Energy Choice Matters

June 30, 2009

D.C. PSC Denies Retailers' Suggested Changes in Codifying Current SOS Rules

"The existing SOS process appears to be working properly," the District of Columbia PSC said in codifying the current SOS regime into formal rules, while dismissing pleas from retailers for a retail bid SOS approach, removal of the non-residential minimum stay, shorter SOS contracts, and redefining SOS classes by peak load size (FC 1017, Matters, 11/4/08).

The order merely codifies the current procedures and does not address the Commission's review of default service procurement under FC 1047.

Under the approved rules, Pepco will continue as the SOS provider, supplying default service load via competitive wholesale auctions for full requirements service.

Contracts for electricity supply may be of varied duration, as approved by the Commission, to stabilize prices for customers. Pepco shall solicit seasonally differentiated summer and winter prices.

Residential and small commercial customers are to be served on fixed-price contracts for terms of one year, two years, or three or more years, with the SOS portfolio at least 40% comprised of contracts of three or more years in length, unless the Commission directs otherwise.

Large commercial customers shall be served on an SOS portfolio containing one to two year contracts.

Non-residential customers returning to SOS from competitive service are obligated to remain on SOS for a minimum term of 12 months, unless electing to receive market-priced service upon their return. Residential customers do not face a minimum stay.

While any customer taking service from a competitive retailer may terminate service with the electricity supplier and elect SOS upon notice to Pepco, the rules also hold that, "[t]he contract provisions and exit fees of the competitive electricity suppliers remain valid and shall be enforced

Continued P. 6

REPs Ask PUCT to Address Compliance with Conflicting Mandates Under §25.475, HB1822

The REP Coalition asked the PUCT to discuss at its July 2 open meeting conflicts in REP disclosure requirements between recently revised PUC Subst. R. 25.475 and recently adopted HB 1822.

In particular, §25.475 requires fixed price contract expiration notices to be sent at least 14 days prior to the date of contract expiration but no more than 45 days in advance of expiration. HB 1822 requires such notices to be sent at least 30 days before the expiration date, but no more than 60 days before expiration.

The method of such notices also varies under the rule and law, most notably in that the Substantive Rules allow REPs to list the approximate end date for contracts in renewal notices, while HB 1822 requires the REP to list the end date with no explicit allowance for using an estimate to take into account the fluid nature of meter reading schedules (see full discussion, Matters, 5/29/09).

The REP Coalition noted compliance with the revised Substantive Rules is required by August 16, 2009. Meanwhile, HB 1822 requires the Commission to adopt rules to implement the law by December 1, 2009, with the Coalition expecting an effective compliance date for such rules

Continued P. 6

REPs Say Customers See No Benefit in Deferrals Which Lead to Balloon Payments

A proposed emergency disconnection rule to expand the current conditions under which service terminations are prohibited in ERCOT is unnecessary due to current protections in place for customers, and would only result in customers amassing large deferrals that they will be unable to pay, the Alliance for Retail Markets, Texas Energy Association for Marketers, CPL Retail Energy, Direct Energy, and WTU Retail Energy said in comments opposing the emergency petition made by several consumer advocates (37142, Only in Matters, 6/24/09).

Consumer advocates have petitioned to change the weather related moratorium to be based on the heat index, and also requested that low-income customers be allowed to avoid disconnection by entering deferred payment plans regardless of weather.

The REP groups cited the host of current disconnection protections under PUC Subst. R. 25.480 and 25.483, including disconnect prohibitions during a heat advisory, required deferred payment plans, and protections for ill and disabled customers or those receiving energy assistance. Indeed, the REPs noted that since the emergency petition was filed, a heat advisory has been issued in Texas, resulting in at least a three-day disconnection moratorium in each of five major utility service areas in ERCOT.

While the current heat advisory protections extend to all jurisdictional service territories in the state, the emergency petition would only apply its new measures to the areas of Texas subject to retail competition. "The Petition provides no basis for this disparate treatment of customers, in which certain weather-based customer protections are applied based solely on the presence of customer choice," the REPs noted.

The proposal also "arbitrarily" prevents the disconnection of a select group of customers (low-income customers qualifying under PURA), while denying such protections to similarly situated customers facing economic hardships but who are not certified in the Low-Income Discount Assistance program.

"As past experience indicates, primarily through lessons learned from the 2006 mandatory summer disconnect moratorium, it is doubtful that this type of mandated initiative ultimately benefits the customers it is intended to assist. A moratorium on disconnections amasses greater debts for customers, making it more difficult or impossible for them to pay off those debts in the long run," the REPs added.

The proposal to allow low-income customers avoid disconnection, regardless of weather, by paying 33% of their bill and entering a deferred payment plan, creates "balloon payments" in the second and third months that are larger than the original bill, REPs noted.

"This is not a solution to the problem that the proposed emergency rule purports to resolve. Rather, customers under this scenario are more likely to default before summer ends," the REPs said.

The summer moratorium of 2006 left REPs with a "significant" amount of uncollectible losses, which impacts all other customers who do pay on time. Such bad debt is also accrued from customers who enter a deferred payment plan but refuse to pay their bills and then switch away from their REP, leaving an unpaid balance, the REPs noted. Despite non-payment by customers, REPs still must pay the applicable charges incurred in the provision of service to those customers (e.g., wholesale power costs, transmission and distribution utility charges).

"There is no mechanism in the competitive retail market for REPs to recover these losses except through retail electric prices," REPs observed.

In addition to the current protections in place, REPs noted that an increased discount under the System Benefit Fund equates to a 30% discount on a 10¢/kWh rate, which is currently available in the market. The amount of funds available from federal sources for energy payment assistance has also increased substantially in 2009, REPs said.

The REPs support consideration of legislative programs to expand consumer protections through a long-term solution that could include a mandatory summer disconnection moratorium coupled with federal and state funding to assist affected customers. Though discussions around such a mechanism were initiated during the most recent legislative session, lawmakers chose not to allocate any additional funding under the System Benefit Fund toward coverage of critical care customers or to support a backstop for a mandatory disconnection moratorium.

"The Commission should not undertake a significant change akin to a 90-day stop payment mandate without legislative direction that includes a review of the necessity, benefits and overall impact on the market, and an identified source of funding for such social programs," REPs said.

SCMC Says Utility FPOs Risky for Customers

National Fuel Gas Distribution's "infirm" effort to "usurp" the competitive market by seeking to offer a fixed price option as an austerity measure would place ratepayers at increased risk and runs counter to New York PSC policy, the Small Customer Marketer Coalition said.

As only reported in *Matters* (Matters, 6/16/09), Distribution requested approval to re-introduce a fixed price option in its austerity filing, as a means of lowering customer bills.

However, SCMC noted that history demonstrates that a gas fixed price option presents considerable risk for ratepayers. From October 1998 until October 2002, the residential gas rates (commodity and transportation) of NYSEG were fixed pursuant to a rate agreement between NYSEG and the Commission. With the upsurge in commodity costs in 2001, NYSEG incurred substantial financial losses from commodity sales to its customers, SCMC noted. In response, NYSEG sought to recover from ratepayers losses of $36.9 million for the year ending September 30, 2002, SCMC said. Thereafter, NYSEG was authorized to recover $10.5 million of the losses it incurred due to the fixed price option program.

Distribution's "admission" that a fixed price option would, "not necessarily produce savings," highlights the impermissibility of requesting the program in a docket meant to review austerity plans to reduce utility expenditures and lower rates, SCMC added.

SCMC noted that the Commission ordered the end to a gas fixed price option at Central Hudson in 2005, as the Commission viewed the fixed price option as, "a barrier against ESCO entry into the market." The PSC further stated, "a fixed-price supply option is a service that could and should be developed and offered by the competitive marketplace."

Likewise in 2006, in an order regarding the Energy East companies' electric fixed price option, the Commission said, "We continue to believe that customers will ultimately best be served by a competitive market for retail electricity service, in which fixed price offerings are provided exclusively by ESCOs, while the utility provides only a default service," SCMC noted.

NOPEC/Gexa Withdraw 12-Month Waiver Request; FES, Utilities Oppose Notice Review Waiver

The Northeast Ohio Public Energy Council and Gexa Energy have withdrawn one of their requested waivers related to the requirements for opt-out governmental aggregations, but are still requesting a waiver of a 10-day posting period for their opt-out notice, which is opposed by FirstEnergy Solutions (FES) as well as Cleveland Electric Illuminating and Ohio Edison.

As only reported in *Matters* (Matters, 6/25/09), NOPEC and Gexa asked for waivers from the following:

- O.A.C. 4901:1-21-17(A)(11), which requires the 21-day opt-out period to start based on the notice's postmark, which NOPEC's bulk mailings will not have;
- O.A.C. Rule 4901:1-21-17(F), which requires the docketing of the opt-out notice at PUCO 10 days prior to use; and
- O.A.C. Rules 4901:1-10-01(P) and 4901:1-21-01(T), which define a governmental aggregation as lasting a minimum of 12 months, as the Gexa agreement was to initially only provide pricing through June 2010.

However, Gexa and NOPEC withdrew the waiver request with respect to the 12-month requirement, stating that Gexa's initial pricing period will now encompass a period greater than 12 months, though no further details were provided.

Both FirstEnergy Solutions and the FirstEnergy utilities had opposed the now withdrawn waiver request of the 12-month minimum duration.

FirstEnergy Solutions argued that the waiver would have allowed Gexa to avoid at least an entire month of peak energy pricing, thereby shifting risk to wholesale suppliers of default service, which participated in the Standard Service Offer auction under the presumption that the current regulatory framework mandating that municipal aggregations be 12-months or longer would continue. FirstEnergy Solutions won about half of the POLR load in the auctions.

FirstEnergy Solutions alleged that such "doughnut" aggregation programs which are shorter than one year in length seek to game the system by taking customers off the Standard Service Offer during certain lower-cost seasons, and then pushing those customers back onto the Standard Service Offer during higher-cost seasons.

"Not only would a waiver prejudice Solutions and the other successful bidders in the Companies' auction, but it also could threaten the success of future auctions by increasing the risk that the Commission's rules cannot be relied upon," FirstEnergy Solutions said.

Bidders in future auctions would have to take increased migration uncertainty into account when determining their pricing, which can only hurt Standard Service Offer customers by artificially inflating auction pricing, FirstEnergy Solutions contended.

Ohio Edison and Cleveland Electric Illuminating made similar comments regarding the 12-month waiver request, which has since been withdrawn.

However, NOPEC and Gexa's request of a waiver from the 10-day docketing period for the opt-out notice, which is still being sought, also drew opposition from FirstEnergy Solutions and the utilities.

FirstEnergy Solutions claimed that the waiver would, "circumvent regulatory timelines established to ensure that customers receive proper notice of their options under government aggregation programs and to ensure an equal playing field among electric generation suppliers." FirstEnergy Solutions also suggested that the docketing serves as a notice to other retail suppliers regarding costs they may soon incur due to the aggregation, and said it has supplied governmental aggregations without the need for a waiver.

In response, NOPEC and Gexa moved that FirstEnergy Solutions has no standing to intervene. While FirstEnergy Solutions may have had standing as a wholesale supplier regarding the 12-month duration waiver, that waiver request has been withdrawn, Gexa and NOPEC said. FirstEnergy Solutions has not shown how it would be prejudiced by the docketing waiver, as the waiver will not prevent Solutions from soliciting customers or supplying its own aggregations, Gexa and NOPEC said

While FirstEnergy Solutions makes reference to the need for other suppliers to have notice of the aggregation, Gexa and NOPEC said such a need was removed by legislative changes in 2006 which prohibit governmental aggregations from soliciting customers currently served by a competitive supplier. Previously, the 10-day notice period served to allow suppliers to take actions to retain their customers, Gexa and NOPEC said, but such notice is inapplicable today, as the aggregation may only enroll customers on the Standard Service Offer.

"Absent a real and substantial interest, FES's only remaining interest in this proceeding is to advance its self-serving interests as Joint Movants' competitor. Obviously, any delay of Joint Movants' solicitation and enrollment of customers benefits FES's competitive position," Gexa and NOPEC noted.

The FirstEnergy utilities argued that a 10-day docketing period is required for them to review the notice and train their customer service representatives on how to handle calls about the notice. A 10-day review period is also required to determine whether any changes to the notice would lessen any likely confusion that would prompt customer calls to the utilities, Ohio Edison and Cleveland Electric Illuminating said.

The Ohio Consumers' Counsel, after reviewing the opt-out notice ahead of its docketing, does not oppose any of the requested waivers, though OCC stressed that the public docketing requirement is important because other parties other than PUCO Staff need to review the notices.

FES Extends Pricing

Meanwhile, FirstEnergy Solutions said it extended through July 13 the deadline for its offer of a 10% discount off the default generation rate for the remainder of 2009 to customers at Ohio Edison and Cleveland Electric Illuminating. The discount drops to 5% in 2010. Though sent to some 400,000 customers in the NOPEC territory, FirstEnergy Solutions reserved the right to limit the quoted rates to 10,000 customers.

Utilities, CCAs File Bond, Re-Entry Fee Settlement

Pacific Gas & Electric, San Diego Gas & Electric, San Joaquin Valley Power Authority, Southern California Edison, the City of Victorville and The Utility Reform Network have filed a settlement with the California PUC that would provide for the method to be used to calculate the bond and re-entry fee applicable to Community Choice Aggregators. Most of the parties also agreed to a stipulation that would allow Community Choice Aggregators to use accounts receivable to offset the bonding requirement (R. 03-10-003)

The lone issue unresolved by the settlement is determining which group(s) of customers should be responsible for any unrecovered re-entry fees to the extent the Community Choice Aggregator is unable to fully satisfy its obligation to pay the full amount of the re-entry fees upon returning load to the utility. The issue will be briefed by the parties.

The settlement provides for a series of calculations to set the Community Choice Aggregator bond, which would be calculated twice annually in May and November. The settlement calls for calculations of various cost exposures that the utility would bear from returned aggregation load (resource adequacy, procurement costs, bundled generation, etc.), and outlines what energy pricing is to be used as inputs for such calculations.

Incremental RPS compliance costs from returning load would not be a factor in the bond or re-entry fee, provided that the Commission grants the utilities greater flexibility to meet RPS requirements for the returned Community Choice Aggregation load. The settlement recommends one additional calendar year beyond the window of flexible compliance after the calendar year in which the aggregation load involuntary returns, or four calendar years (using the current three years flexible compliance set by the Commission) after the calendar year in which the utility received actual notice from the Community Choice Aggregator of the involuntary return, whichever comes first.

If the Commission declines to grant such additional RPS flexibility, RPS costs would be included in the bond and re-entry fee amounts.

Under the settlement, the utility would determine the re-entry fees as a binding estimate of (i) the administrative costs incurred as a result of the involuntary return; and (ii) the expected costs of power procurement contracts that will have to be added to the utility's bundled service portfolio under then-current market conditions to serve the involuntarily returned customers for a one-year period beginning on the date the involuntary return starts. The binding estimates of the administrative costs and the incremental procurement costs shall not be subject to true up.

The accounts receivable offset agreement would allow the Community Choice Aggregator to offset the gross bond amount by granting the utility a first priority security interest in its accounts receivable. The first priority security interest must be granted to the utility before the Community Choice Aggregator provides electric services or issues required customer notifications, and must be senior to all other liens, claims or encumbrances on the Community Choice Aggregator accounts receivable.

FirstEnergy Ohio Utilities File Tariffs for Real-Time Pricing

Ohio Edison, Cleveland Electric Illuminating and Toledo Edison filed proposed tariffs at PUCO to implement an Experimental Critical Peak Pricing Rider, an Experimental Real Time Pricing Rider, and a revised Generation Service Rider which includes a Time-of-Day Option.

The Experimental Real Time Pricing program is voluntary and would be offered through May 31, 2011, to test customer response to hourly price signals quoted by the Midwest ISO. It would include a monthly program administrative charge of $150/month.

The Experimental Critical Peak Pricing program, also voluntary, would include three prices: midday peak, shoulder peak, and off-peak, and reflect time-of-day pricing. The monthly program charge would be $37.50.

The Generation Service Rider would be revised to add a time-of-use option with the same three periods as under critical peak pricing.

Briefly:

Kelson Files for Rehearing of CCN, Seeks Remand

Kelson Transmission requested rehearing of the PUCT's order denying its CCN application for its transmission line to link the Cottonwood generating plant with ERCOT, asking that the application be remanded rather than denied (34611). Kelson cited changed circumstances, including a legislative delay for Entergy's transition to competition as well as lower costs of various construction materials which will lower the project's costs, as warranting a remand of its application.

PUCO Grants Constellation NewEnergy-Gas Retail License

The Public Utilities Commission of Ohio granted Constellation NewEnergy-Gas Division a competitive retail natural gas marketer certificate (Matters, 6/3/09).

La. PSC Files Complaint Over Entergy Sales to Power Marketers

The Louisiana PSC filed a complaint at FERC against Entergy Corp. and its utility subsidiaries for allegedly using low-cost resources to supply non-requirements sales to power marketers and other third parties, denying native load the low cost generation which the PSC said customers are entitled to under the Entergy system agreement. The PSC has raised the claim before, but a court deemed that the question was not properly before the Commission in an earlier case. The PSC alleged that Entergy sold such low-cost power beginning in 2002 to, among others, Cargill Power Markets LLC, TXU Energy Trading Company, Select Energy, Duke Energy and Trading, Westar Energy Inc., and PG&E Energy Trading Power L.P.

MISO Files Tariff for Muscatine Pricing Zone

The Midwest ISO filed various revisions to its tariff to include Muscatine Power and Water in the tariff as a pricing zone in connection with its proposed integration into the Midwest ISO.

Aramark, Amerex Post White Paper for Universities

Brokers Aramark Higher Education and Amerex Energy Services released a white paper (click for link) on the use of a managed heat rate product by colleges.

D.C. SOS ... from 1

before a customer will be permitted to switch to the SOS supplier or another competitive electricity supplier."

However, the rules also hold that, "All residential customers shall be eligible to switch from SOS to competitive suppliers and return to SOS *without restrictions*." [emphasis added]

Additionally, the adopted rules provide that, "SOS shall be provided to any customer who purchases a new service within the District of Columbia and who does not obtain electric generation service from an alternative retail electricity supplier *at that time*." [emphasis added]

The Commission will conduct a review of the SOS program every other year, beginning in 2010, to make any appropriate adjustments to SOS as competitive developments in the District dictate. The Commission said suggestions for shorter contracts (Matters, 12/2/08) or a retail bid model (Matters, 12/3/08) may be proposed in such proceedings.

Texas ... from 1

subsequent to December 1.

However, HB 1822 takes effect September 1, 2009. The REP Coalition noted that changes taken to comply with the new Substantive Rules effective August 16 could be construed as non-compliant with the requirements of HB 1822 taking effect two weeks later.

"Moreover, in the absence of a rule providing specific guidance on compliance, it is possible that a REP could make a good faith, reasonable effort to comply with the terms of HB 1822 between September 1, 2009 and December 1, 2009 (or whenever the Commission completes its rulemaking(s)), and nonetheless be considered by some interpretations to be out of compliance with the statute," the Coalition said in requesting direction from the Commission.