

Energy Choice

Matters

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ICC Says Greater Disclosure Required for Integrys Energy Services' Managed Product

Proposed marketing materials from Integrys Energy Services (Integrys) regarding a managed price product to be offered in conjunction with New Illinois Cooperative Energy do not comply with subsection 16-115A(e)(i) of the Illinois Public Utilities Act because the materials do not provide the minimally necessary pricing disclosure about the commodity to be supplied pursuant to the customer contract, the Illinois Commerce Commission found in a declaratory ruling (09-0165, Only in Matters, 9/14/09).

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 that the marketer has with New Illinois Cooperative Energy (NICE). Under the NICE agreement, NICE would 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 which 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

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PPL Requests to Lower Credit Standard for Renewable RFP to Increase Participation

PPL petitioned the Pennsylvania PUC to modify its post-2010 default service plan to increase the number of competitive bidders eligible for the procurement of alternative energy credits (AECs).

While suppliers providing full requirements supply to PPL must provide alternative energy credits with their supply, PPL's post-2010 plan includes a small amount of block energy purchases (300 MW for residential customers only), for which it separately procures alternative energy credits to meet the alternative energy portfolio standard requirements.

The PUC rejected the most recent PPL solicitation for Tier I solar alternative energy credits due to a lack of bidder participation (Matters, 10/23/09).

Under the current requirements, a potential bidder is required to demonstrate that its, or its guarantor's, unsecured senior long-term debt rating (or issuer rating if the unsecured senior long-term debt ratings is unavailable) is currently available from Standard & Poor's, Fitch Ratings, or Moody's Investor Services.

According to bid consultant NERA Economic Consulting, a group of potential bidders in the RFP for Tier I, Tier I solar, and Tier II alternative energy credits were disqualified because they are relatively small entities that do not have a debt rating as required under the RFP. NERA further noted that the small size of the alternative energy credits to be procured on a separate basis may have contributed to a relative lack of interest in bidding by larger, rated entities, and, correspondingly, an increased interest by smaller, non-rated entities.

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CL&P, UI Post Standard Service and Last Resort Rates

Connecticut Light and Power and United Illuminating filed with the DPUC Standard Service rates for 2010 and Last Resort Service rates for the first quarter of 2010.

CL&P Last Resort Service Rates

January through March 2010 (¢/kWh)

| | GSC | FMCC- Generation | Total |
|--------------------------------|-------|---------------------|--------------|
| Rate 21, 39 | | | |
| January | 9.249 | 0.300 | 9.549 |
| February | 9.411 | 0.300 | 9.711 |
| March | 9.433 | 0.300 | 9.733 |
| Rate 41, 55, 56, 57, 58 | | | |
| On-peak | | | |
| January | 9.249 | 0.300 | 9.549 |
| February | 9.411 | 0.300 | 9.711 |
| March | 9.433 | 0.300 | 9.733 |
| Off-peak | | | |
| January | 9.249 | 0.300 | 9.549 |
| February | 9.411 | 0.300 | 9.711 |
| March | 9.433 | 0.300 | 9.733 |

CL&P Standard Service Rates

January through June 2010 (¢/kWh)

| | GSC | FMCC- Generation | Total |
|-------------------------------------|--------|---------------------|---------------|
| Rate 1, 5 | 10.827 | 0.300 | 11.127 |
| Rate 7 | | | |
| On-Peak | 13.428 | 0.300 | 13.728 |
| Off-Peak | 9.928 | 0.300 | 10.228 |
| Rate 18, 29, 30, 35, 40, 115 | 11.670 | 0.300 | 11.970 |
| Rate 21, 119 | 11.481 | 0.300 | 11.781 |
| Rate 27, 37 | | | |
| On-Peak | 13.765 | 0.300 | 14.065 |
| Off-Peak | 10.765 | 0.300 | 11.065 |
| Rate 41, 55, 56 | | | |
| On-Peak | 13.678 | 0.300 | 13.978 |
| Off-Peak | 10.678 | 0.300 | 10.978 |
| Rate 116, 117 | 8.938 | 0.300 | 9.238 |

For rates in both types of service, Last Resort Service is for customers 500 kW and up. Standard Service is for customers under 500 kW

CL&P Standard Service Rates

July through December 2010 (¢/kWh)

| | GSC | FMCC- Generation | Total |
|-------------------------------------|--------|---------------------|---------------|
| Rate 1, 5 | 10.678 | 0.300 | 10.978 |
| Rate 7 | | | |
| On-Peak | 13.215 | 0.300 | 13.515 |
| Off-Peak | 9.715 | 0.300 | 10.015 |
| Rate 18, 29, 30, 35, 40, 115 | 11.188 | 0.300 | 11.488 |
| Rate 21, 119 | 11.120 | 0.300 | 11.420 |
| Rate 27, 37 | | | |
| On-Peak | 13.257 | 0.300 | 13.557 |
| Off-Peak | 10.257 | 0.300 | 10.557 |
| Rate 41, 55, 56 | | | |
| On-Peak | 13.259 | 0.300 | 13.559 |
| Off-Peak | 10.259 | 0.300 | 10.559 |
| Rate 116, 117 | 8.964 | 0.300 | 9.264 |

UI Standard Service Rates (GSC)

January - June 2010 (¢/kWh)

| | |
|----------|---------|
| R | 11.7044 |
| RT | |
| On Peak | 14.2452 |
| Off Peak | 10.7452 |
| GS | 11.6413 |
| GST | |
| On Peak | 13.6615 |
| Off Peak | 10.6615 |
| LPT | |
| On Peak | 13.6603 |
| Off Peak | 10.6603 |
| M | 11.4802 |
| U | 11.4802 |

UI Standard Service Rates (GSC)

July - December 2010 (¢/kWh)

| | |
|----------|---------|
| R | 11.3869 |
| RT | |
| On Peak | 13.9315 |
| Off Peak | 10.4315 |
| GS | 11.4859 |
| GST | |
| On Peak | 13.4758 |
| Off Peak | 10.4758 |
| LPT | |
| On Peak | 13.4359 |
| Off Peak | 10.4359 |
| M | 10.9276 |
| U | 10.9276 |

UI Last Resort Service Rates (GSC)

January through March 2010 (¢/kWh)

| Month | On-Peak | Off-Peak |
|----------|---------|----------|
| January | 9.8290 | 9.8290 |
| February | 10.0755 | 10.0755 |
| March | 9.1514 | 9.1514 |

Clearview Electric Ceases Use of Problem Marketing Agent

Clearview Electric informed the Connecticut DPUC that it has ceased using an unnamed third party marketing and sales agent whose solicitations were responsible for all but one of Clearview's recent Connecticut complaints (Only in Matters, 11/16/09).

As only reported in *Matters*, the DPUC opened an investigation of Clearview due to the complaints and Clearview's unresponsiveness to DPUC interrogatories. Clearview said that staff turnover caused its untimely replies, and also said that it had been awaiting results of an audit conducted on its remaining third party marketing agent.

Clearview said that the dropped marketing agent did not provide requested documentation regarding its sales in a timely manner. "We stopped using their services when it was obvious they were not staying in compliance with us," Clearview said. This third party marketing group was responsible for all but one of the Connecticut customer complaints Clearview has received, Clearview said.

Clearview reported two instances of potential spoofing, in which the sales agent's phone number was alleged to have been altered to appear as the utility's number. Clearview said that it questioned the third party marketing group on its Caller ID hardware and software regarding spoofing. "They use a predictive dialer and are confident that an agent cannot change the Caller ID on an individual phone. To be able to check on a particular number that was dialed, they would need to know the number and date of the call to pull the data. All calls are recorded and randomly listened to daily by the onsite supervisor and beginning on November 18, Clearview will begin receiving recorded samples of sales calls," Clearview said.

For its remaining third party agents, Clearview has instituted regular site visits, daily

communications and biweekly review of full sales calls (not just third party verifications).

Consumers Energy Opposes Proposal for Transportation Customer Pooling

Pooling of transportation customers is unnecessary at Consumers Energy because the LDC balances deliveries on a monthly, not daily, basis, Consumers said in rebuttal testimony in its current Michigan gas rate case (U-15986).

In direct testimony, Constellation NewEnergy-Gas Division proposed that Consumers implement pooling in order to simplify the transportation service procedures for marketers, thereby promoting efficiencies, reducing administrative burdens, and reducing the costs associated with transportation service.

Constellation further noted that pooling would reduce balancing charges by eliminating paper imbalances -- imbalances specific to a supplier's individual customers but which cancel each other physically in the aggregate -- while still holding suppliers responsible for physical balancing.

However, Consumers opposed the pooling proposal, claiming that it, "could have detrimental effects on transportation customers, may result in operational impacts that negatively impact GCR customers, and would cause an administrative burden to the Company."

Consumers noted that transportation customers may now select one of five Authorized Tolerance Level (ATLs). "If customers were pooled by a marketer, that pool would likely contain customers who are paying for a higher ATL, and customers who are paying for a lower ATL. But since under pooling, the marketer would aggregate the ATL levels of all customers, the customers paying for the lower ATL would benefit from those customers who are paying for the higher ATL. This cross-subsidization between customers would be entirely the result of pooling," Consumers argued.

While pooling may be advantageous in systems requiring daily balancing, "there is no operational need to offer a pooling service," at Consumers, since customers are only balanced monthly, within their Authorized Tolerance Level, the LDC said.

Consumers further argued that pooling could raise costs for sales customers paying the gas cost recovery rate. "Under a pooling option, a gas marketer would have the flexibility to combine the MDQs [Maximum Daily Quantity] of each individual customer, and nominate up to that level on any given day. Therefore, the marketer could choose to minimize nominations on certain days, for example when gas prices are high, and maximize nominations on other days, for instance when gas prices are low. This pattern of nomination variation could be problematic for the Company because its physical system is built to receive a relatively leveled gas flow. If this took place during January or February, it could result in no flowing gas coming from the marketers for the transportation customers. Because a certain level of flowing gas is required to serve the Company's overall load, Consumers could be forced to purchase flowing supplies to maintain deliveries to all customers. If these gas purchases were made during a period of higher gas prices, it could result in a higher GCR cost of gas paid by sales customers," Consumers said.

Consumers conceded this same result may occur without pooling, but contended that, "the scale of the problem that could exist under pooling does not exist today."

Both Constellation and the Association of Businesses Advocating Tariff Equity have argued that transportation customers have been assigned a disproportionately large allocation of storage costs compared to their ability to use storage. Constellation cited figures from Consumers and PSC Staff showing that while transportation customers pay 9% of storage costs, transportation customers account for only 3% to 5% of total storage volumes. ABATE said that transportation customers do not have access to storage facilities, except in cases where storage gas is used to cure inadvertent imbalances.

On rebuttal, Consumers said that on the peak day, transportation customers' volume of storage withdrawals accounted for approximately 8% of the total peak day withdrawal.

Mich. ALJ Would Allocate Entire Choice Incentive Mechanism Refund to Residential Customers

A proposed decision would use the entirety of the \$20 million Detroit Edison Electric Choice Incentive Mechanism refund to pay down the residential Regulatory Asset Recovery Surcharge (RARS) balance, denying a protest from the Association of Businesses Advocating Tariff Equity (U-14838-R).

As only reported in *Matters*, a decline in electric choice sales for the period January 2008 through April 13, 2008 resulted in Detroit Edison overcollecting non-fuel revenues versus the Choice Incentive Mechanism baseline, requiring a refund to customers (Only in *Matters*, 4/6/09). A prior settlement calls for any refunds to be applied towards paying down the Regulatory Asset Recovery Surcharge balances.

However, the Regulatory Asset Recovery Surcharge balances have already been paid off for non-residential customers. Detroit Edison, therefore, proposed applying the entire \$20 million refund to the remaining residential Regulatory Asset Recovery Surcharge balance. ABATE argued that commercial and industrial customers are entitled to their share of the refund under the settlement, stating that nothing permits their refunds to be redirected towards residential customers (Only in *Matters*, 4/22/09). As the non-residential Regulatory Asset Recovery Surcharge balances have been paid off, ABATE said commercial and industrial customers should receive direct refunds.

An ALJ, however, agreed with Detroit Edison and Michigan PSC Staff that the plain language of the prior settlement regarding the Choice Incentive Mechanism calls for all Regulatory Asset Recovery Surcharge balances to be paid off, regardless of class, before using excess revenue to provide customers with direct refunds.

Briefly:

Liberty Power Offering Service to PPL Residential Customers

Liberty Power is accepting residential enrollments in PPL, according to the *Williamsport Sun-Gazette*. Given an opportunity, Liberty did not deny or correct the *Sun-Gazette's*

reporting yesterday, and did not offer any comment. The *Sun-Gazette* quoted a Liberty sales rep as offering a 12-month residential fixed rate of 9.87¢/kWh, and a 24-month rate of 10.35¢/kWh. That compares to Dominion Retail's residential offer of 10% off the final PPL price to compare through the December 2010 meter reading cycle, with Dominion Retail currently projecting its rate at 9.495¢/kWh.

Realty Energy Services Seeks Illinois Electric License

Realty Energy Services, currently a competitive retail gas supplier in Illinois and several other Midwest markets, applied for an Illinois alternative retail electric supplier license to serve non-residential customers with annual electrical consumption greater than 15,000 kWh at Commonwealth Edison. ACES Power Marketing will provide scheduling services and will be used to meet various technical requirements for licensing. Realty does not intend to provide single billing services.

Resource Energy Systems Expands to Brokering, Seeks Ohio License

Resource Energy Systems LLC applied for an Ohio electric broker-aggregator license to serve mercantile customers in all service areas. Resource Energy Systems provides renewable energy systems and load management services in New Jersey and California, and said that its customers have requested that it offer energy supply procurement services as well. Resource Energy Systems' clients typically own large portfolios of commercial real estate.

GSE Consulting Seeks Ohio Electric License

GSE Consulting applied for an Ohio electric broker-aggregator certificate to serve commercial, mercantile, and industrial customers in all service areas. GSE is seeking an Ohio gas license as well (Only in Matters, 11/16/09).

Reflective Energy Solutions Receives Ohio Gas License

The Public Utilities Commission of Ohio granted start-up Reflective Energy Solutions a natural gas broker-aggregator license to serve all sizes of commercial and industrial customers at all

four LDCs (Only in Matters, 10/15/09).

Midwest Utility Consultants Receives Ohio Gas License

The Public Utilities Commission of Ohio granted Midwest Utility Consultants a natural gas broker-aggregator license to serve all customer classes in all service areas (Only in Matters, 10/8/09).

Great Lakes Energy Withdraws Ohio License Application

Great Lakes Energy withdrew its application for an Ohio electric broker-aggregator certificate (Only in Matters, 10/15/09).

AGR Group Withdraws Md. License Application

AGR Group, Inc. withdrew its application for a Maryland electric broker application (Only in Matters, 10/22/09).

PUCT Approves Tara Trade Names for Fulcrum Retail Energy

The PUCT approved an amendment to the REP certificate of Fulcrum Retail Energy, LLC to add the trade names Tara Energy Resources and Tara Power. Fulcrum recently purchased Tara Energy, which still operates under its own certificate (Only in Matters, 9/4/09).

TXU Extends Marriott Contract

TXU Energy said that it has extended its supply contract with Marriott through 2013, and, as part of the extension, conducted energy audits for 40 Marriott hotels throughout Texas. The audits found the potential for 2 million kilowatt-hours of annual savings. TXU also said that the hotel chain will receive rebates under TXU's energy efficiency rebate program.

Port of Houston Short-Lists Three REPs

The Port Commission of The Port of Houston Authority at its meeting today will consider authorizing its executive director to enter into a three-year, up to \$18 million contract on behalf of the Port with one of three retail electric providers. The three providers -- Gexa Energy LP, Suez Energy Resources NA Inc. and Texas General Land Office -- were short-listed from among seven companies that were evaluated.

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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.

However, the ICC found that under Integrys' reasoning, a disclosure 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 minimum 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 Commission said.

The Integrys and NICE marketing materials do not provide the minimally necessary pricing disclosure about the commodity covered by the contract, the ICC said. "They say nothing whatsoever about the commodity price except that it will vary and may or may not exceed utility pricing. 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. In effect, the telemarketing script and contract (assuming the latter is marketing material) disclose exactly what the Commission deemed inadequate in the preceding paragraph of this Order - that 'buyer will pay whatever supplier demands,'" the Commission concluded.

The ICC stressed that it makes no finding

regarding whether the pricing mechanism of Integrys' product itself is permissible, since that issue was not brought before the Commission in the request for a declaratory order.

"[T]his Order does not rule on - much less preclude - [the] proposed pricing. As the Commission emphasized above, the instant Petition requests a ruling on the applicability of a statute that governs marketing and disclosure, not pricing," the ICC said.

While the Commission did not endeavor to describe precisely what disclosure for a managed product would satisfy the statute's requirements, the ICC noted that Integrys surely has a definite mechanism in mind for determining the price of electricity that each NICE customer will actually be expected to pay, citing various pricing components enumerated in confidential materials provided in the case.

"For whatever reason, [Integrys] and NICE have not elected to disclose to prospective customers the mechanism that will establish the price of electricity purchased pursuant to the [Integrys]-end user contract. As a result, customers have no way to ascertain, before executing that contract, how the price of electricity will be determined, let alone what the price will actually be," the Commission noted.

The Commission recommended that Integrys and NICE consider disclosing information that 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, the ICC reasoned. "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 Commission concluded.

Integrys had also asked for a declaratory ruling on the applicability of the ABC law (Section 16-115C of the Act) to NICE. The Commission declined to grant a declaratory ruling on that matter; however, as the Commission said that only NICE, as Integrys' agent, is the party that has standing to seek such a declaratory ruling.

PPL ... from 1

To address this issue, PPL proposed removing from the RFP the requirement that a bidder demonstrate that its, or its guarantor's, unsecured senior long-term debt rating (or issuer rating if the unsecured rating is unavailable) is currently available from one of the three listed rating agencies.

"PPL Electric believes that removal of the debt rating requirement of Article 4.1.1 is likely to increase the number of competitive bids submitted by small, non-rated entities that would otherwise not be qualified to bid."

"Because of the relatively low total costs of the AECs, PPL Electric does not believe that elimination of the rated debt requirement for AEC bidders will present a substantial increased risk of nonperformance." Potential bidders would still be required to submit a credit application, with requisite financial information, PPL said. Non-rated entities would be required to post the full performance assurance required by Section 12.1 of the AEC Supply Master Agreement as well.

PPL asked for an expedited ruling from the PUC so the relaxed requirements could be in place for its January 19, 2010 solicitation (P-2008-2060309).