

Energy Choice

Matters

July 27, 2009

PUCT Staff: Contract Expiration Provisions in HB 1822 Require Rulemaking to Take Effect

PUCT Staff interprets HB 1822 such that Section 5, governing fixed price contract renewal notices, requires the Commission to implement rules before new PURA § 39.112 is effective (37214).

Accordingly, Staff asked the Commission to determine at its July 30 open meeting whether PURA § 39.112 is effective on the effective date of amendments to PUC Subst. R. § 25.475 that make the substantive rules consistent with § 39.112, or instead takes effect September 1, 2009. If the Commission finds HB 1822 takes effect September 1, Staff asked that the Commission determine whether it is appropriate to forgo enforcement of the provisions of § 25.475 that are in conflict with § 39.112, for the period August 15 through 31.

Staff argued statutory construction supports its view that § 39.112 does not take effect until Commission rules consistent with the new subsection take effect, with such rules required to be adopted no later than December 1, 2009. Additionally, Staff noted that REPs making good faith attempts to implement § 39.112 without the aid of Commission rules could produce divergent results, particularly with respect to the timing of expiration notices. Absent Commission rules clarifying § 39.112, "the REP would not know a specific expiration date, because that date depends on when the utility reads the customer's meter. Thus, interpreting Section 5 of HB 1822 as taking effect on September 1 would therefore produce a burdensome and confusing result, and thus a result the Legislature was unlikely to have intended," Staff said.

Staff also requested approval of a draft proposal for publication to harmonize § 25.475 with new § 39.112.

Consistent with its recommendation for amendments to PUC Subst. R § 25.479 (Only in Matters, 7/24/09), Staff recommended that REPs be permitted to estimate the expiration date of a residential

Continued P. 6

MXenergy Says Connecticut-Style Referral Program Would Benefit Larger Suppliers in Mass.

A Connecticut-style supplier referral program which requires suppliers to offer a 12-month fixed product with no termination fee would benefit larger suppliers over smaller ones, MXenergy said in comments to the Massachusetts DPU (09-46, Matters, 7/24/09).

As only reported by *Matters*, several suppliers have suggested that Massachusetts implement a program similar to Connecticut, rather than the utilities' proposed programs which do not inform customers of specific supplier offers.

"Typically only larger suppliers, possibly those with a wholesale energy arm, will be in the best position to take on the risk of offering 12-month fixed price contracts where the customer is free to leave the contract at any time," MXenergy said of Connecticut's program.

"The risk to smaller suppliers of customers leaving them 'holding the bag' may be too great to allow them to participate, or these suppliers must factor in such a large risk factor into their pricing that they will never be near the top of the list," MXenergy added.

If the DPU opts for a Connecticut-style program, "MXenergy strongly recommends that a referral price offer oversight and compliance program is implemented as part of the program."

Continued P. 6

Allegheny Files Md. Type II Rates

Allegheny Power filed with the Maryland PSC updated Type II SOS rates for the three-month period beginning September 1.

Type II SOS: 9/1/09 through 11/30/09

General And Commercial Service (Schedule "C")

Energy Charge

First block (0-350 kWh)	\$0.10835/kWh
Second block (next 350 kWh)	\$0.10641/kWh
Third block (over 700 kWh)	\$0.04169/kWh

General Service (Schedule "G")

Capacity Charge

All kilowatts in excess of 7.5 measured as set forth under "Determination of Capacity"	\$6.85/kW
--	-----------

Energy Charge

First block (0-700 kWh)	\$0.09000/kWh
Second block (over 700 kWh)	\$0.04167/kWh

General Service - All Electric (Schedule "C-A")

Energy Charge

First block (0-350 kWh)	\$0.11998/kWh
Second block (next 350 kWh)	\$0.10438/kWh
Third block (over 700 kWh)	\$0.05498/kWh

Schedule "C-A" for Eligible School/Churches

All kWh	\$0.06339/kWh
---------	---------------

Light And Power Service (Schedule "PH")

Capacity Charge

First block (0-500 kW)	\$12.91/kW
Second block (over 500 kW)	\$12.58/kW

Energy Charge

First block (0-100,000 kWh)	\$0.02896/kWh
Second block (over 100,000 kWh)	\$0.02616/kWh

PECO Agrees to Seek Approval Before Using Migration Rider

PECO and retail suppliers have reached an agreement which maintains a so-called migration rider in PECO's default service tariff, but requires PECO to provide suppliers with 15 days advance notice if it intends to apply the rider, which reconciles default service costs, to shoppers. Suppliers will have the opportunity to

oppose the rider at the PUC at that time, and have agreed not to apply for reconsideration of the PUC's decision approving the rider.

Under PECO's procurement plan approved in April, PECO was permitted to include a quarterly reconciliation mechanism that, as interpreted by PUC Chairman James Cawley, would impose residual default service costs (or credits) on shopping customers even after the customer switches to a competitive provider. The reconciliation rider would be applied to any customer taking default service any time during the quarter being reconciled, regardless of whether the customer is currently taking default service (Matters, 4/17/09). Cawley criticized the reconciliation mechanism applicable to switching customers as confusing, and as leading to distorted pricing.

Competitive suppliers, however, had not interpreted the tariff provision in that manner, and began discussions with PECO. Under an agreement reached with the Retail Energy Supply Association, PECO agreed not to have the migration rider automatically take effect upon the expiration of rate caps on January 1, 2011. Instead, if PECO wishes to impose reconciliations on migrating customers, it will file notice of its intent with the Commission and suppliers, with suppliers retaining the right to protest the filing.

The agreement will allow parties to determine whether imposing reconciliations on shopping customers is legitimately warranted by high volumes of migration that would otherwise cause non-shopping customers to bear an unreasonable level of reconciliation costs.

Md. PSC Approves WGL Hedging Joint Proposal for Coming Winter Only

The Maryland PSC approved a joint proposal to govern Washington Gas Light's 2009-2010 winter hedging, but declined to approve hedging plans through 2010-2011 as proposed in the joint proposal from WGL, Staff, and the Office of People's Counsel (Only in Matters, 5/29/09).

"At this point ... given continued concerns with the economy's recovery and the recovery's potential impact on the commodities market, the Commission declines to set a definitive Quantity

or a Trigger Price for seasons so far into the future," the Commission said.

The Commission said it will address possible hedging opportunities for future seasons in the context of a broader proceeding that it intends to initiate on natural gas hedging programs.

As filed, the joint proposal calls for WGL's hedging program to be limited to fixed-price purchases and the use of financial instruments that achieve a similar result. The use of price caps, options, and collars, which have previously been authorized at WGL, is not permitted under the joint proposal. The joint proposal calls for 25% of expected winter purchases to be hedged, when the price of the NYMEX strip is at or below a confidential trigger price.

Pa. Draft Would Require Equitable to Lower BTU Conversion Factor

Equitable Gas Company would be required to reduce its BTU Conversion Factor used in Pennsylvania from 1.06 to 1.057 under a recommended decision posted by the Pennsylvania PUC last week.

In its 1307(f) filing, Equitable applied to continue using the current 1.06 factor. However, two ALJs said that, "data clearly reflects Equitable failed to provide sufficient heat content to justify the conversion factor of 1.06 for eight (8) months out of the twelve (12) months in Equitable's historical period." The ALJs recommended that Equitable use a conversion factor of 1.057 until such time as Equitable shows, in a subsequent 1307(f) proceeding, that a different conversion factor is just, reasonable and in the public interest.

The ALJs did not consider various protests filed by Dominion Retail, since the arguments were first raised in objections to a settlement agreement in the proceeding. Among other things, Dominion Retail raised concern that customer-specific BTU factors, one of which would be approved under the settlement, will increase costs for other customers who must suffer under an inaccurate (and likely higher) conversion factor to make up the difference between the negotiated rate and the "actual" rate of the customer receiving the negotiated,

customer-specific rate.

Dominion Retail also raised concerns about releases of Dominion Transmission, Inc. capacity, given a prior release by Equitable to its affiliate Equitable Energy. While the settlement recommended by the ALJs calls for Equitable to post any future release of the Dominion Transmission capacity on its electronic bulletin board, with notification to suppliers of the posting, Dominion Retail expressed concerns about the vagueness of the settlement language on this point.

The settlement would also continue the use of the current retainage rates of 8% for residential customers and 6% for commercial and industrial customers. Dominion Retail has said that the split rate discriminates between residential customers and commercial/industrial customers without justification, and for residential customers is simply too high as a matter of operational fact, since Equitable's actual weighted average retainage rate is approximately 7.09%.

Exelon Generation Earnings Fall on Lower Margins

Lower energy gross margins due to unfavorable portfolio and market conditions lowered Exelon Generation's second quarter net income to \$512 million from \$653 million a year ago.

Quarterly generation energy margins, excluding mark-to-market impacts, were \$109 million lower versus a year ago. Aside from current weak power market positions, the decrease is due to gains realized in the 2008 quarter from Generation's proprietary trading portfolio.

"Market and retail" sales at Exelon Generation were 29.5 GWh in the second quarter of 2009, versus 28.6 GWh a year ago. Average Market and Retail margin was down at \$54.27/MWh versus \$61.91/MWh a year ago.

Average margin across all sales was \$38.96/MWh versus \$40.53/MWh.

Generation is 95-98% hedged for 2009, 87-90% hedged for 2010, and 59-62% hedged for 2011, as of June 30, 2009.

During an earnings call, Exelon Corp. CEO John Rowe said no other merger or acquisition opportunities appear attractive in the wake of

ending its quest for NRG Energy. Most other merchant generators pose market power issues, Rowe noted, while regulated utility plays pose regulatory issues, Rowe said in stating Exelon has no near-term acquisition plans.

Aside from concentrating on previously announced nuclear uprates, Rowe called the expiration of the power purchase agreement between Exelon Generation and PECO at the end of 2010 Exelon's next "growth opportunity."

Exelon is also planning a new transmission company that would focus both on accessing renewables in the Midwest and reducing congestion in the Northeast and Mid-Atlantic. Exelon said it will look for opportunities both within and beyond its historic footprints.

Pa. PUC Approves Wellsboro Congestion Settlement

The Pennsylvania PUC approved a settlement between Wellsboro Electric Company and Penelec that is designed to avoid, as much as possible, any repetition of the congestion cost spike experienced by Wellsboro in late 2007 and early 2008. Wellsboro's 5,900 customers were billed \$775,000 for congestion charges which were incurred during a single three-month period in early 2008.

Wellsboro will request approval from the appropriate bodies (PJM and/or FERC) to change the settlement point for Wellsboro's purchases of electricity from the Wellsboro aggregate bus to the Penelec zone. Penelec agrees not to oppose the request.

The change in settlement point will help reduce the risk to Wellsboro of market disruption and transmission-related price spikes, mitigating the risk that a single, isolated transmission problem or pricing spike will have a major impact on Wellsboro.

Wellsboro and Penelec have also agreed to an initial list of projects which Penelec will include in its 2010 budget to improve reliability on the circuits that serve Wellsboro.

Wellsboro will recover the congestion costs incurred during the period under investigation (January 2008, February 2008, and March 2008).

Aside from noting the importance of a well-built transmission system, Commissioner Wayne Gardner noted that speculative trading in

the financial transmission rights market may have exerted upward pressure on congestion costs during the period at issue. "I wish to commend Wellsboro for intervening in the federal litigation involving the Tower Companies at FERC, and consistent with Act 129 of 2008, strongly encourage our electric utilities to take such action when necessary," Gardner said.

Briefly:

FERC Refuses to Order NYISO Resettlement Related to Error in Applying NYSEG Grandfathered Rights

FERC ruled that the New York ISO does not require a waiver to not correct erroneous invoices from June 2005 through June 2008 which imposed a congestion charge on transactions conducted by NYSEG using 7 MW of grandfathered transmission rights, and FERC refused to order NYISO to correct the invoices as requested by NYSEG. The software error resulted in NYSEG paying erroneous congestion charges totaling approximately \$1.25 million. The Commission said that NYISO tariff provisions governing the finality of settlements do not require the ISO to receive a waiver to not correct the charges. The Commission also declined NYSEG's request for resettlement, citing the time NYSEG has had to challenge the incorrect invoices.

N.Y. PSC Seeks Comments on Referral Compliance Plans

The New York PSC published a notice in the state register seeking comment on the utilities' compliance filings regarding continuing ESCO referral programs with costs borne by participating ESCOs rather than ratepayers, or instituting a new program for utilities currently without a referral program (Matters, 12/16/08, 12/12/08).

Final Order in SCG Rate Case Affirms Draft's Retail Supply Findings

A final decision in Southern Connecticut Gas' rate case affirmed a draft's findings with respect to retail marketing (Matters, 7/13/09). The DPUC declined to grant imbalance waivers or other relief related to delays and inaccuracies in implementing Daily Demand Meters for

customers between 5,000 ccf and 30,000 ccf, but the Department did order a waiver of the daily demand metering fee for customers whose meter does not report a minimum of 23 hourly reads per day every day in the customer's billing cycle. SCG will also be required to file enhanced daily demand metering reports which will form the basis of adjudicating any further action or relief, if required. The DPUC also declined SCG's request to impose a three-year minimum stay on interruptible customers switching to firm service.

Pa. PUC Approves Clarification to NFG Tariff

The Pennsylvania PUC approved a tariff revision at National Fuel Gas Distribution to clarify that the rate for storage gas transferred to suppliers shall be equal to (1) the higher of (a) the average cost of gas based upon the Company's 1307(f) gas cost rate or (b) the Daily Market Price Of Natural Gas for that day, plus (2) the Demand Transfer Recovery Rate. The clarification has no effect on suppliers as the language reflects Distribution's current procedures. Distribution proposed the clarification, however, to ensure that the prior language was not construed to mean that storage transfers would be priced at the average cost of gas for the Company's fiscal year (the twelve months ending in September). Such a reading would have been impractical since it would have required that the final storage transfer rate charged to the natural gas suppliers would not be determined until the end of the fiscal year, requiring constant adjustments of charges to natural gas suppliers for previous month transfers.

Mass. DPU Dismisses WMECO Smart Grid Pilot

The Massachusetts DPU dismissed a proposed smart grid pilot from the Western Massachusetts Electric Company for failure to meet the requirements of the Green Communities Act. Among other things, WMECO did not include time-of-use or critical peak pricing structures in its pilot, as required by the act. Additionally, the DPU said it could not grant WMECO's requested waivers from applicable customer termination protections for its pay-as-you-go metering pilot. General Law Chapter 164, § 124 requires that customers be given at least three days' notice by

mail before disconnection, a statutory requirement that the DPU said it cannot waive. The Department further said any change to its own, more stringent termination procedures (including the required 45 day notice period) should be conducted in a comprehensive examination of customer protection standards, and that such decisions should not be made in a smart grid pilot application. While WMECO proposed limiting its smart grid pilot to low-income customers, the DPU said such an approach is overly restrictive, "because it constrains the ability of the Company to more broadly apply the results of the pilot program to its customer population and is, therefore, less effective from the standpoint of the public policy objectives of Section 85 pilot programs."

Dayton Power Issues REC RFP

Dayton Power and Light issued an RFP for solar and non-solar RECs compliant with the requirements of Ohio's SB 221.

FERC Defers Incorporation of Demand Response in SPP Imbalance Market to Order 719 Compliance Docket

FERC accepted but suspended proposed revisions to the Southwest Power Pool's Open Access Transmission Tariff to incorporate demand response resources into the its real-time energy imbalance services market, ruling that the specific proposal should be considered with global demand response issues raised in SPP's Order No. 719 compliance proceeding. FERC accepted SPP's proposal to eliminate the lock-out provision in the imbalance market, which had removed a resource from the imbalance market if the resource failed to follow dispatch instructions for six consecutive, five-minute intervals.

N.Y. PSC Conditionally Accepts Smart Grid Plans

The New York PSC conditionally approved a host of smart grid pilots and other initiatives proposed by the state's jurisdictional electric utilities, contingent upon the receipt of federal stimulus funds. Various programs at the utilities include assorted dynamic pricing pilots and home area network (HAN) pilot installations (Matters, 4/20/09).

HB 1822 ... from 1

fixed price product, "by reference to the billing cycle and month or approximate end date."

Staff also proposed adjusting HB 1822's timeline for fixed rate contract expiration notices to include reference to the billing cycle, rather than only days prior to expiration. Staff's language holds that, "The REP shall send a written notice of contract expiration at least 30 days or one billing cycle prior to the date of contract expiration, but no more than 60 days or two billing cycles in advance of contract expiration for a residential customer."

Staff's proposal for publication would also amend § 25.475 such that all residential fixed rate contract expiration notices must be sent via mail and e-mail (if the customer's e-mail address is known), consistent with HB 1822, while notices for small commercial customers could still be sent via email only, if previously agreed to by the customer.

Unlike the recently approved changes to § 25.475, HB 1822 does not require REPs to notify customers of the price that will be charged if the customer takes no action regarding their renewal notice. Some REPs have said that it would be difficult to provide pricing information 30 days prior to expiration under HB 1822's longer notification timeline, but said it would be possible with a 14-day notice.

Accordingly, Staff suggested that § 25.475 be amended to hold that the renewal notice either contain an Electricity Facts Label (EFL) of the default renewal product if the customer takes no action, or, if the EFL is not included with the renewal notice, "the REP must provide the EFL to the customer by www.powertochoose.com or another website and through a toll-free number at least 14 days before the expiration of the contract. The contract expiration notice must specify how the EFL will be made available to the customer."

Consistent with HB 1822, residential expiration notices would have to include a description of any fees or charges associated with the early termination of the customer's fixed rate product that would apply during the period from the date of the notice until 14 days prior to expiration (at which time termination fees are prohibited).

Mass. Referral ... from 1

"It has been MXenergy's experience with the CT program that not all Qualifying Referral Program offers are completely honored at all times. When customers call a supplier regarding the Referral Program offer, at times the customer has been told that the price is available but only for a shorter term, such as 3 months. In MXenergy's opinion, this is a form of bait-and-switch," MXenergy said.

MXenergy suggested a compliance program with a "3 strikes and you are out" policy, where an offending supplier is suspended from the referral program for 3 months after the first violation, suspended for 1 year for the second violation, and permanently removed for 3 violations.

Rather than instituting a Connecticut-style program, MXenergy suggested that the utility programs be modified, so that the programs help customers understand that the utility will not treat them any differently if the customer is served by a competitive supplier. Any alphabetical supplier list used by the utilities should rotate so that each supplier is given an equal time on the top of the list to ensure fairness, MXenergy added. Customers should also be given an option to receive information about suppliers via mail or e-mail after being read the supplier list over the phone, MXenergy said.

With several suppliers intending to offer terms and conditions for an alternative referral program by July 27, the DPU ordered that reply comments will be accepted through August 3.