Energy Choice Matters

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N.Y. PSC Adopts ConEd-Style Contest Period for ESCO Enrollments

Some three years after an initial petition, the New York PSC approved something of a contest period during ESCO enrollments, adopting a process employed by Consolidated Edison rather than the mechanism initially outlined by then-named U.S. Energy Savings (Just Energy).

Under Just Energy's original proposal in August 2006, a contest period would have been added to the Uniform Business Practices starting when an ESCO (the pending ESCO) submits an enrollment to a distribution utility on behalf of a customer currently receiving service from a different ESCO (the incumbent ESCO). During the contest period, the incumbent ESCO, with customer authorization, would be allowed to cancel the pending enrollment with the pending ESCO so that the customer remains with the incumbent ESCO, rather than requiring the customer to call the utility or the pending ESCO to cancel the switch as under the current rules.

Just Energy argued that a contest period would reduce confusion and slamming while helping customers avoid early termination fees. Just Energy's proposal would have been implemented through a series of new 814 reinstatement and drop transactions. Just Energy also requested that, within two business days of receiving the enrollment request, the distribution utility be required to provide the pending ESCO notice that a customer is already served by an ESCO.

There was no consensus among ESCOs to support a contest period. Among those opposing the contest period, Intelligent Energy said that the contest period would deny customers their most recent choice, and could expose customers to termination fees from their pending ESCO.

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PPL Files POR Discount Rates, Revises All-In Requirement

PPL Electric Utilities has proposed that the discount rate for residential receivables purchased from competitive retail suppliers shall be 1.37%, representing an uncollectible rate of 1.32% and an administration charge of 0.05%. The rate would apply to PPL's one-year POR program for 2010 (with POR beyond 2010 subject to future proceedings).

PPL proposed a discount rate of 0.17% for small commercial and industrial customers, reflecting a 0.12% uncollectible rate and 0.05% administration charge.

PPL said that the uncollectible rates reflect data from its most recent rate case, based on the average of actual bad debt write-offs from 2002-2006.

As only reported by *Matters*, in its initial filing PPL proposed to require that suppliers include all customers in the POR program in order to be eligible for POR, despite a Commission order expressly directing PPL to refrain from including an all-in/all-out requirement (Only in Matters, 9/14/09).

In its pro forma tariff filed last week, PPL amended its all-in proposal such that a competitive supplier would only have to place all customers in a certain broad customer class onto POR. PPL's revised proposal would allow suppliers to use POR (which would only permitted with utility consolidated billing) for residential customers while dual billing small commercial customers, or vice

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Central Hudson Files to Expand Mandatory Hourly Pricing on May 1, 2011

Central Hudson filed with the New York PSC its plan to implement mandatory hourly pricing on May 1, 2011, for S.C. No. 2 customers with demands exceeding 500 kW in any two of the previous twelve months. Currently, hourly pricing is mandatory for customers with demands over 1,000 kW (S.C. Nos. 3 and 13).

As only reported by *Matters*, the Commission ordered the expansion of mandatory hourly pricing in Central Hudson's last rate case, directing that hourly pricing be implemented in early 2011 (Only in Matters, 6/23/09).

Central Hudson proposed the May 1, 2011 date to coincide with the start of revised capacity pricing adopted by the Commission (moving to a peak-hour based charge), so that customers are not confused by first moving to hourly pricing and then being subjected to a change in the capacity pricing mechanism. The May 2011 start date also provides sufficient time for customer education, Central Hudson said.

Under Central Hudson's plan, meters would be installed for new hourly pricing customers by May 2010 to provide customers with a year of hourly usage before mandatory hourly pricing begins.

Central Hudson plans to conduct two series of seminars to educate customers on hourly pricing and related topics: one series in early 2010 to introduce the program and one in early 2011 to provide more specific hourly pricing information. In April 2010 Central Hudson plans to offer a seminar at several locations throughout its service territory to: (1) provide customers with an overview of hourly power markets and the mandatory hourly pricing provision, (2) introduce them to the Energy Manager software, and (3) provide information on energy efficiency. All potential and existing mandatory hourly pricing customers (both full service and retail access) will be invited to attend.

In March 2011 Central Hudson plans to hold a second seminar, again at several locations throughout its service territory, to provide customers with details on how hourly pricing will work, and information on supply alternatives. In addition to new S.C. No. 2 customers, all S.C. Nos. 3 and 13 customers will be invited to these seminars to learn about the new capacity pricing effective May 1, 2011.

The first half of the 2011 seminars will focus on the details of hourly pricing. Central Hudson plans to program the second-half of each of seminar as an expo-style format. After a brief discussion of retail access, customers will have the opportunity to speak with representatives of ESCOs operating in Central Hudson's service territory. Central Hudson reported that as of September 1, 2009, 66 of the 109 S.C. No. 2 customers subject to the hourly pricing expansion are participating in the company's retail access program.

Central Hudson said that its Energy Manager software currently allows electric customers to view their hourly usage through midnight of the prior day by approximately 11:00 a.m. each morning. The utility is working to accelerate the daily posting of hourly load data such that the data will be available by approximately 4:30 a.m. each morning.

Central Hudson estimated material and labor costs for the required meter installations/ replacements at approximately $200,000, with the total varying due to site-specific circumstances that might require variations in metering hardware to accommodate different types of communications equipment. It is estimated that initial, one-time costs associated with required additional data acquisition hardware and software will be approximately $5,100, with recurring monthly costs of about $130 per month. New hourly pricing customers under S.C. No. 2 will be provided access to the Energy Manager software free of charge during the period from final meter/phone line installation through April 30, 2011, which will cost the utility approximately $2,180 per month (109 customers at about $20 per month).

FirstEnergy EDCs: NOPEC Criticism of CSP Shows "Disdain" for Competing for Customers

Criticisms of the FirstEnergy Ohio utilities' corporate separation plan by the Northeast Ohio Public Energy Council, "appear to be more directed at lamenting about having to compete for customers rather than any specific shortcoming of the Companies' practices as described in the Corporation Separation Plan," Ohio Edison, Toledo Edison and Cleveland Electric Illuminating said in a reply filed with the Public Utilities Commission of Ohio (Only in Matters, 9/4/09).

As only reported by *Matters*, NOPEC made various, non-specific allegations that FirstEnergy Solutions' marketing practices to solicit prospective customers in the NOPEC aggregation territory, including FirstEnergy Solutions' relationship with the three FirstEnergy distribution utilities, violated PUCO rules. NOPEC also called the FirstEnergy utilities' corporate separation plan deficient, lacking detailed descriptions of how affiliate abuse would be prevented.

However, the FirstEnergy utilities contended that SB 221 did not materially alter the previously required corporate separation plans, aside from two modifications. First, SB 221 added a provision regarding the sale of utility-owned generating assets (which the FirstEnergy utilities no longer have); and second, SB 221 subjected corporate separation plans under R.C. 4928.17 to the provisions of R.C. 4928.142 and R.C. 4928.143.

"S.B. 221 did not create a new standard that must be met through a corporation separation plan and did not provide new additional authority to the Commission in this regard," the FirstEnergy companies said, who argued that the plan that they filed is consistent with their current plan to meet the existing (and unchanged) requirements. "[T]he Companies' Plan is designed to prohibit practices that may give an undue advantage to their competitive affiliates and to restrict the flow of information consistent with the code of conduct. These requirements specifically address NOPEC's concerns, and the Plan as filed achieves these purposes," the utilities said.

"NOPEC's unauthorized comments overall are more directed at its disdain for competing for customers ... rather than any shortcomings in the Companies' implementation of the corporation separation rules," the FirstEnergy companies said.

Generators Press for Specificity on Exclusion of Uncompetitive Offers from RPM CONE Analysis

While generators generally supported PJM's proposal to set Cost of New Entry (CONE) in the Reliability Pricing Model using the Handy-Whitman Index, generators said that PJM needs to provide more clarity regarding the exclusion of uncompetitive offers from an analysis of whether additional CONE adjustments are needed. Several generators also protested the use of RPM auction clearing prices in determining whether CONE should be revised apart from the Handy-Whitman adjustment.

As first reported by *Matters*, the Handy-Whitman Index would be used to adjust CONE annually. Additionally, every four years, PJM would conduct a comprehensive analysis of the Cost of New Entry based on (i) clearing prices in the RPM auctions that cleared new entry offers and (ii) the offers for new entry by resources of the same type as the then-effective Reference Resource submitted in the four preceding Base Residual Auctions (Matters, 9/2/09).

While PJM said that it would not include uncompetitive new entry offers in its analysis, generators protested the lack of a specific criteria in PJM's proposal. Dayton Power & Light protested that PJM appears to argue that an objective criteria for determining uncompetitive bids ahead of time cannot be developed, rendering PJM's test for determining the competitiveness of an offer to, "I know it when I see it." Dayton cautioned that an opportunity exists for a small group of stakeholders, perhaps including state regulators, to drive capacity prices down artificially through non-competitive entry offers.

While PJM said that new entry offers reflecting any uncompetitive distortion, such as direct subsidies, preferential financing, or feed-in tariffs, would be deemed non-competitive, the PPL companies noted that the list could be more exhaustive, to include out-of-the-money Power Purchase Agreements, deliverability contingencies, or terms that were not the product of arms'-length bargaining

Mirant, FPL Energy, and Edison Mission Energy suggested following the process used in ISO New England where capacity auction rules require low new entry offers to be consistent with the long run average costs of that resource net of expected net revenues other than capacity revenues.

Mirant et. al. also urged FERC to remove the use of clearing prices from PJM's four-year review of CONE, arguing that clearing prices are influenced by a variety of factors (transmission upgrade costs, demand resources, and other parameters of the Variable Resource Requirement Curve) which are not relevant to the cost of constructing a reference resource in PJM. Only competitive new entry offers should be used, the generators said.

Notwithstanding PJM's failure to justify the use of clearing prices as a basis for estimating future CONE values, RRI Energy said that if the their use is allowed, PJM must exclude clearing prices that were lowered as a result of non-competitive new entry offers. "This would include situations where a non-competitive new entry offer either sets the clearing price or displaces competitive offers that would have resulted in a higher clearing price," RRI said.

Old Dominion Electric Cooperative and North Carolina Electric Membership Corporation protested that PJM's proposal fails to take into account uncompetitive offers designed to artificially raise, not lower, capacity prices, such as offers resulting from a high-bid strategy. Such offers designed to falsely increase the clearing prices for capacity must be excluded from the four-year CONE analysis, the munis said.

In a separate docket containing consensus proposals relating to RPM, the New Jersey Board of Public Utilities said that the derating of generation, the expectation of further retirements, and the likelihood of increased exports to New York City, all coupled with the relative lack of new New Jersey generating capacity clearing in the first six Base Residual Auctions, "indicate that an exploration of needed revisions to RPM is in order ... [which] should include the possibility of longer-term certainty of revenues for new generating capacity."

ISOs/RTOs Tout Organized Markets as Beneficial to Renewables, Demand Response

The Independent System Operator/Regional Transmission Organization Council released a 2009 State of the Markets Report yesterday touting organized markets as facilitating renewable integration and demand response. The ISO/RTO Council also credited organized markets with: creating new efficiencies in plant operations; significantly improving grid reliability; sending clear, timely, and transparent pricing signals; and expanding regional planning.

The Council noted that RTOs have nearly 32,000 MW of available demand response in North America, up from 17,000 MW in 2006.

Additionally, the Council said that organized markets provide one-stop shopping for interconnection of renewable generation, while providing such resources with access to a spot market for energy, plus financial mechanisms such as financial transmission rights and day-ahead market schedules to define transmission system entitlements. Nearly 80% of U.S. wind capacity operated in organized markets in 2008, the Council said.

Noting that organized markets support efficient new generation, the Council reported since 2001 installed new capacity increased by nearly 27,000 megawatts in ERCOT, a 50% increase. The increase in installed capacity for nine of the 10 ISO/RTOs was 20% during the same time frame.

The Council also cited a litany of fuel-adjusted price comparisons showing that spot energy prices have fallen in RTOs when adjusting for fuel costs. The comparison is of spot energy market prices, and the Council does not provide comprehensive all-requirements comparisons to capture capacity prices as several RTOs have added centralized capacity markets in recent years.

Briefly:

Chautauqua Energy Seeks Pa. Gas License

Chautauqua Energy Management applied for a Pennsylvania natural gas supply license as a supplier, broker/marketer and aggregator to serve all sizes of non-residential customers at

National Fuel Gas Distribution.

AllStar Energy Partners Applies for Conn. Aggregator Certificate

AllStar Energy Partners, LLC applied for an electric aggregator license at the Connecticut DPUC. AllStar currently brokers in most Northeast markets as well as ERCOT. AllStar said it works with various suppliers including Gexa, Constellation, Direct, ConEdison Solutions, Pepco Energy Services, Hess, Hudson and TransCanada.

Aspen Energy Seeks Ohio Gas License

Aspen Energy Corporation applied for an Ohio natural gas broker/aggregator license for all customer classes in all LDC territories. Aspen recently applied for an electric license as well (Only in Matters, 9/21/09).

Draft DPUC Order Finds No Investigation of Electric Rate Differentials Required

A draft Connecticut DPUC decision would conclude that the rate differentials in 2006, 2007, and 2008 between residential and industrial customers were less than the rate differential in 1998, meaning an investigation into the rates is not required. Statute requires the DPUC to open an investigation if it determines that the rate differential for electric service between residential and industrial customers has increased by three percentage points or more from the rate differential that existed on January 1, 1998. The DPUC's conclusions were based on using Standard Service or Last Resort Service rates as a proxy of the supply component paid by customers in 2006-2008, while recognizing that customers also take service from competitive supply. The DPUC found that industrial rates at Connecticut Light and Power were 34.3% lower than residential rates in 1998, 32.3% lower in 2006, 12.1% lower in 2007 and only 1.9% lower in 2008. At United Illuminating industrial rates were 35.6% lower than residential rates in 1998, 32.3% lower in 2006, 20.9% lower in 2007, and 22.7% lower in 2008.

MISO Requests Extension for RSG Filing

The Midwest ISO requested a 30-day extension, until December 5, 2009, for a compliance filing regarding its proposed Revenue Sufficiency Guarantee charge exemptions, to be based on the result of an RSG task force analysis. MISO said additional time is required to complete the analysis, especially as the scope of the analysis is currently in dispute between MISO and financial marketers (Only in Matters, 9/21/09).

PUCT Approves Commerce Certificate Withdrawal

The PUCT approved Commerce Energy's request to relinquish its REP Certificate (No. 10029) as it has not served customers since selling its ERCOT book to Ambit Energy last fall. The unused certificate is held by Just Energy after a series of acquisitions.

FirstEnergy Solutions Accelerates Construction of Fremont Plant

FirstEnergy Solutions said yesterday it expects to complete construction on the Fremont Energy Center by the end of 2010 as originally planned, and have the plant available to operate in 2011. FirstEnergy Solutions had previously announced that it would extend the plant's construction schedule through 2012 in response to the slowing economy and lower electricity demand. With the changes in construction scheduling, FirstEnergy Solutions now estimates that it will cost approximately $200 million to complete the plant. The partially complete plant, located in Fremont, Ohio, was purchased from Calpine Corporation in January 2008. The Fremont Energy Center includes two natural gas combined-cycle combustion turbines and a steam turbine capable of producing 544 MW of load-following capacity and 163 MW of peaking capacity.

ETP CEO Warren "Disgusted" by FERC Enforcement Staff

"FERC needs to take a long, hard look at how its Enforcement Staff conducts itself to ensure the natural gas industry receives the fairness and due process it rightly deserves," Energy Transfer Partners CEO Kelcy Warren said in a statement yesterday concerning a settlement reached between FERC and ETP regarding allegations of price manipulation (Matters, 9/22/09). Warren noted that in FERC Staff's separate enforcement proceeding against ETP's

Oasis Pipeline, an ALJ's initial decision earlier this year granted Oasis' summary judgment motion relating to the primary claim against Oasis. "I continue to be disgusted by the manner in which the FERC Enforcement Staff administers the FERC's enforcement powers," Warren added.

Contest Period ... *from 1*

Subsequent to Just Energy's proposal, Consolidated Edison developed its own process to address issues related to a contest period in December 2006. Under the ConEd process, an incumbent ESCO, having obtained authorization from its customer to cancel a pending enrollment, transmits to the distribution utility a specially coded EDI Drop request that cancels the pending enrollment. Upon receipt of the drop request from the incumbent ESCO, the utility transmits an EDI Drop transaction to the pending ESCO. The customer also receives a letter from ConEd confirming the request to stay with the incumbent ESCO.

The Commission found ConEd's mechanism to be a less complicated means to implement a contest period versus Just Energy's proposal, and generally adopted the process. However, the Commission noted the amended EDI transactions used by ConEd have neither been issued for formal comment, nor approved by the Commission. Accordingly, the PSC directed ConEd to file its proposed modifications to the current New York EDI transaction standards and any other related documents necessary to implement its variant of the contest period within 30 days. Commission Staff was directed to issue revised EDI transaction standards for formal comment.

The PSC modified UBP Section 5.D.6 to state that an incumbent ESCO may cancel a pending enrollment consistent with the adopted form of a contest period.

The Commission said it approved a contest period to reduce calls to the utility call centers for the purpose of cancelling pending enrollments, but added that, "we remain concerned that implementation of the contest period could lead to increased allegations of slamming."

The Commission stressed that under the contest period, the incumbent ESCO is prohibited from canceling a customer's enrollment with a pending ESCO unless it has specific authorization from the customer to cancel the pending enrollment, under the processes permitted in the UBPs. The incumbent ESCO must retain verifiable authorization from the customer in a manner consistent with UBP Section 5.K.3. "If an incumbent ESCO cancels a pending enrollment, and the customer did not authorize the cancellation, it will be considered a slam. In that case, the ESCO's records could be subject to audit by Staff and the ESCO could be subjected to the consequences identified in UBP Section 2.D.5.b," the Commission said.

The PSC further stressed that ESCOs cannot rely on prior agreements with customers to cancel pending enrollments, and cannot re-enroll customers based on the lack of written notice of cancellation, denying an argument made by Liberty Power. "In response to the comments of Liberty, contracts that allow an incumbent ESCO to 're-enroll' a customer upon receipt of a drop notice from a distribution utility without specific customer authorization for the re-enrollment are inconsistent with the UBP. In this instance, the re-enrollment without customer authorization could be slamming, and customer complaints regarding such re-enrollments by an incumbent ESCO would be considered slamming complaints. Additionally, the UBP does not require customers to submit written notice to the incumbent ESCO to cancel service with that ESCO before enrolling with another ESCO or returning to the distribution utility. We see no reason to change the status quo. It is not the role of distribution utilities to enforce specific ESCO service contract provisions, thus a customer need only contact his or her distribution utility to change service providers," the Commission reiterated.

The Commission will not require, as requested by Just Energy, that utilities provide specific notification to ESCOs upon enrollment that the customer is being served by another ESCO. The PSC said that such information is currently provided in the 814 EDI enrollment transaction, which shows the rate class (e.g., retail choice rate) of the customer.

The Commission declined to modify the start of the rescission period in the instant case due to the introduction of a contest period, as suggested by Intelligent and others. However, the Commission said that it is willing to entertain future proposals for modifications to the rescission period. Intelligent had suggested that the rescission period start only after the enrollment is submitted to the distribution utility, while ConEd further recommended that the rescission period extend to three days before the customer is switched to another supplier.

The PSC also did not act on requests to limit the ability of customers to enter into agency relationships with ESCOs to only non-mass market customers, as suggested by the joint utilities.

PPL ... from 1

versa. However, if any customer within a class is not on POR, then the supplier would be ineligible for POR (e.g., a supplier could not use POR for some residential customers and dual billing for other residential customers).

PPL has argued that an all-in provision is necessary to prevent cherry-picking of good credit customers for dual billing, raising actual uncollectibles above the discount rates and the rate in the Price to Compare.

Under PPL's pro forma tariff, a supplier could opt onto POR any time during its one-year term, but a supplier would not be permitted to remove customer accounts from utility consolidated billing with POR for 12 consecutive billing cycles.

Under POR, electronic payments to suppliers will occur 25 days after the issuance of utility consolidated residential bills and 20 days after the issuance of utility consolidated small commercial and industrial bills.

PPL's pro forma tariff would also apply the uncollectible percentages contained in the POR discount rates to a bypassable Merchant Function Charge, unbundling such expenses from base rates as previously reported.