Energy Choice Matters

September 22, 2009

N.Y. PSC Approves Expansion of O&R ESCO Referral Program to New Service Customers

The New York PSC approved with modifications Orange & Rockland's proposal to allow new service electric and gas customers enroll onto its PowerSwitch ESCO Referral program (Only in Matters, 6/5/09).

However, O&R's approved plan to expand PowerSwitch is limited to making technical and backoffice changes to accept new service customers onto PowerSwitch. O&R will not change its current scripts or new service activation process to promote PowerSwitch to customers calling to activate service. Customers wishing to enroll onto PowerSwitch at service initiation will have to ask for the referral program during their activation call.

Among the modifications to O&R's proposal is that O&R must revise its ESCO random assignment process as requested by the National Energy Marketers Association, so that single commodity customers can be assigned to both dual-fuel ESCOs and single-fuel ESCOs, and that dual commodity customers can be assigned to electricity-only and natural gas-only ESCOs as well as dual-fuel ESCOs. The change mirrors a requirement the PSC ordered in approving a pilot to expand the referral program at Consolidated Edison.

The Commission adopted O&R's proposed requirement that ESCOs must accept new service customers to continue participating in PowerSwitch, finding that since ESCOs are not required to participate in PowerSwitch, it is reasonable for O&R to require that ESCOs participating in PowerSwitch accept both new and existing customer enrollments.

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Ontario Board Proposes New Reporting Requirements for Competitive Suppliers

The Ontario Energy Board has proposed to make mandatory certain quarterly reporting requirements for competitive gas marketers and electric retailers, and also proposed a change in the breakdown of customers under current reporting requirements.

Although contained in separate codes, the proposed rules would essentially impose the same obligations on competitive suppliers regardless of commodity. Under the proposed revisions, electric and gas retailers would be required to provide the Board with the following information quarterly, on the last day of the second month following the quarter end:

a) Number of active salespersons;

b) Number of new enrolments;

c) Number of contract renewals;

d) Marketing approach percentages based on sales revenue broken down by: direct mail, door to door, telesales, internet sales and other;

e) Number of consumer complaints; and

f) Retail offers available to customers during the quarter. Details must include the contract length, and pricing details (and for electric offers only, whether the offer was for low volume or high volume customers).

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PNM Raises First Choice EBITDA Outlook on Favorable Market Conditions

Citing favorable market conditions and operational improvements, PNM Resources raised expected EBITDA from First Choice Power for the year to the range of $55 million to $60 million

In PNM's most recent outlook issued in late July, the company expected that First Choice EBITDA would likely exceed $35 million, which was the high end of the previously announced EBITDA outlook range.

"First Choice Power continued to demonstrate strong performance in July and August, clearly indicating that our expectations will be exceeded," said Jeff Sterba, PNM Resources chairman and CEO.

However, Sterba tempered expectations for next year, cautioning that changing market conditions mean that 2010 likely will not be as strong as 2009.

"For 2010, we expect market conditions to continue to be a key driver for the business, and we believe margins will return to more historic levels," Sterba said.

"In addition, we see bad debt as a persistent problem negatively affecting First Choice Power's performance. This continues to be an issue that needs regulator intervention through change in market rules," Sterba added.

Energy Michigan Says Longer Rescission Period Would Financially Harm Suppliers

An ALJ's proposed decision in Consumers Energy's electric rate case to expand to rescission period to 14 days could significantly damage the financial status of alternative electric suppliers during rapidly changing market conditions, Energy Michigan said in exceptions to the proposal for decision.

As only reported by Matters, the ALJ agreed with Michigan PSC Staff and found that expanding the rescission period from three days to 14 days would enhance consumer protections (Only in Matters, 9/3/09).

However, Energy Michigan reiterated its testimony that a 14-day rescission period would permit a customer to lock in a price with one supplier and then use the expanded timeframe to shop for a better price. "It is not appropriate to characterize such a proposal as a 'customer protection' measure," Energy Michigan said, arguing that no party has demonstrated that Energy Michigan's proposed five-day rescission period does not provide customers with adequate time to review contracts to discover errors and cancel service.

"If numerous residential customers rescind Electric Choice contracts in order to take advantage of rapidly changing energy market pricing, the financial status of [alternative suppliers] may be damaged significantly in a rapidly changing energy market," Energy Michigan said.

While the ALJ said that the issue could be revisited if problems arise, "[t]he promise to revisit the entire issue might come too late for Alternate Electric Suppliers who absorb significant losses and potentially go out of business," Energy Michigan cautioned.

In other exceptions, Consumers Energy continued its push to include the cost of the residential rate subsidy in the delivery rates paid by non-residential retail access customers. Currently, only bundled service non-residential customers pay for the residential subsidy, with retail access customers paying lower, cost-based delivery rates. The Commission has repeatedly rejected attempts to make retail access customers pay for the subsidy.

However, Consumers pointed to the Commission's August decision which imposed a portion of stranded costs on bundled service customers for the first time as prompting the need for retail access customers to pay for the residential subsidy. Previously, only retail access customers paid for stranded costs. Under the Commission's August decision, the stranded costs paid by retail access and bundled service customers are still not equal, and the Commission maintained the previous rate differential by raising retail access stranded cost charges when imposing new bundled service stranded cost charges.

Still, Consumers argued that since, "Full Service customers are helping [retail access] customers pay for stranded costs associated with offering electric choice ... Fairness requires that [retail access] customers pay their share of remaining rate subsidies."

"There is no valid basis that justifies maintaining a subsidy for Alternate Energy Supplier that must be paid for by Full Service customers," Consumers said in advocating for "parity" in distribution rates.

Energy Transfer Partners to Pay $30 Million to Settle FERC Manipulation Claims

Energy Transfer Partners, L.P. will pay $30 million to settle allegations that it manipulated physical wholesale natural gas prices at Houston Ship Channel on specific dates from 2003 through 2005, under a stipulation approved by FERC.

The total represents a $5 million civil penalty and $25 million in disgorged profits. Parties have 60 days to state any claim to the disgorged profits.

The amount is the highest of any settlement related to an enforcement action since Congress gave FERC enhanced enforcement authority under the Energy Policy Act of 2005.

Energy Transfer Partners neither admits nor denies the allegations made by FERC Staff under the stipulation.

Staff had alleged that Energy Transfer Partners artificially lowered the price for prompt month gas at the Houston Ship Channel to benefit of its physical and financial positions. Staff also alleged that ETP suppressed the price of daily gas at the Waha hub, and gave undue preference to affiliated shippers while unduly discriminating against non-affiliated shippers on its Oasis Pipeline for interstate gas transportation system.

FERC had originally proposed $167 million in penalties and disgorged profits in a 2007 show cause order.

As only reported by Matters, an ETP subsidiary, Energy Transfer Retail Power, has applied for a REP certificate before the PUCT (Only in matters, 7/3/09).

Merchant Generators Push for Weekly NYISO Invoicing

Favoring expeditious implementation of weekly invoicing in the New York ISO, the Independent Power Producers Of New York urged FERC to require the New York ISO to file a status report on mediation discussions to implement weekly invoicing by year-end if NYISO does not file a proposal to accelerate billing in the interim. IPPNY's comments came in a docket reviewing a host of other changes to the NYISO's credit policies which do not include weekly invoicing (Only in Matters, 8/24/09).

Calling weekly invoicing "long overdue," IPPNY argued that, "there is a heightened concern that market participants may default on their payment obligations to the NYISO due to diminished liquidity in capital markets, increased borrowing costs, challenges meeting pension funding requirements, decreased overall profitability/liquidity and the potential increase in end-user defaults."

Weekly invoicing would reduce credit exposure from 50 days to 11-15 days, IPPNY said.

Additionally, IPPNY said a move to weekly invoicing was imperative as other RTOs are moving to shorter settlement periods. If NYISO remains the only RTO with longer settlement periods, "market participants will be able to exploit the float period provided by the NYISO's current monthly invoicing to satisfy their obligations in other ISOs/RTOs with shorter settlement periods," leaving NYISO with relatively higher bad debt from such market participants in any defaults, IPPNY contended.

The New York Municipal Power Agency and the Municipal Electric Utilities Association of New York sought to exempt public power entities from two of NYISO's proposed reforms, including the requirement that market participants be required to prepay on a weekly basis expected NYISO charges for an entire year if they miss one payment. Munis called such a requirement "excessive," claiming that it would, "have a devastating effect on municipal members in New York."

"In the case of small companies and municipals, entities that do not have an entire staff of billing personnel and accountants, an invoice may be accidentally processed late (e.g., a snow storm could prevent an employee from getting to work)," the munis said.

Munis also sought an exemption from the proposed elimination of the use of unsecured credit for the purchase of Transmission Congestion Contracts.

Ontario Board Revises Proposed Storage, Transportation Rule Changes

The Ontario Energy Board has issued a revised proposal to modify its Storage and Transportation Access Rule (STAR) governing the competitive storage market, which is meant to ensure non-discriminatory access to transportation services for storage providers and customers (EB-2008-0052).

As only reported by Matters, the Board in April posted a proposal which would have, among other things, required consistent, predictable and transparent methods for allocating transportation capacity, including a requirement that new long-term (one year or longer) firm transportation capacity be offered through an open season (Only in Matters, 4/10/09).

The revised proposal would include two exemptions to the open season requirement, based on stakeholder comment. However, the revised proposal maintains that, "due to the integrated structure of the utilities in Ontario, open seasons are the best means of ensuring that all potential customers have the opportunity to purchase existing long-term firm transportation capacity in an open and transparent manner."

However, in the event that a transmitter holds an open season and is unable to allocate all of its long-term existing firm transportation capacity through that process, the transmitter may offer the residual capacity to shippers by other allocation methods as outlined in its tariff, the revised proposal says.

Additionally, the updated proposal would not require an open season for Union's M16 transportation services since such service is site-specific.

The proposal would also require transmitters to post on their website the standard form of contract for each of its transportation services. Although negotiated contracts will be allowed, they must also be posted online.

Under the revised proposal, the Board would require a storage provider to provide pricing and revenue information semi-annually (on April 1 and October 1) on its website, for firm storage contracts with terms of one year or greater. The pricing and revenue information to be posted must include the following:

- Identity of shipper; and
- The unit charge (annual cost per GJ of storage capacity) and total revenue received from each shipper.

The Board believes that storage contracts with terms of less than a year may be driven by specific customer requirements and pricing information for such contracts may provide limited benefit to the market.

Briefly:

Integrys Energy Services Closes Canadian Sales

Integrys Energy Services said it has closed on the sale of nearly all of its Canadian natural gas and electric power contract portfolio to Shell Energy North America (Canada). The contracts will be integrated into Shell Energy's existing natural gas and power portfolio effective October 1 (Mattes, 7/20/09). In a separate transaction, Integrys Energy Services of Canada completed the sale of its 2 bcf natural gas storage contract to TransCanada Gas Storage Partnership. With the two transactions, Integrys Energy Services has exited electric and natural gas marketing in all provinces in Canada, leaving only its New Brunswick-based power generation and associated electricity production. As a result of the closing of the two transactions, Integrys Energy Group's collateral support requirements, which include corporate guarantees, letters of credit and cash, are expected to be reduced by approximately $300 million by year-end 2009.

ResCom Energy Expects 1,000 Residential Enrollments in First Year

Start-up retailer ResCom Energy said that it expects to enroll 1,000 residential electric customers in the first 12 months of Connecticut operations, according to additional attachments to its application which were made public yesterday after the DPUC denied confidential treatment to the exhibits. As only reported by Matters, ResCom is run by CEO David Cohen, co-owner of Standard Oil of and Standard Security Systems (Only in Matters, 8/31/09). ResCom said that its standard residential and commercial product will be a monthly variable rate with no termination fee. ResCom Energy, will not require security deposits customers.

Ohio Industrials Appeal AEP Electric Security Plan Order

Industrial Energy Users-Ohio appealed the Public Utilities Commission of Ohio's approval of the AEP-Ohio utilities' electric security plan to the state supreme court for, among other reasons, approving 90% of AEP-Ohio's POLR revenue requirement when AEP did not demonstrate any POLR risk, or that it could not mitigate any such risk (Matters, 3/19/09). Industrials also appealed the expected market price which PUCO used to compare the security plan to a Market Rate Offer, and the exclusion of smart grid and POLR costs from the electric security plan price when making the comparison. As only reported in Matters, the Ohio Consumers Counsel is also appealing the PUCO decision (Matters, 9/14/09).

PJM Proposes Framework to Expand Transmission Projects Included in Regional Planning, Cost Sharing

PJM proposed a potential framework for FERC to consider to incorporate public policy "imperatives," such as aggressive integration of renewable resources, into regional transmission planning. Under an informal outline presented by PJM in conjunction with a FERC technical conference, PJM suggested the following: (1) a FERC rulemaking to identify appropriate planning principles, (2) RTO analysis of proposed projects against FERC-articulated standards for reliability, economic, and public policy imperatives; (3) PJM Board action developing and filing of recommendations with the Commission; and (4) Commission action on those recommendations. Of note, FERC would approve regional projects under this approach, to adjudicate the merits of competing proposals to meet the same public policy objective. Currently, under PJM's current regional planning, only cost allocation is submitted for FERC approval, not the actual projects. The FERC rulemaking in step #1 would allow PJM to expand its criteria for economic projects from the current, strict bright-line test in the current tariff, PJM said.

Kelly Declines Additional FERC Term

FERC Commissioner Suedeen Kelly announced that she has declined a nomination to serve another term on the Commission, in order to pursue private sector opportunities. Kelly is to remain on the Commission during an interim period.

O&R ... *from 1*

The PSC also accepted O&R's revised timeline for notifying ESCOs of new service enrollment via PowerSwitch. Under O&R's plan, O&R will provide EDI notice of a new electric customer enrollment on the date of enrollment, although it will provide advance EDI notification for new gas enrollments (which occur on the first of the month). Originally, O&R had proposed no advance EDI notice of enrollment for both commodities, which ESCOs said would not allow them to arrange for supply (Matters, 5/13/09). O&R later agreed that prior notice of gas customer enrollments must be provided to ESCOs in order to effectuate capacity releases and gas scheduling, and said that all gas enrollments whether through PowerSwitch or otherwise, must be timed to provide the ESCO prior EDI notification of enrollment.

While ESCOs had suggested a manual process to provide for advance notification, the Commission accepted O&R's modified ESCO notification proposal, but requested that the Commission be apprised of any problems that result from O&R's notice procedures.

The timing of gas enrollments on the first of the month means even with the expansion of PowerSwitch to new service customers, such new customers may still take LDC supply for up to two months due to the enrollment timing. The Commission agreed with ESCOs that O&R should be required to explain to customers why their PowerSwitch gas enrollment may not occur immediately, and that they may receive supply for O&R for a portion of their first billing cycle.

The Commission denied, as outside the scope of the proceeding, the Small Customer Marketer Coalition's request that O&R allow new service customers to enroll onto competitive supply upon service initiation outside of the referral program. The PSC also rejected SCMC's recommendation that ESCOs be allowed to act as the customer's agent and enroll the customer into PowerSwitch.

The PSC approved, at this time, O&R's plan to recover expansion costs equally from participating ESCOs, although it directed O&R and ESCOs to consider alternative cost recovery mechanisms and report back within 60 days, mostly to consider allocation of costs between dual fuel and single fuel ESCOs. NEM has noted that single fuel ESCOs derive different benefits from the referral program, and has suggested an accommodation be msde for such ESCOs in cost recovery.

The Commission denied a request from SCMC to use unspent funds in O&R's retail access education budget to fund PowerSwitch expansion, as such funds are to be returned to ratepayers.

O&R estimates that the costs of an expanded PowerSwitch program will be $46,100 in the first year, including the costs to modify the existing systems, with ongoing maintenance costs of approximately $4,100 annually. Currently, ten ESCOs participate in PowerSwitch.

Ontario ... *from 1*

Reporting of such market monitoring information is currently voluntary.

The proposed revisions would also change how suppliers are required to report their current customer counts, to categorize customers by remaining contract length, rather than reporting the average length of current contracts.

Gas marketers would be required to report quarterly, on the last day of the second month following the quarter end, information on the total number of customers at the end of the reporting quarter who are low volume consumers (as defined in statute), broken down by type of contract as follows:

a) Contracts with less than one year remaining in the term of the contract;

b) Contracts with greater than one year but less than three years remaining in the term of the contract; and

c) Contracts with between three and five years remaining in the term of the contract.

Electric retailers would be required to report customers based on the same breakdown used by gas marketers, but electric reports would not be restricted to reporting only low volume customers. However, electric suppliers would be required to separately categorize low volume consumers (less than 150,000 kWh annually) and high volume consumers (150,000 kWh or more annually), with those customers further broken down by the criteria listed above. Additionally, electric customer counts would include all accounts, "successfully enrolled (accepted by a distributor for flow)."

Marketers/retailers licensed to act as an agent only would be exempt from the new requirements.

The proposed changes would take effect January 1, 2010.

The Board also proposed several changes in gas LDC reporting requirements, including a requirement to provide quarterly information on gas supply deferral accounts in addition to quarterly information on non-gas supply deferral accounts. Additionally, LDCs would be required to provide detailed information regarding retail market activity, including a breakdown of migration activity such that switches to competitive supply, switches back to LDC supply, and switches from one marketer to another are tracked separately in addition to aggregate statistics.

LDCs would also be required to update unaccounted for gas on a quarterly basis.