion Retail's petition for a declaratory ruling finding that electric suppliers are prohibited from imposing an early termination fee, or other charge for switching, on any customer eligible for Standard Service (09-04-40). Comments are due July 7.

As only reported in *Matters*, Dominion Retail has argued that Connecticut General Statute § 16-244c(k)5, a subsection of the code establishing utility-administered supplier referral programs, extends a prohibition on termination fees to all customers eligible for Standard Service (< 500 kW), as opposed to only customers receiving service under the supplier referral program.

Connecticut General Statute § 16-244c(k)5 holds that, "Any customer that receives electric generation service from a participating electric supplier may return to standard service or may choose another participating electric supplier at any time, including during the qualifying electric offer, without the imposition of any additional charges."

Dominion Retail has argued that the subsection's definition of the term "participating electric supplier," and the use of the word "including," requires the subsection to be read as extending the termination fee prohibition beyond only customers receiving service through the referral program.

"Participating electric supplier" means, "an electric supplier that is licensed by the department to provide electric service, pursuant to this subsection, to residential or small commercial customers."

FirstEnergy EDCs: Switching Fee May be Charged to Aggregation Suppliers Even Under New Rule

Pending Ohio rules that, if ultimately enacted, would prohibit the imposition of switching fees on governmental aggregators would not impede a utility's ability to assess a switching fee on a governmental aggregator's supplier, Ohio Edison and Cleveland Electric Illuminating said in their latest response regarding a complaint over the switching fees filed by the Northeast Ohio Public Energy Council (Only in Matters, 5/20/09).

NOPEC is protesting some $2.5 million in switching fees that the FirstEnergy utilities intend to assess as NOPEC's customers are switched to NOPEC's new supplier, Gexa Energy. NOPEC has argued that the fees are impermissible under a pending revision to Ohio Administrative Code Chapter 4901:1-10-32(D), which would hold that, "A switching fee shall not be assessed to customer accounts that switch to or from a governmental aggregation." Although approved by PUCO, the rule is still awaiting action by the Joint Committee on Agency Rule Review and thus is not yet in effect.

The FirstEnergy utilities have previously argued that, as the new rule is not yet effective, NOPEC's complaint is unfounded, and that the utilities must impose the $5 switching fee per customer as provided in the current tariffs (Matters, 5/28/09).

In a further reply, the FirstEnergy utilities now say that, even when new O.A.C. 4901:1-10-32(D) is enacted, the utilities may still charge a switching fee to suppliers serving governmental aggregations.

"Based upon the plain language of the amended rule and the plain language of the Companies' approved Supplier Tariff, the amended rule would not impact the ability of the Companies to continue charging the authorized switching fee as they have done since 2001," the utilities said.

The FirstEnergy companies stressed that their tariffs impose the switching fee on the "supplier," but note that the new rule only prohibits the imposition of a switching fee on, "customer accounts that switch to or from a governmental aggregation."

"The plain language of this rule states that a switching fee may not be charged to a customer. The Companies are not permitted to charge a switching fee directly to customers under the tariff provision cited above. The Companies are authorized to charge a switching fee to Certified Suppliers, which the plain language of the change in the rule does not affect," the utilities said.

Texas ALJ Asks Our Energy to Clarify Certificate Transfer

A PUCT ALJ requested that Our Energy clarify its petition for an amendment to its REP certificate to reflect the transfer of the certificate to start-up Yam Energy (37012, Only in Matters, 5/20/09).

As described by the ALJ, "Our Energy seeks a transfer of Certificate No. 10170 from Our Energy to YAM. The requested change of company name apparently refers to changing the name on the certificate to reflect the transfer of the certificate from Our Energy to YAM, but does not refer to changing the name of Our Energy to YAM Energy LLC. Nor does Our Energy seek to change its principals/officers (though Our Energy and Yam have a common chief operating officer, Tom Tate). Nor does Our Energy seek to change the ownership of Our Energy. Rather, Our Energy seeks to transfer its certificate to a new company, YAM, which does not have a certificate (resulting in Our Energy no longer holding a certificate and YAM becoming the new holder of Certificate No. 10170)."

The ALJ noted that Commission rules require a currently uncertificated company, such as Yam, to immediately comply with the new REP certification rules under PUC Subst. R. 25.107, including more stringent financial requirements. As Yam did not have a certificate prior to May 21, 2009 (the effective date of the new rule), Yam is required to immediately satisfy the new provisions of PUC Subst. R. 25.107 in order to take over Our Energy's certificate, the ALJ said.

Although not addressed in the ALJ's ruling, Yam Energy would ostensibly not need to immediately meet the new financial requirements if it purchased Our Energy and became its new owner under the current certificate, rather than applying to transfer the certificate. The PUCT recently granted an amended certificate reflecting a current REP's new ownership without requiring that the new certification requirements be immediately met, in recognizing Eagle Industrial Power Services as the new owner of TexRep2, LLC (see Matters, 6/16/09). As TexRep2 was certified prior to May 21, 2009, Eagle Industrial Power Services has until May 21, 2010 to meet the new requirements under PUC Subst. R. 25.107.

More Utilities Oppose ESCO Choice on Use of Load Shape

Additional utilities have filed in opposition to the New York PSC Staff's recommendation to allow ESCOs to elect, for their customers with hourly meters, to be billed on actual hourly data, or a class average load shape (09-M-0074, Matters, 6/16/09).

A working group had recommended that if an ESCO customer's electric usage is measured by an hourly meter, then the ESCO should be billed on their customer's actual load shape instead of a class average load shape. However, PSC Staff proposed giving ESCOs the option of using actual hourly load, or the class load shape (Matters, 4/15/09). NYSEG and Rochester Gas and Electric have already opposed Staff's recommendation due to potential gaming and administrative burden.

Citing similar rationale, Central Hudson Gas & Electric opposed Staff's recommendation as well, stating, "the concept advanced by Staff is inconsistent with a foundational premise of AMI [Advanced Metering Infrastructure], namely that providing actual time-differentiated usage information will induce customers to make proper time and price sensitive usage decisions."

Consolidated Edison and Orange & Rockland agreed that granting ESCOs a choice in load shape, "could be used to game the information provided to the NYISO, with customers having more metered usage in higher priced hours than the load profile reported on the basis of load shapes and customers with less metered usage in higher priced hours than the load profile reported on an hourly basis."

Indeed, Central Hudson called it "likely" that any customer (or its ESCO) with a load shape having higher on peak usage than the system or class average would select the average, and any customer with usage less than the average would select its individual shape.

"This means a significant potential for a non-cost based shift in the number of billing units that will be disruptive to rate making and utility collections alike," Central Hudson said.

ConEd and O&R reported that applying a class average load shape is an unnecessary administrative step if the utility has hourly data. Central Hudson also noted Staff did not provide any justification for the change from the working group consensus in making its recommendation.

Staff Files Exception to ALJs' Recommendation on Oncor Inadvertent Gain Fee

PUCT Staff filed an exception to two ALJs' finding that Oncor should be allowed to implement an $25 charge related to certain Inadvertent Gains, as Staff argued that the charge is prohibited by Section 4.3.5 of the Tariff for Retail Delivery Service (35717).

Specifically, Oncor is seeking to charge $25 to REPs that select an incorrect premise location from the ERCOT portal for a switch or move-in (thus requiring Oncor to correct the error). In a proposal for decision in Oncor's rate case, the ALJs' concluded that the Inadvertent Gain fee is appropriate as it endeavors to place the costs of an erroneous switch on the REP if it were at fault, which is a more equitable allocation of costs.

Staff reiterated that it is not always certain who is at fault in such situations, and that the charge could introduce an element of inequity.

Furthermore, Staff argued Section 4.3.5 of the Retail Tariff prohibits charging a REP for a change in the designation of a customer's REP. Staff also said that P.U.C. SUBST. R. 25.495, which establishes the process for resolving unauthorized REP changes, does not provide for additional charges regardless of whether the change is authorized or unauthorized.

Compete Coalition Says Electric Markets Are Vital to Reducing Carbon

Competitive forces in restructured electric markets which drive efficiency and least-cost dispatch will be key in the success of any market-based approach to carbon regulation, the Compete Coalition said yesterday in presenting a report from Navigant Consulting which it commissioned.

The Navigant study, Compete said, "finds that restructured competitive electricity markets will better enable market-based cap-and-trade programs to produce their intended results because they provide clear, timely and transparent price signals for electricity producers and consumers."

"If consumers are going to be encouraged to reduce electricity use and buy electricity from new clean energy suppliers, they will need to be guided by clear price signals. And these price signals will only come in well-functioning competitive markets that will reduce emissions by providing added value for low-carbon electricity," Compete co-chair and former Secretary of Energy Federico Peña said.

Competitive market forces, the Navigant study said, will shape how a carbon market can lead to cleaner generation through the dispatch of lower-carbon generation, investment in renewable energy and other low-carbon generating capacity, increased consumer demand response, and more efficient use of electricity.

If the marginal generator's cost of production increases as a function of carbon compliance costs, then wholesale prices will increase, as will the profits accruing to lower-cost generators, therefore rewarding low-carbon generation. Since market prices reflect the carbon costs of the marginal generator, those with carbon costs that are higher than those of the marginal generator will not be able to fully recover their carbon-related expenses. This will eventually lead to the retirement of carbon-intensive generating units, the report said.

The Navigant study credited organized markets in producing a 9.4% decline in heat rates of large coal-fired generators over a ten-year period (from approximately 10,800 Btu/kWh to approximately 9,850 Btu/kWh). Additionally, the capacity utilization of nuclear power plants in the RTO markets increased from 81% to 93% between 1996 and 2007, the study said.

Briefly:

Nazarian Says Residential Electric Migration in Current Price Environment Will Dictate Future of Choice

Speaking before a Maryland House Economic Matters Committee hearing, PSC Chairman Douglas Nazarian suggested that the future of choice in the state will likely rest on whether suppliers can increase residential migration given the market’s current headroom. Citing the current lower wholesale prices, Nazarian noted that if suppliers are unable to attract residential load this summer, he doesn't understand how migration will ever increase in the future. Aside from favorable wholesale pricing, the residential SOS prices have not decreased with the market, due to the two-year blending process used to set prices. Accordingly, even though the most recent residential solicitation saw lower prices, SOS customers will not see those lower prices until October 1. Nazarian also said changing the SOS process to make prices more attractive to retail suppliers would be difficult.

On-Demand Energy Receives Ohio Electric License

The Public Utilities Commission of Ohio has granted On-Demand Energy an electric aggregator/broker license (Matters, 5/12/09).

MISO EDR Transition Period Would Not Allow Day-Ahead Offers Absent XML

The Midwest ISO's Emergency Demand Response (EDR) "transition program" required by FERC to give demand resources time to implement systems capable of receiving Extensible Markup Language (XML) instructions will likely not allow resources lacking XML capability to make day-ahead Emergency Demand Response offers, the Midwest ISO said in a notice filed with FERC (ER09-991, Matters, 6/15/09). MISO's filing was informational, and the proposed parameters of the transition period will not be filed until July 13. However, MISO said that it intends to institute a 90-day transition period during which time Emergency Demand Response offers may receive dispatch instructions via telephone instead of XML. However, such resources would be limited to making monthly offers, and day-ahead offers would only be allowed via XML, "in accordance with the Commission's June 12 Order," MISO said.

RBS-Sempra Names Two Former Lehman Execs

RBS Sempra Commodities has appointed Satu Parikh as Managing Director and President, and also named Maximilian Coreth as Managing Director and Head of Power, North America. Parikh joins RBS after 12 years at Lehman Brothers, where he was most recently the Global Head of Commodities from 2006 to 2008. Coreth was most recently Head of North American Gas and Power Trading at Lehman Brothers and from 2001 to 2008 was a part of the management team for Morgan Stanley's power business in New York. RBS-Sempra Commodities CEO Kaushik Amin said that the joint venture anticipates, "significant growth in our commodities business over the next few years through both organic growth as well as the capture of synergies between our existing platform and the strengths of RBS."

KeySpan POR ... from 1

"A transfer of title to account receivables, whether before or at the time of billing, without a secured interest in those accounts receivable, will not be adequate assurance of the utility's right to payment of amounts due it from the ESCO or to recover from customers the value of its payment for receivables if those receivables are encumbered in any way," the ConEd utilities said.

Accordingly, ConEd recommended that the PSC not modify the financial security provisions of the Uniform Business Practices as implemented in the KeySpan billing services agreement, "and should permit every utility offering a [POR] program to establish terms for financial security that provide the security intended by the UBP."

Verde ... from 1

written notice 30 days from the end of the current term. Deposits are not required for any customer class.

Verde estimates that its first-year load (Sept. 1, 2009 through Aug. 31, 2010) will be 2.35 MW, comprised of 2.02 MW residential and 0.34 MW commercial. First-year customer count is excepted to be 1,436, with 1,401 residential and 35 commercial. Aggregate initial-year volume is projected at 14,706 MWh.

According to a corporate structure chart provided in its application, Verde Energy Savings, Inc. is in the process of forming a subsidiary, Verde Energy Savings NY, Inc., though Verde said that formation of the entity and its exact name are still being finalized.

FitzGerald, who will serve as chief executive, is managing director at corporate and financial advisory firm Goodrich Capital. He was previously CFO at BrandDirect Marketing as well as Home-Link Services, where he was brought in to lead a late-stage turnaround at the provider of software application hosting and home and moving services for 150 sponsoring real estate companies.

Lundberg, chairman of Verde, previously founded Icon International, a $400 million per year global corporate trading firm, as well as iSolve Incorporated, a business-to-business e-commerce website.

Verde has contracted with EC Infosystems for EDI support, and other backoffice and wholesale business systems processes.