Energy Choice Matters

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World Energy Sees Six Electric Suppliers Active in Ohio

World Energy Solutions is seeing six active electric suppliers in Ohio, Dave Laipple, vice president of energy markets for the online broker, said during a web conference yesterday. World Energy has been aggressively soliciting electric customers, including cross-pollinating electric service to its significant Ohio gas book, to take advantage of the market opportunity while it is available, Laipple separately told *Matters*.

Historic lows in wholesale electric prices have created an opportunity for competitive supply in Ohio based on where the Standard Service Offer rates were set, with the FirstEnergy utilities and Duke Energy reporting higher migration during their Q2 earnings calls (Only In Matters, 8/5/09).

Speaking with *Matters* earlier this month, Laipple said that World Energy Solutions has procured supply for customers in the FirstEnergy and Duke territories. It had yet to see any activity at Columbus Southern Power or Ohio Power. Dayton Power and Light is still under a rate stabilization plan.

Laipple said savings off the Standard Service Offer can range from 10% to over 20%, based on customer class and service area.

While World Energy's typical offering in other markets is a reverse auction platform, World Energy has found that blind auctions are working "significantly better" in Ohio given the market's dynamics, Laipple reported. Though Laipple did not elaborate, the market is distinguished by several utility-affiliated retail suppliers, some of which possess owned generation.

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Mich. Draft Would Let Customers Stay on Competitive Supply Once Allotted Load Under Cap

Michigan customers on competitive supply would not be returned to utility service if choice participation exceeds the 10% cap either due to a decline in utility sales or increased choice customer usage in future years, under proposed rules governing the choice cap released by the PSC yesterday (U-15801). The Michigan PSC scheduled a meeting on September 1 to discuss the proposed procedures.

As only reported by *Matters*, suppliers had been concerned that the Commission, if faced with choice sales exceeding the cap, may have required the pro-ration of choice-served load for all shopping customers, or the removal of customers from choice on a last-in, first-out basis (Matters, 11/18/09). Under the proposal issued yesterday, once a customer receives an allotment for their load to be served by a competitive supplier, they could not be removed from competitive supply, even if the customer has not yet begun taking service from their competitive supplier (due to the enrollment lag).

While choice customers are permitted to have increased usage served by their alternative supplier, expansions (defined as connecting new load through an existing meter) at the same facility may not be entitled to receive competitive supply depending on the "vintage" of the choice customer.

The proposed rule would define a customer facility as a building or dwelling served through a

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SCE Says Complete Novations By Jan. 1 "Very Unlikely"

Southern California Edison said that it was "very unlikely" that it will complete all of its assigned Department of Water Resources contract novations by the January 1, 2010 target, according to a report posted by the California PUC yesterday.

Of SCE's six contracts, it only expects to be able to novate one (Mountain View) by January 1. SCE cited various reasons for the delays, such disagreements over contract terms, delays in negotiating a Non-disclosure Agreement, and time dedicated to executing long-term arrangements for Market Redesign and Technology Upgrade operations with some counterparties.

Pacific Gas & Electric said completing all of its novations by January 1 was feasible, assuming "very timely" resolution of FERC litigation in the cases of the Coral and PacifiCorp contracts. San Diego Gas & Electric said it can complete all of its novations by January 1.

Stream Moves to Dismiss "Shakedown Scheme" Lawsuit

Stream Gas & Electric, along with various affiliates and principals, moved to dismiss a "self-promoting" class action lawsuit which Stream alleged was filed as an apparent "shakedown" by unsuccessful former sales associates. The class action suit alleges that Stream's multi-level marketing program amounts to a pyramid scheme (Matters, 7/2/09).

The plaintiffs, Stream noted, were not as successful in their Ignite sales efforts as desired for various reasons, "including an admitted lack of substantive effort."

"Plaintiffs' decision to turn their lack of success with Ignite into a concocted class action RICO witchhunt against the Defendants, smearing their good names with connotations of corruption and organized crime, is simultaneously both laughable and deplorable. The reality that the present lawsuit is little more than an apparent shakedown scheme by Plaintiffs and their self-styled class action specialist attorneys is underscored by the gratuitous press release issued by Plaintiffs' counsel, Scott Clearman, concomitant with the filing of the Complaint: complete with a self-promoting direct link to his own law firm's website and incorporating a scandalous accusation that the Ignite sales effort is a pyramid scheme."

At the heart of the plaintiffs' case is the fundamental assertion that the Ignite organization is a pyramid scheme illegal under federal and state law. Stream said that the two hallmark elements of such illicit pyramid schemes are (1) the lack of an actual product or service, and (2) the payment of compensation to sales associates for the recruitment of other sales associates rather than the sale of an underlying product or service. Neither element is applicable to Stream, Stream said.

To begin, Stream does sell electric and natural gas service, which is clearly an actual product or service.

Additionally, Stream said that the compensation plan for Ignite's independent associates prevents any individual from earning income without first achieving specified levels of sales of electricity and natural gas services. "Indeed, the very structure of such compensation plan requires the gathering of energy service customers as a qualifying condition for any payments - and thus ensuring that no Ignite member can be renumerated [sic] solely for the recruiting of other associates," Stream noted.

"Independent Associates who reach higher positions within the Ignite organization receive bonus leadership compensation only in the event that newly-enrolled Independent Associates in their downline personally sign up new electricity customers," Stream added

"Plaintiffs' attempt to gloss over this reality constitutes a crucial failure of truthfulness, as the mandatory enrollment of energy service customers is one of numerous factors that distinguishes Ignite's legitimate business model from an illegal pyramid scheme," Stream said.

Stream further noted that Ignite is, "a fully-legitimate and well-reputed multi-level marketing company in complete good standing with both the Texas PUC as well as other state and Federal law enforcement agencies."

Stream moved to dismiss the complaint for additional procedural reasons, including the failure to state a claim upon which relief can be granted, and failure to plead fraud with particularity.

Additionally, Stream said that the plaintiffs entered into a valid arbitration agreement with Stream under Ignite's compensation plan, making the United States District Court for the Southern District of Texas Houston Division an improper venue.

Pa. OCA Calls Monthly PGC Adjustment Illegal Absent Fixed Rate Option

Reformulating the LDC Price to Compare as proposed in a Pennsylvania PUC rulemaking would be both "illegal and unsound," the Office of Consumer Advocate said in comments at the PUC (Matters, 8/25/09).

Specifically, OCA cited the proposed move to monthly Purchased Gas Cost adjustments despite the lack of an accompanying 12-month fixed rate offer from the LDCs. OCA noted that 66 Pa. C.S. § 1307 (f)(1)(ii) requires that the LDC "shall" offer a 12-month fixed product if commodity rates are adjusted more frequently than quarterly.

OCA further protested that the proposed rule's policy of moving all procurement-related costs into the bypassable Price to Compare will subsidize shopping customers at the expense of bundled customers. Only avoidable procurement-related costs should be included in the Price to Compare, OCA said, since the LDC must stand ready as a Supplier of Last Resort for all customers regardless of whether they are on competitive supply.

The consumer advocate also objected to monthly Purchased Gas Cost adjustments as overly volatile, suggesting that monthly revisions may even hinder competition, as monthly rate changes will be confusing to customers. Monthly changes in the Price to Compare, OCA reasoned, could discourage customers from comparing LDC and supplier rates, as the LDC rate will change in 30 days (potentially shorter than the up-to 45 day switching timeline), and may change from a rate higher than the supplier's price to a rate lower than the supplier's price, exposing the customer to the risk of moving to a higher-priced contract. OCA argued that there is "no evidence" monthly rate adjustments would benefit the competitive market in any way.

OCA further said that the volatility of monthly pricing will simply lead to customers switching to a supplier out of frustration, echoing Vice Chairman Tyrone Christy's argument that SOLR rates should not be "ugly."

Shipley Energy, Interstate Gas Supply, and Dominion Retail countered claims about monthly pricing adjustments producing "ugly" LDC rates. LDCs will still follow the same least-cost procurement methods, the suppliers noted, and will simply use shorter reconciliations. Given that many LDCs have recently experienced significant undercollections in their commodity rates, shorter reconciliations will benefit customers, the suppliers said, by reducing interest charges paid by customers for undercollections.

With respect to volatility, the suppliers noted that budget billing can mitigate any swings that may be seen with monthly commodity rates, while still preserving an accurate Price to Compare that informs customers of their energy options.

Doubting that suppliers could offer real value to customers, OCA cited the Illinois Citizens Utility Board's numbers, which show that 91% of fixed rate gas contracts since 2003 have lost money or are losing money. OCA said that, according to CUB, the largest total savings from any contract was $26, while the largest total loss was $964.

The Pennsylvania Utility Law Project also opposed monthly commodity rates, stating, "a good many customers simply may be incapable of making a sound decision," about switching suppliers despite monthly pricing.

OCA suggested that LDCs should be required to disclose actual NYMEX futures contract prices for the 12-month strip, or some other period, to give customers a better sense of LDC rates when shopping.

In its only comments on the proposed rule, the Office of Trial Staff said that LDCs should be required to post the Price to Compare on all bills, separately listed, labeled, and defined. Currently only UGI Utilities and UGI Penn list the Price to Compare on bills, Staff said.

Equitable Gas Company noted logistical hurdles to the proposed unbundling of various procurement costs and inclusion of such costs in the Price to Compare. Equitable, and other LDCs, are operating under rates set in a black box settlement which precludes a line-by-line itemization for various procurement costs that would allow such costs to be transferred to the Price to Compare outside of a full base-rate proceeding, Equitable noted. Equitable added said that such unbundling appears to be single-issue ratemaking, an argument also raised by OCA.

Regarding POR, OCA argued that customers should not be terminated for failure to pay supplier charges in excess of the bundled rate, consistent with its POR position in other cases. Additionally, OCA said that supplier-related uncollectibles should not be paid by customers (and thus presumably included in the discount rate). If supplier uncollectibles are imposed on customers, OCA alternatively said suppliers should be prohibited from charging a deposit or credit screen on customers for whom they will use POR.

OCA also questioned a proposed provision stating that POR would not be limited to suppliers using a utility consolidated bill. Though unclear, some marketers have interpreted the provision as mainly allowing for the use of supplier consolidated billing and POR for such receivables. OCA, however, said that the provision could also cover dual billing, in which case the LDC would be turned into a collections agent for bills it does not render and may not even see.

Noting that the proposed rule would limit purchased receivables to basic commodity supply costs, Equitable said that an independent audit should be conducted, at the supplier's expense, to ensure supplier compliance with the provision.

The Pennsylvania Utility Law Project said consumer protections should not be reduced through POR in order to shield suppliers from business risk.

AReM Says Calif. Staff Indicative Resource Planning Would Perpetuate Anticompetitive CAM

The Alliance for Retail Energy Markets renewed objections to a California PUC Staff strawman for "indicative" resource plans, calling the plans inconsistent with the original intent of the PUC's cost-allocation mechanism (CAM) which assigns costs of certain utility-owned generation to direct access customers (Only in Matters, 7/24/09).

Citing D.06-07-029, AReM said that while the cost-allocation mechanism was to be a "limited," "interim" and "transitional" policy, Staff's strawman would entrench the cost-allocation mechanism into continued utility procurement practices, with no end in sight.

Furthermore, the original impetus for the cost-allocation mechanism was to "avoid real scarcity" and "assure grid reliability," AReM noted. However, Staff's strawman would grant utilities authorization to procure new resources to meet system and/or local Resource Adequacy requirements, with such procurements presumably subject to the cost-allocation mechanism, rather than being paid for by only bundled service customers.

"This despite the fact that the electric service providers ('ESPs') have a completely independent and enforceable obligation to meet their own Resource Adequacy ('RA') requirements for the direct access customers they serve," AReM noted.

Staff justifies its forecast need for new "system" power -- power needed for reliability that should thus be paid for by all customers under the cost-allocation mechanism -- by citing the looming retirements of existing generation due to once-through cooling (OTC) restrictions. However, AReM rejected such logic as "absurd," since the once-through cooling units, nuclear and thermal, are only serving bundled customers today.

"There can be no rational argument that replacement of these units creates a 'system reliability' need requiring CAM treatment," AReM said. Indeed, such logic and other statements in the strawman lead AReM to conclude that, under the Staff's plan, new utility generation could never be attributed solely to bundled customers.

AReM said that any true reliability concerns could be met through a targeted procurement of specific megawatt amounts in specific locations by the applicable utility if warranted, rather than expanding the utilities' authority to build new generation billed to direct access customers. Even under such a targeted procurement, the Commission must guard against attempts by the utilities to bypass their standard procurement requirements or attempts to offload bundled customer needs onto direct access customers, AReM said.

AReM suggested an independent study of the true "system" need in the California ISO as the staring point for any procurement planning, rather than the Staff's indicative planning process.

Briefly:

Energy Plus Completes ERCOT Test Flight

Energy Plus Holdings, which was certified as a Texas REP last year but has not yet become active (Matters, 9/8/08), has completed its ERCOT Test Flight.

Maine Opens Inquiry for Continued ISO-NE Reforms

The Maine PUC opened an inquiry (2009-269) to pursue ongoing reforms to ISO New England identified in prior orders, in which the Commission held that Central Maine Power and Bangor Hydro-Electric should renew their transmission owner agreements although improvements are still needed at the ISO (Matters, 7/15/09). An initial collaborative session will be held September 15. Areas of concern for the Commission include transmission cost allocation and cost-effectiveness, and the lack of a consumer-focus in governance.

Mich. PSC Approves Detroit Edison Renewable RFP Process

The Michigan PSC approved Detroit Edison's revised RFP process to solicit supplies under its renewable energy plan (Matters, 6/3/09). Though Commission Staff will monitor the RFP process, the RFP will not have an independent monitor function, which was sought by independent power producers. The Commission also said that Detroit Edison provided adequate assurances regarding the protection of third-party confidential or proprietary information from Detroit Edison employees planning self-build projects, company affiliates, and other third-party developers, another concern raised by merchant developers. Although the PSC did not order Edison to conduct pre-RFP collaboratives with potential bidders, the Commission agreed that such sessions would be of great assistance to Edison and stakeholders, directing Staff to address the issue in a rulemaking.

Mich. PSC Approves SEMCO Curtailment Settlement

The Michigan PSC approved a settlement among SEMCO Energy Gas Company, the Retail Energy Supply Association, Constellation NewEnergy-Gas Division, and Staff which will allow SEMCO to implement several proposed changes relating to curtailment of gas service, modification of transportation balancing, and associated pipeline penalties (U-15953, Only in Matters, 8/214/09). SEMCO will implement the tariff changes as filed, but will also modify its transportation confirmation process and provide notice to suppliers of any future intent to change balancing penalties (see earlier story for full discussion).

FERC Accepts CAISO-Utility Demand Response Pilots

FERC approved participating load pilots among the California ISO and California's three large investor-owned utilities which will explore the feasibility of aggregating certain smaller demand response resources and bidding them into the CAISO's day-ahead and real-time markets for ancillary services. FERC dismissed the Alliance for Retail Energy Markets' arguments regarding the discriminatory nature of Southern California Edison and Pacific Gas & Electric's pilots, which exclude direct access customers, as outside the scope of the proceeding. AReM was not seeking to stop the pilots, but was seeking a confirmation from FERC that the exclusion will not serve as precedent (Matters, 7/20/09).

Pa. OCA Has No Objection to Accelerated Customer List Refresh at PPL

The Pennsylvania Office of Consumer Advocate said it did not object to refreshing PPL's customer list now, rather than the first half of 2010 as provided under PPL's default service settlement. The PUC ordered all parties to the settlement to file their position on accelerating the refresh so that the customer lists may be used prior to the expiration of rate caps, under its order to reduce barriers to competition at PPL (Matters, 8/17/09). The Retail Energy Supply Association and Direct Energy Services also did not object to the acceleration.

FERC Revokes MBR Authority of Four Sellers
FERC revoked the Market-Based Rate authority of the following sellers for failure to file Electric Quarterly Reports: Energy Algorithms, LLC; Forest Energy Partners, LLC; Norge Power Marketing Corporation; and Ohms Energy Company, LLC.

N.Y. Launches Smart Grid Consortium
New York Gov. David Paterson yesterday announced the launch of a state smart grid consortium to foster the development and deployment of new technologies. The Consortium, "will be comprised of leaders from government, utility companies and universities, as well as consumers," and is charged with developing a strategic vision on how best to deploy secure, efficient and reliable smart grid technologies in New York.

World Energy ... from 1

Margins for winning suppliers in the World Energy procurements range from $0.25/MWh to $2/MWh versus the $4-8/MWh range suppliers typically extract in contracts not subject to a competitive solicitation.

World Energy has transacted electric procurements with over 50 Ohio facilities, with volumes exceeding 1 billion kWh, Laipple reported. The vast majority has been in the FirstEnergy territory, though World Energy has begun procuring supplies for Duke customers in the past few weeks.

Contract terms range from 8-35 months, and are driven, in part, by the suppliers' view of a customer's credit. The May 2011 end date for the current FirstEnergy Standard Service Offer also serves as a key marker for determining contract lengths.

Although World Energy does not have a strict minimum load size, Laipple said a minimum of 3-5 million kWh is required to attract suppliers, for a single meter.

World Energy currently serves more than 90 customers in Ohio across 160 facilities, reflecting its gas book, many of which were included in its acquisition of EnergyGateway.

Michigan ... from 1

single existing electric billing meter at a single site, and would not mean the person, corporation, partnership, association, governmental body, or other entity owning or having possession of the building or dwelling.

The PSC would establish five categories of customers with different choice rights, following statutory carve-outs.

Group One Customers are any customers operating an iron ore mining facility, or iron ore processing facility located in the Upper Peninsula of Michigan (the Cleveland-Cliffs provision). A Group One customer may increase its usage above the load cap.

Group Two Customers are customers who have been continuously taking service through a competitive supplier since April 1, 2008. A Group Two Customer may both increase its usage and expand its load, at its current facility, above the cap. For new facilities, expanded load may also be served on competitive supply regardless of the cap if the new facility is "similar in nature" to the existing facility, and more than 50% of the new facility is under common ownership with the existing facility.

Group Three Customers are customers who have been continuously taking service through a competitive supplier since October 6, 2008, but began taking such service after April 1, 2008. Group Three Customers are limited to existing load and subsequent increased load through meters served continuously by a supplier since October 6, 2008. Expanded (new) load at such a facility shall be classified as having Group Four Customer status.

Group Four Customers include the load of a customer seeking to expand usage at a facility served through a competitive supplier, where expand means to connect new load through an existing meter.

Group Five Customers are any customers who enrolled or began taking retail open access service after October 6, 2008, and who are not classified as a Group One, Two, Three or Four Customers.

The final 10% choice cap would be based on the weather-adjusted retail sales from the preceding calendar year and published in February, subject to challenge. Utilities would also develop an interim cap, to take effect January 1, based on actual weather-adjusted sales from January through November, with an estimate of December sales. The Commission's proposal rejects arguments from Constellation NewEnergy which said that the cap should only based on 10% of bundled sales, rather than total delivery sales, with all current choice sales not counting towards the cap.

Choice sales under the cap would be allocated as follows. Group One and Group Two customers would receive the initial allotments, and would always be permitted to buy from a competitive supplier regardless of the cap.

If there is space remaining under cap, the utility would allocate available load to waiting Group Three customers, then Group Four, then Group Five, one a first-come, first-served basis within each group (measured by the date the utility receives a complete enrollment from the supplier).

All customers, including Group Three, Four, and Five Customers may retain the allotments they had in the prior year.

Load available under the cap would be allocated based on a customer's prior 12-month usage (or estimate if history does not exist). In the case that the first-in-line customer's load exceeds the remaining space available under the cap, the customer would not be allowed to shop, nor would any customers behind it in the queue be allowed to shop. The customer would retain its first-in-line status if space under the cap increases to accommodate its load.

The Commission would also order the utilities to develop an online cap-tracking system updated monthly, weekly, or daily depending on the level of choice sales (daily updates being required as choice sales exceed 8% and near the cap). The tracking system would include relevant information such as total weather-adjusted delivery sales, current choice participation, energy allotments available, the number of MWh in the queue, etc.