Energy Choice Matters

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PPL Files to Include All-In/All-Out Requirement in 2010 POR Program

Contrary to an express directive in a Pennsylvania PUC order, PPL is proposing to require competitive suppliers to sell all of their receivables to PPL as a condition of participating in a one-year POR program to be in place only for the calendar year 2010 (Matters, 8/17/09).

Last week, PPL filed its proposal to implement the Commission's August order requiring the implementation of a POR program coincident with the expiration of rate caps on January 1, 2010. PPL is seeking to implement a one-year POR program since under its post-2010 default service settlement, it had committed to filing a POR plan effective January 1, 2011 whose terms would be subject to challenge by settling parties. PPL also proposed to unbundle generation-related uncollectibles through a Merchant Function Charge as part of its 2010 POR program. PPL said pro forma tariff sheets to implement the program would be filed September 17.

In its August order, the Commission ruled that PPL shall not impose an all-in/all-out provision on POR that would require a supplier to sell all of its generation receivables to PPL in order to participate in the program. Citing concerns about potential gaming due to the limitation, PPL's proposed 2010 plan would include an all-in/all-out requirement. In the alternative, PPL asked for authority to impose supplier-specific discount rates to combat any gaming of purchased receivables by electric generation suppliers (EGS).

"Allowing a participating EGS to selectively choose which accounts receivables to sell to PPL Electric has the potential to increase significantly the uncollectible accounts expense percentage,"

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Proposed ICC Order Would Allow Managed Price Products, But Says Integrys Disclosures Fall Short

An Illinois Commerce Commission proposed order would find that Integrys Energy Services' (Integrys) disclosures for its managed price product would not meet statutory requirements, but that the product would be acceptable with more comprehensive customer disclosures (Matters, 7/29/09).

As only reported by *Matters*, Integrys sought a declaratory ruling from the Commission regarding the applicability of Sections 16-115A and 16-115C of the Public Utilities Act, and Section 2EE of the Consumer Fraud and Deceptive Trade Practices Act, to a supply agreement the marketer has with New Illinois Cooperative Energy (NICE). Under the NICE agreement, NICE will offer its members electricity to be supplied by Integrys, with NICE responsible for marketing its product to the public. Integrys will not itself be engaged in the sale of the product to customers (Only in Matters, 3/25/09).

The main issue in the case is that the per kilowatt-hour rate customers will be paying will not be known ahead of time. Integrys' supply costs include a true-up component which is required because the costs to supply the program cannot be known until Integrys' costs are finalized, which occurs approximately two months after the close of each calendar month. Customers are thus not contracting for a specific kilowatt-hour rate, but rather for Integrys to serve them on a managed wholesale portfolio. Integrys argues that its disclosure to the customer of the variable nature of the rate, and that the rate may not be lower than the default service rate, is sufficient.

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Md. PSC Orders Collaborative on Contingent Bidding for Use in April 2010 Procurement

The Maryland PSC ordered that a collaborative should develop a consensus proposal detailing specific mechanisms for implementing contingency bidding in the SOS procurements, with such a mechanism to be in place in time for the April 2010 procurement.

As only reported by *Matters*, Consolidated Edison Energy recommended the use of contingent bidding in utility-specific SOS procurements as a means of increasing the potential for lower bids. Contingent bidding, used in other jurisdictions such as Massachusetts, allows wholesale suppliers to specify constraints at the time of bid submission, such as a detailed matrix listing the number of bids the supplier is submitting versus the maximum number of blocks the supplier wishes to serve (Only in Matters, 8/21/09).

The Commission found that the implementation of contingent bidding may result in additional bidders participating in the SOS procurement process with a potential for lower bids for the various blocks of SOS load being bid. However, the PSC said that ConEd Energy's proposal was not sufficiently specific, particularly regarding the amount of collateral a bidder would need to submit in connection with contingency bidding. Thus, the Commission will not implement contingency bidding for the October 2009 procurement, but set the matter for a collaborative process including Staff, the utilities, the Office of People's Counsel, wholesale suppliers, and other interested parties.

The Commission also accepted consensus recommendations from the SOS Procurement Improvement Process working group, which are intended to make credit requirements more flexible and more acceptable to bidders and their banks (Only in Matters, 8/24/09). Bidders/suppliers and their banks will be given an option regarding whether or not the required letter of credit is transferable, under both the bid assurance letter of credit and performance assurance letter of credit accompanying the Full Requirements Service Agreement (FSA). Additionally, the bid assurance letter of credit required of SOS bidders will be changed so that it is effective for a minimum of 60 days, rather than expiring on a date certain.

Calif. Legislature Enrolls Direct Access Bill

The California state legislature has enrolled SB 695 which, among other things, allows additional customers to be served on direct access, subject to a load cap (Matters, 4/27/09).

Since direct access was suspended, only customers on competitive supply on September 20, 2001, have been eligible to shop for electricity. SB 695 removes that restriction for non-residential customers, and allows non-residential customers to acquire electric service from competitive providers subject to a cap specific to each utility service area.

The maximum allowable annual limit of kilowatt-hours served competitively shall be established by the PUC equal to the maximum total kilowatt-hours supplied by competitive providers in a service area during any sequential 12-month period between April 1, 1998, and the effective date of SB 695. The PUC shall phase-in the cap over a period of no less than three years and no more than five years, starting on the sooner of the bill's effective date, or July 1, 2010. The Commission shall review, and if required modify, rules for direct access service, but the review shall not delay the start of the phase-in schedule.

The bill otherwise continues the suspension of direct access until the legislature, by statute, repeals the suspension or otherwise authorizes direct transactions.

As part of SB 695, the PUC must ensure that competitive suppliers are subject to the same resource adequacy, RPS, and carbon requirements imposed on the state's three largest investor-owned utilities, notwithstanding any prior Commission decisions to the contrary.

SB 695 also requires that for generation procured by utilities in order to meet system or local area reliability needs for the benefit of all customers, the net capacity costs of those generation resources shall be allocated on a fully nonbypassable basis consistent with departing load provisions as determined by the Commission to the following groups: bundled service customers; direct access customers;

and community choice aggregation customers. The resource adequacy benefits of such generation shall be allocated to all customers who pay its net capacity costs. An energy auction shall not be required as a condition for applying this allocation, but is permissible.

Additionally, SB 695 requires the PUC to perform a just and reasonable review for any "modification" to a Department of Water Resource supply contract, and sets various other conditions governing the contracts. Modify is defined to mean any material change proposed in the terms of the contract, excluding administrative changes and changes that result in ratepayers savings not to exceed $25 million.

The bill deletes the prohibition on increasing residential rates from the February 1, 2001 levels for usage up to 130% of baseline levels. The PUC is allowed under SB 695 to increase the rates charged to residential customers for electricity usage up to 130% of the baseline quantities by the annual percentage change in the Consumer Price Index from the prior year plus 1%, but not less than 3% and not more than 5% per year.

SB 695 also prohibits the Commission from requiring or permitting a utility to implement default time-variant pricing for residential customers prior to January 1, 2013. Additionally, unless bill protection is offered, default time-variant pricing for residential customers may not be offered prior to January 1, 2014. Default real-time residential pricing without bill protection is prohibited until January 1, 2020.

Renewable bills

The legislature also passed two bills increasing the state's RPS to 33% by 2020, but Gov. Arnold Schwarzenegger said he would veto the bills which, among other things, limit the use of imported renewable power and RECs for compliance. The governor's office indicated that Schwarzenegger will sign an executive order increasing the RPS to 33% without the restrictions, and potentially allowing nuclear and large hydropower resources to qualify under the RPS.

Detroit Edison Asks for Clarification on Deskewing

Detroit Edison asked the Michigan PSC to clarify when the next phase of rate deskewing, meant to remove the residential subsidy, must be completed.

Commercial customers on bundled service currently subsidize residential delivery rates, while commercial customers on retail access do not pay a subsidy in their delivery rates. The deskewing process will remove the subsidy from bundled commercial rates, and remove an advantage currently enjoyed by competitive suppliers with respect to commercial load.

Detroit Edison noted that a rate case order (U-15244) in January 2009 calls for an annual 1.7% realignment on October 1 of each year, beginning October 1, 2009, unless modified by a future "rate filing." Edison, which has proposed a different realignment schedule in its current rate case, said that it intends to implement the annual 1.7% realignment on October 1 if the Commission does not rule on its proposed modifications in the interim (with subsequent modifications made upon a final order).

However, Edison noted that Staff, in testimony in Edison's current rate case, has argued that the Commission's January order makes a distinction between a rate "filing" and rate "order." Since Edison has proposed to modify the realignment schedule in its current rate "filing," Staff said that the 1.7% annual adjustment no longer holds, as it has been modified.

Accordingly, Detroit Edison asked the Commission whether implementation of the next phase of rate realignment should occur on October 1, 2009, or on the date of a final order in the current rate proceeding.

California ISO Board Approves Proxy Demand Response

The California ISO board approved a proposal to allow retail demand response programs to participate in the ISO markets through a new "proxy" demand response product for energy and operating reserves that will be auctioned in the ISO wholesale electricity market.

Proxy demand response will be permitted in the day-ahead, real-time, and non-spinning reserve markets.

The program will allow an aggregator of retail load to offer demand resources in the market separately from the customer's load serving entity.

However, the load serving entity must approve the registration of a new proxy demand resource requested by a demand response aggregator. CAISO included this provision to address concerns of LSEs, including competitive suppliers, that they will lack customer-specific data about their commodity customers' proxy demand response participation and metering adjustments, especially considering settlements beyond what occurs between the ISO and the demand response aggregator will take place outside of the ISO settlement process.

The mechanism will also allow the retail demand response programs that are imbedded as part of the investor-owned utilities' load to participate in the ISO markets through a market bid rather than through the current manual process.

CAISO said that an estimated 500 MW of existing electricity load reduction will help balance electricity supply and demand by summer 2010.

Under the CAISO program, the proxy demand resource will be settled at a Custom-Load Aggregation Point (LAP).

Performance will be determined through a pre-determined baseline calculation using the last 10 non-event days with a look back window of 45 days and a bidirectional morning adjustment capped at 20%. The ISO will adjust the settlement of the load serving entity based on the measured performance of the proxy demand resource to ensure there is no double payment for the demand response.

CAISO said that its product also simplifies forecasting and scheduling requirements for load serving entities to facilitate end-use customer participation. The program also meets the requirements of FERC Order 719, CAISO said.

Implementation is targeted for April 1, 2010.

CAISO said that it is continuing to work on other demand response products since proxy demand response is not an all-encompassing product.

MRTU Releases

CAISO also announced a schedule for market enhancements under updates to MRTU. Dates below are targets which the CAISO says it is on track to complete, but subject to change with shifting priorities:

Post Summer Release (October 1, 2009)

- Modified application for managing wind resource forecasting;
- Modified market bidding interface;
- Modified ramp rate accounting approach, and
- Modified external user interface to the master file database.

Payment Acceleration Release (Nov. 1, 2009)

- Shorten time between trade date and market clearing

Winter 2009 Release (January 1, 2010)

- Standard Capacity Product, and
- New bidding rules for ancillary services must-offer obligation functionality.

Spring 2010 Release (April 1, 2010)

- Multi-Stage Generating Unit Modeling (may be pushed until fall 2010);
- Scarcity Pricing Enhancements (raises bids to the bid cap when there are insufficient energy bids in real time), and
- Proxy Demand Resources.

Early 2011 Release

- Convergence bidding (CAISO said it will ask for an extension on implementation at FERC until February 1, 2011);
- Participating load refinements.

Interconnection Security

CAISO's board approved lower financial requirements needed in the ISO interconnection study process. The proposed changes listed on the next page still need approval from FERC.

CAISO Interconnection Security

Postings and Timeframes	Current	New
Initial financial security posting (90 days after Phase I studies are complete)	20% of network upgrades (min $500,000) and 20% of PTO interconnection facilities.	Lesser of three options: 15% of network upgrades as identified in the Phase I study, or $20,000/MW, or minimum $500,000 to a cap of $7.5 million; and 20% of the cost of PTO interconnection facilities.
Second posting (180 days after Phase II studies are complete)	100% of the cost of network upgrades (min $500,000) and 100% of PTO interconnection facilities.	Lesser of 30% of network upgrades (min $500,000) as identified in either the Phase I or Phase II studies; and 30% of PTO interconnection facilities.
Third posting at start of construction	None	Remaining costs equal to 100% of project cost.

Briefly:

Major Energy Services Seeks Ohio Gas License

Major Energy Services applied for a competitive retail natural gas license in Ohio as a marketer, broker and aggregator, to serve all classes of customers at Columbia Gas and Dominion East Ohio. Major said it has grown to 25,000 meters. As only reported in *Matters*, it is also currently seeking a Pennsylvania natural gas license (Only in Matters, 8/24/09).

PES Brokers Seeks Pa. License

PES Brokers (Prime Energy Services) applied for an electric broker/marketer license at the Pennsylvania PUC to serve non-residential customers over 25 kW in all service areas.

Md. PSC Approves Plan for 2007 SOS Solar REC Needs

The Maryland PSC ordered that the investor-owned utilities shall pay the compliance penalty for all the solar RECs needed for load served under the 2007 SOS supply agreements for the seven-month period from June 1, 2008 through December 31, 2008, and ruled that a competitive auction shall be used to procure solar RECs for the five-month period from January 1, 2009 through May 31, 2009. As only reported by *Matters*, the measures are required because the wholesale full requirements service agreements for the affected periods do not address the solar RPS requirement, which was added after the agreements were executed. Staff had calculated the cost of the approved plan to be $714,000, lower than alternative proposals which included 15-year contracts with solar REC sellers (Matters, 6/5/09).

Cross Border Energy Seeks Maine Electric License

Cross Border Energy, an affiliate of International Energy Partners, applied for a competitive electricity provider and Standard Offer provider license at the Maine PUC. Cross Border Energy is seeking authority to serve medium and large non-residential customers at Maine Public Service, Eastern Maine Electric Cooperative, Houlton Water Company, and Van Buren Light and Power.

ICC Denies Family Energy Gas License for Deficient Application

The Illinois Commerce Commission denied the alternative gas supplier license application of Family Energy for failure to file a complete application, citing deficiencies with respect to managerial and technical qualifications, and financial security and qualifications, among other things (Only in Matters, 8/7/09).

OCC Appeals Effective Date of AEP Ohio Electric Security Plan

The Ohio Consumers Counsel appealed to the state supreme court the Public Utilities Commission of Ohio's order setting the AEP Ohio utilities' revenue requirement for its electric

security plan based on the calendar year 2009, rather than for the period starting with PUCO's order approving the plan on March 18, 2009. OCC argued that PUCO's order amounts to retroactive ratemaking, by allowing the companies to recover revenue associated with service previously provided at lower rates while a Commission decision on new rates was pending (Matters, 3/19/09).

PPL ... from 1

PPL contended. PPL said that a supplier may have a financial incentive to sell only accounts receivables from low-income customers with low credit scores or other indicia of poor payment prospects absent an all-in requirement.

PPL reported that as of August 31, 2009, 82% of PPL's residential overdue accounts receivables were from customers at 150-250% of the Federal Poverty Level. Furthermore, 90% of residential customers currently in the collections process are low-income customers, PPL said, although low-income customers only make up 18% of PPL's residential customer count.

If a supplier selectively sold only its low-income receivables to PPL, PPL would incur "substantially" higher uncollectible expenses, on a percentage basis, from that supplier -- expenses not calculated into the average uncollectible expense used in the POR discount rate. PPL would have to recover the difference from either other suppliers or customers, neither of which PPL said would be fair.

PPL asked the Commission require a supplier to sell all of its commodity receivables to participate in POR in order to prevent such an outcome, which PPL said is consistent with similar POR programs pending at the Commission.

If the Commission declines to impose an all-in requirement on suppliers, PPL asked that it be allowed to establish a separate discount rate for suppliers that do not sell all of their receivables to PPL. PPL will propose the rate in its September 17 tariff filing. Furthermore, PPL requested that it be permitted to bill suppliers whose uncollectibles exceed this separate discount rate.

PPL noted that Duquesne Light's POR program allows Duquesne to adjust supplier discount rates in the event that a supplier is engaging in unusual behavior that increases the supplier's uncollectible expenses above a set threshold.

Additionally, PPL cited administrative costs associated with allowing suppliers to use POR for some accounts, but not for others. PPL said that, among other things, it would require changes to EDI transactions, requiring both PPL and suppliers to modify their backoffice systems.

PPL also proposed that POR be limited to suppliers using utility consolidated billing. PPL argued that it should not be responsible for receivables which it has not billed, since it would not control the revenues received, or be in a position to terminate non-paying customers. Necessary programming changes to allow the purchase of receivables not billed on a utility bill would likely not be completed prior to January 1, 2010, PPL added.

Furthermore, all suppliers using utility consolidated billing must be required to participate in the POR program, PPL said, to eliminate lengthy programming changes required to allow utility consolidated billing without POR. PPL committed to evaluate allowing suppliers to use utility consolidated billing without POR for the 2011 POR program.

Under PPL's proposed 2010 program, suppliers would also be required to accept all customer enrollments without requiring deposits or performing credit checks.

PPL would establish a unique discount rate for residential and non-residential customers reflecting their uncollectible expenses, plus development, implementation and administrative costs. PPL will provide proposed discount rates in its September 17 tariff filing. The uncollectible portion of the discount rate will be based on uncollectible expense percentages included in PPL's most recent base rate case. Although the rate case resulted in a black box settlement, PPL said that the uncollectible figures represent historical expenses and are appropriate.

As noted, PPL proposed instituting a Merchant Function Charge (MFC) to unbundle uncollectibles related to default service (generation and transmission uncollectible expenses). The MFC will be included in the

Price to Compare.

The MFC for residential and small commercial/industrial customers will equal the uncollectible portion of the POR discount rate.

The POR program and MFC would apply to residential customers under Rates RS, RTS(R), and RTD(R), and small commercial/industrial customers under Rates GS-1, GS-3, GH-1(R), GH-2(R), IS-1(R), BL, SA, SM(R), SHS, SE, TS(R), and SI-1(R).

As directed by the Commission, POR will only cover basic generation supply charges.

PPL said that the Office of Consumer Advocate's proposal in other POR proceedings to prohibit the termination of competitive supply customers for non-payment of supplier receivables above the amount that would be owed under default service is unworkable, due to the need to program billing system changes to perform shadow billing to accomplish OCA's proposal.

Integrys ... from 1

However, an ALJ found that under Integrys' reasoning, a customer disclosure simply stating that, "buyer will pay whatever supplier demands," would be sufficient, so long as both the supply contract and associated marketing materials convey that information.

"The Commission is convinced that the General Assembly provided more consumer protection than that in subsection 16-115A(e)(i). Accordingly, we construe subsection 16-115A(e)(i) to require a pricing disclosure that enables the customer to ascertain - in general terms at the very least - the actual price of the electricity the customer is committing to buy. Without that disclosure, the customer cannot meaningfully determine whether entering into the proposed supply contract will serve that customer's interest. If subsection 16-115A(e)(i) does not require even that minimal disclosure, it would promote neither consumer choice nor retail competition," the ALJ said in the draft order.

The draft further concludes that the Integrys and NICE marketing materials do not provide the minimally necessary pricing disclosure about the commodity covered by the contract. "The customer is not even informed in general terms - whether qualitative or quantitative - of the components that make up the commodity price or the factors that will be applied when weighting or quantifying those components. Moreover, there are no price ceilings or floors or other referential indicia that would enable the customer to even estimate a likely range of prices under the contract," the ALJ said.

The ALJ further noted that while Integrys has explained to the Commission how the commodity price will be formed, nothing in the record suggests that prospective customers will have access to such information.

While Integrys has compared its disclosures to the disclosures received by customers on real-time pricing, which Commonwealth Edison and Ameren offer under ICC approval, the ALJ called Integrys' product "trust me" pricing, as opposed to a real-time price which is linked and passed through from a wholesale market.

Accordingly, the proposed order would find that Integrys' proposed price disclosures are insufficient under subsection 16-115C(e).

The ALJ stressed, however, that the proposed order would not preclude the offering of a managed product by competitive suppliers, given sufficient customer disclosures.

While the ALJ said that a declaratory ruling is not the proper vehicle to precisely enumerate what disclosure would satisfy the statute with respect to managed pricing, or develop ad copy for suppliers' marketing materials, the ALJ said that customers must have a way to ascertain, before executing a contract, how the price of electricity will be determined.

"Therefore, to comply with subsection 16-115A(e)(i), the Commission recommends that [Integrys] and NICE consider disclosing information that, at the least, shows how the price of electricity to the customer will be determined. While the rate may be 'variable' in the general sense that it is market-dependent, the specific components, weightings and calculations that make up that rate are presumably fixed. Knowledge of those elements will enable the customer to, at the least, generally estimate whether acceptance of the [Integrys]-NICE offer will serve the customer's interests," the ALJ said.

The ALJ's proposed findings came after determining that Integrys did have standing to ask for the declaratory ruling with respect to the

Public Utilities Act, a point which ICC Staff had disputed. Even though NICE will handle most marketing of the product (which was Staff's main objection as to standing), the ALJ noted the Section 16-115A(e)(i) of the Act encompasses the "offering and provision" of electricity products by suppliers, not simply the marketing.

However, the proposed order would only address Integrys' petition with respect to the Public Utilities Act, and not the Consumer Fraud and Deceptive Trade Practices Act, because the ALJ concluded that Integrys did not sufficiently demonstrate its standing to bring the petition with regards to the latter act.

The draft would also not address the applicability of the ABC law (Section 16-115C of the Act) to the Integrys-NICE relationship, since the ALJ concluded that only the sales agent in the relationship (NICE) has standing to seek such a ruling.

The ALJ also dismissed Staff's argument that declaratory orders may only determine whether a statute is applicable to a petitioner and may not address how such a statute is applicable, which is what Integrys is seeking.