Energy Choice Matters

September 24, 2009

PPL Seeks Clarification of Information Customers Can Restrict from Customer Lists

Citing an apparent conflict between a 1999 Pennsylvania PUC order relating to the provision of customer lists to competitive suppliers by electric utilities and the Commission's electric choice regulations, PPL petitioned for clarification of the PUC's August order directing PPL to update its customer lists available to competitive suppliers (Matters, 8/17/09).

The Commission had directed PPL to update its customer lists made available to suppliers as part of an order to remove barriers to competition ahead of the expiration of rate caps. In order to refresh its customer list, PPL must inform customers of their ability to restrict information shared with suppliers.

Based on PPL's review of (1) the Commission's electric choice regulations at 52 Pa. Code § 54.8; (2) the Commission's May 18, 1999 order in Docket M-00991230; (3) the Commission's customer disclosure regulations for gas LDCs; and (4) information on the PUC's website, PPL said that there is conflict regarding what information customers are allowed to restrict electric distribution companies from disclosing to retail suppliers.

PPL said that 52 Pa. Code § 54.8 provides that a customer may restrict the release of their phone number and billing history, but does not specifically provide that the customer may restrict the sharing of other information (such as name and address).

The PUC's subsequent 1999 electric choice order found that customers can restrict the release of all information, not just phone number and billing history. Additionally, the 1999 electric order held that a distribution company may not share the customer's phone number with a competitive supplier,

Continued P. 4

NYSEG/RG&E Propose Single Block Bidding Energy Efficiency Solicitation for 2010

NYSEG and Rochester Gas & Electric propose to conduct a single Block Bidding energy efficiency competitive solicitation in 2010, should the New York PSC approve the Block Bidding program at its December 2009 Open Session, the two utilities said in an update on the Block Bidding program.

NYSEG and RG&E said that they are open to the possibility of conducting a second Block Bidding solicitation during the 2010-2011 period.

Part of the utilities' energy efficiency portfolio standard plan, the Block Bidding program is open to independent parties such as ESCOs, performance contractors, management companies and individual customers. The Block Bidding program is designed to create additional ways for customers to achieve electric and gas energy savings that would increase total electric and gas savings above the levels expected from previously approved utility programs.

Unlike NYSERDA's Block Bidding program, the NYSEG/RG&E program is not limited to, or specifically focused on, large industrial customers.

NYSEG and RG&E proposed to procure Block Bid efficiency through a procurement similar to the state's main-tier RPS solicitations. Specifically, the utilities would use a sealed-bid, pay-as-bid RFP to procure resources under the Block Bidding program. As in the RPS process, the Commission would approve the methodology and criteria to be used to procure resources, in lieu of the

Continued P. 5

MXenergy Completes Exchange Offer, Consent Solicitation

MXenergy Holdings announced that it has successfully completed its offer to exchange the company's outstanding Floating Rate Senior Notes due 2011, and its corresponding solicitation of consents from holders of the notes for certain amendments to the indenture under which the Notes were issued.

Completion of the exchange offer and consent solicitation allows MXenergy to continue on its restructuring process, as exclusively reported by *Matters*. MXenergy had previously disclosed that failure to consummate the exchange offer, whose deadline had been extended for nearly two months, would have significantly impaired its ability to continue as a viable business and likely would have prompted bankruptcy proceedings (Only in Matters, 7/2/09)

As part of the restructuring, MXenergy has entered into new combined supply and hedging facilities with Sempra Energy Trading, which replaced MXenergy's existing revolving credit facility with a syndicate of financial institutions and existing hedge facility with Societe Generale. Sempra Energy Trading received a 7.37% stake in MXenergy and the ability to nominate a board member as part of the transaction (Only in Matters, 8/21/09).

MXenergy said that it has repaid and terminated its existing $12 million credit facility with Denham Commodity Partners LP.

In addition to issuing new notes in the exchange offer, MXenergy paid noteholders $28.6 million in aggregate cash, plus nearly 34 million shares of Class A common stock, representing, in the aggregate, 62.5% of the outstanding shares of common stock of the company.

Just Energy Seeks Michigan Gas License

Just Energy submitted an application for an alternative gas supplier license to the Michigan PSC. Through an acquisition, Just Energy owns the existing license of Universal Energy, and Just Energy's application is a revision of a pending Commerce Energy application originally filed in May (Only in Matters, 5/25/09), again acquired through the Universal acquisition.

Just Energy said that among several consumer protection measures, its Michigan contracts will include a disclosure box on the front page listing material terms and conditions, stating the following:

1. Price
2. Term
3. The contract does not guarantee savings
4. Just Energy is not affiliated with the local utility
5. Explanation of early termination fees
6. Cancellation rights under law as well as an extended cancellation period offered by Just Energy.

Just Energy will allow customers to cancel the contracts with no early termination penalty up to 30 days after the customer's first Just Energy bill.

Customers will be required to sign the contract twice, once in the disclosure box, and a second time on the bottom of the page.

Just Energy will verify all of its Michigan sales through third-party verification or, in cases where a TPV cannot be obtained, in writing as a response to a verification letter sent by Just Energy after the contract is signed, containing the same information as the TPV script.

The verification procedure will confirm price and term, and also provide:

- A positive confirmation that the customer understands the contract does not guarantee savings;
- A positive confirmation that the customer understands that Just Energy is not affiliated with the local utility;
- A statement outlining the exit fee applicable for early termination; and
- A statement of cancellation rights under law as well as an extended cancellation period offered by Just Energy.

Just Energy said that it will comply fully with the settlement agreement between Universal Energy and PSC Staff, including the provisions related to exit fees (Matters, 4/17/09). Under the settlement, Universal voluntarily agreed that it will only offer contracts for one year with a $50 termination fee, and two years with a $100 termination fee, for a period of twelve months. The provision does not limit the termination fee that Universal may charge commercial accounts using more than 2,000 Ccf per year.

WMECO Seeks Clarification on Number of Supplier Offers in Referral Program, Cost Allocation

Western Massachusetts Electric Company filed for clarification of the Massachusetts DPU's order approving a supplier customer referral program to clarify how many offers electric distribution companies must provide to customers per supplier, in addition to seeking clarification on the timeline between receiving supplier offers and producing bill inserts containing the offers (an issue also raised by National Grid, see Matters, 9/21/09).

While a group of retail suppliers had suggested developing a standard product for the referral program, the DPU rejected that proposal, finding that the program should contain no limitation on the type of offer permitted. However, the DPU was silent as to how many offers a specific supplier could offer under the program.

WMECO asked for clarification on whether there is any limit, raising logistical concerns especially with respect to the bill insert program, but also stating that a multitude of different offers from the same supplier in both the bill insert and referral webpage could create confusion.

WMECO noted that as more suppliers submit multiple offers, a longer and heavier bill insert will be required, raising postage costs. The DPU's order held that suppliers are responsible for incremental costs of the referral program, but WMECO asked for clarification on how such costs should be allocated especially if suppliers are permitted to submit multiple offers.

"For example, if one supplier submits a number of offers, and in so doing, causes, solely because of its action, the need to print additional bill insert panels and the need to incur additional postage expense, it is not clear if all competitive suppliers should be assessed equally," WMECO said.

FERC Rules CAISO Default Loss Rule Unreasonable, Orders Settlement Procedures

The California ISO's current default loss rule is unjust and unreasonable since it only allocates default losses to CAISO creditors even though other market participants benefit from the CAISO markets, FERC ruled yesterday. However, an alternative default loss rule proposed by several wholesale suppliers has not been shown to be just and reasonable, FERC said, in setting the matter for settlement discussion and, if need be, hearing (Matters, 7/2/09).

FERC agreed with a coalition of California sellers that, "because all market participants benefit from their participation in liquid ISO/RTO markets, it would be equitable for a default loss allocation rule to apply to all market participants."

"In this case, we agree with the Complaint's contention that the Default Loss Rule is unjust, unreasonable, and unduly discriminatory because it only allocates default losses to CAISO Creditors. While CAISO Creditors can include buyers if they make net sales over the relevant time period, they are primarily sellers and these entities bear a disproportionate share of default risk," the Commission held.

"It is beyond doubt that buyers as well as sellers benefit from a liquid wholesale energy market, such as the one administered by the CAISO," FERC added, citing benefits from diversity of sellers in a market as well and locational marginal pricing.

However, FERC said that the sellers' alternate proposal which would broadly allocate defaults to all market participants based on the value of their market transactions with no netting of transactions, "fails to adequately demonstrate whether market participants with both load and generation should be allowed to net certain transactions and does not adequately demonstrate whether certain participants (e.g., self-suppliers) should be exempt from the default allocation rule."

Incumbent LSEs had objected to the sellers' proposed alternative because the proposal would treat self-supplies as market activity for the purpose of allocating defaults, although LSEs noted that the only reason such transactions occur in the market is for logistical purposes, arguing that LSEs receive no market benefits from self-supply (Matters, 7/21/09).

Accordingly, FERC set the matter for hearing and settlement procedures, with a refund date of June 30, 2009.

Brookfield Says FERC Cannot Allow Private Prosecution of Manipulation Complaint

Brookfield Energy Marketing filed for rehearing of FERC's order setting a complaint from Connecticut load representatives against certain New England capacity importers for hearing, arguing that no private right of action exists under section 222 to the Federal Power Act (First in Matters, 8/25/09).

In an August decision, the Commission ordered hearings despite the "poorly supported" complaint of the Connecticut parties. However, in a departure from precedent, the Commission allowed the Connecticut parties to prosecute the complaint and bear the burden of proof, rather than FERC Enforcement Staff conducting prosecution, Brookfield said.

Brookfield contended that such private action is expressly prohibited by section 222 of the Federal Power Act. Although FERC said that section 306 of the Federal Power Act confers a private right of action for manipulation claims, Brookfield said such an interpretation, "is wrong as a matter of law because it fails to give effect to the plain meaning of section 222(b)," which holds there is, "[n]o private right of action."

While Brookfield said that complaints may be brought before FERC by private parties under section 306, only FERC has authority to prosecute such complaints if the Commission proceeds to hear the complaint.

Briefly:

Amerex Seeks Texas Aggregation License

Amerex Brokers, which has long brokered individual ERCOT load, applied for an aggregator certificate at the PUCT to pool all classes of customers, although its initial focus will be on providing aggregation services to commercial and industrial users.

Energy Choice LLC Receives Conn. License

The Connecticut DPUC granted Energy Choice LLC an electric aggregator license to pool all classes of customers. Principal Richard Sattler has a background in load management and energy efficiency projects, with various positions at New England Conservation Services as well as Northeast Utilities Service Company. Energy Choice will offer customers two main products: a fixed and a variable rate, with the variable rate targeting both residential and small commercial customers (Matters, 7/21/09).

PUCO Approves FirstEnergy Program to Buy Distributed Residential RECs

The Public Utilities Commission Of Ohio approved a program under which the FirstEnergy utilities will purchase RECs from residential customers with distributed generation on contracts lasting 15 years. Pricing will be based on REC prices in the utilities' most recent REC procurement or (for customer-sited solar RECs) the companies' most recent solar REC procurement. Costs will be recovered through bypassable Rider AER. Eligible customers will only be able to execute REC sale agreements under the program through May 31, 2011.

PUCO Sets Workshop on Excessive Earnings Test

The Public Utilities Commission Of Ohio scheduled a workshop be held October 5 regarding the development of a methodology for the significantly excessive earnings test to be applied to electric distribution utilities under electric security plans or market rate offers.

CAISO to Hold Stakeholder Symposium

The California ISO announced a stakeholder symposium October 7-8 to facilitate a comprehensive discussion of market and grid issues, including (1) environmental stewardship, (2) markets, monitoring and technology enhancements, (3) infrastructure development, and (4) operations and compliance. FERC Chairman Jon Wellinghoff and California PUC President Michael Peevey will give keynotes.

PPL ... *from 1*

even if the customer does not affirmatively restrict its release. The Commission's website, in informing customers of their ability to restrict information sharing, similarly states that customers can instruct the utility not to release all of their personal information. Additionally, the website informs customers that phone numbers are not provided to suppliers.

Subsequent to issuing electric choice regulations in 52 Pa. Code § 54.8, PPL noted that the Commission issued regulations governing disclosure of natural gas information. Unlike the electric code, the gas code in 52 Pa. Code § 67.78 holds that an LDC may not share a customer's phone number with a competitive supplier, and specifically holds that a customer may restrict the sharing of all their information (rather than just phone number and billing history).

PPL proposed sending an information disclosure notice to customers informing customers that generation rate caps will expire on January 1, 2010, and that if the customer wishes to receive and consider competitive offers, they should not opt out of disclosing their customer information to suppliers. PPL proposed giving customers 15 days to opt out. If PPL does not receive a response within 15 days, that customer's information would be posted on the utility's customer information database.

Given the background of various provisions relating to customer information disclosures, PPL proposed a process consistent with the PUC's 1999 choice order (and natural gas codes), rather than the earlier electric code in 52 Pa. Code § 54.8.

Specifically, PPL would not make a customer's telephone number available to competitive suppliers, though 52 Pa. Code § 54.8 contains no such prohibition. Additionally, although 52 Pa. Code § 54.8 does not explicitly permit a customer to restrict the sharing of any information aside from phone number and billing history, PPL would give customers the option to restrict the sharing of all of their information consistent with the 1999 electric choice order.

PPL would give customers two options:

1) Restrict the release of only their historical billing data, or

2) Restrict the release of all of their private customer information, including name, service address, and all other categories.

PPL said it will not send the information disclosure notices to customers until the Commission clarifies the applicable rules. PPL asked for expedited consideration, with a decision at the PUC's October 8 meeting.

If the PUC adjudicates PPL's request on October 8, PPL said it could provide large commercial and industrial customer lists to suppliers by November 2009, and customer lists for other customer classes by December 2009.

NYSEG/RG&E ... from 1

Commission approving the individual successful proposals that were ultimately selected in the RFP.

The procurement process is projected to require roughly four months, to allow time to develop a list of interested bidders, finalize and issue an RFP, provide a six-week period for bidders to develop their proposals, and conclude with proposal evaluation, selection, negotiations, internal approvals, and PSC Staff consultations required prior to contract signature.

Unlike RPS, bidders would not be required to post security for the Block Bid program, since energy efficiency programs are not exposed to the same permitting and construction risks as renewable generators. Instead, NYSEG and RG&E would retain the right to terminate or reduce the size of contracts with bidders whose programs fail to meet their contractual commitments to deliver expected savings in a timely manner. The distribution companies would also retain the right to increase the size of contracts with bidders whose programs prove capable of delivering more savings than originally anticipated.

"Bidders will need a reasonable time opportunity to recover their initial investments, and to achieve sufficient revenues to justify their involvement in the Block Bidding Program," NYSEG and RG&E said. "The Companies believe that bidders will be discouraged if required to commit to a contract duration that is shorter than two years plus the duration of the startup period. If they launch their programs in the third quarter of 2010, contracts should extend through at least mid-2012," the utilities proposed.

"Under certain circumstances, it may be necessary for the Companies to entertain even longer contract periods. This might be true, for example, in the case of programs that produce savings that are sustainable only if regularly or consistently reinforced. It may also be true for programs that will require an extended roll-out or ramp-up period to achieve full scale, or that will require the bidder to develop new personnel or facilities infrastructure in New York State to implement the program."

Accordingly, NYSEG and RG&E requested the ability to execute contracts that will extend beyond the end of 2011, with a corresponding extension through the end of those contracts of the system benefit charge (SBC) necessary to recover the associated costs.

Both bid price and total cost to NYSEG and RG&E would be considered when evaluating Block Bidding proposals. Total cost would include both bid price and the costs incurred by the utilities to carry out their responsibilities as operating partners to the bidder, and to evaluate the program.

To be eligible for consideration in the Block Bidding Program, a proposal must have a Total Resource Cost (TRC) test benefit-cost ratio greater than 1.0.

Additionally, the sustainability or lifetime of savings of bid program will be taken into account when analyzing price and cost. As the utilities believe that the PSC, in its energy efficiency portfolio standard orders, has found TRC test results to be a more critical cost-related criterion for purposes of approving programs than $/kWh or total cost, the utilities would place a higher relative importance on TRC as a way to evaluate program costs when evaluating bids.

Favorable consideration would also be given to innovative program designs and customer recruitment approaches; programs that target hard-to-reach markets; and programs that have been demonstrated to produce changes in customer behaviors that influence energy consumption.

Furthermore, all bidders must demonstrate that their proposals will avoid reducing the savings expected to be achieved by programs already approved by the Commission, and will instead contribute additional savings toward the energy efficiency portfolio standard gas and electric savings goals for the NYSEG and RG&E service territories.

Finally, every proposal must exceed a minimum size of 1,000 MWh/year for the duration of the savings lifetime specified by the bidder, which the utilities said will help to better align administrative and evaluation costs with the anticipated scale of the proposal.

Any electric measures, usage behaviors, or usage processes may be targeted by the bids, unless specifically prohibited by the Commission, to any customer class paying the SBC. Demand response measures would not be considered for the Block Bidding program, nor would renewable resources that qualify for, or are under consideration for, incentives under the RPS.

NYSEG estimates that by 2012, the Block Bidding program will produce 8,270 MWh of annual savings in its service area, and RG&E also estimates 8,270 MWh of annual savings in 2012.

Combined total costs from 2010 through 2012 across both utilities are estimated at $6.4 million.