

Energy Choice

Matters

November 20, 2009

PPL POR Settlement Approved, Bundled Renewable Attributes Covered by Program

The Pennsylvania PUC approved a settlement implementing a Purchase of Receivables program at PPL Electric for the year 2010, finding that receivables from basic supply service to be included in the POR program shall include costs associated with renewable energy bundled with generation service (Only in Matters, 11/2/09).

As only reported by *Matters*, stakeholders had reached a settlement on most issues in the case, including the level of the discount rate, and regarding all-in/all-out requirements (P-2009-2129502). The settlement only applies to PPL's POR program for 2010. POR beyond 2010 is subject to separate litigation.

Per the approved settlement, PPL will purchase supplier accounts receivables for residential customers who take service under Rate Schedules RS, RTS(R) and RTD(R) at a discount of 1.37%, reflecting an uncollectibles rate of 1.32% and a POR administrative factor of .05%. The 1.32% uncollectibles rate related to generation supply will be unbundled from PPL's base rates and placed in a bypassable Merchant Function Charge, which will be incorporated into the Price to Compare.

For residential customers, suppliers will be subject to an all-in/all-out requirement for participation in the POR program. All of a supplier's residential customers will be required to be billed on utility consolidated billing with POR if the supplier wishes to use POR for any residential account. Suppliers in the POR program are required to accept any residential enrollment if they are active in

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N.Y. PSC Approves NiMo Collection of Delivery Local Receipts Tax from ESCO Customers

The New York PSC approved Niagara Mohawk's changes to its electric and gas tariffs to remove the prohibition of recovering municipal and village gross receipt taxes for delivery services provided to customers purchasing their commodity supplies from energy marketers (09-E-0548 et. al.).

NiMo has not been charging the municipal and village gross receipt taxes to customers taking competitive supply, similar to the exemption ESCO customers enjoy from the State gross receipts tax. Only customers taking both supply and delivery from NiMo are currently charged the local gross receipt taxes.

However, in June, the New York State Department of Taxation and Finance issued an informal Advisory Opinion stating that, "both the sale of the commodity and the sale of the transportation, transmission and distribution of the commodity are subject to the city and village gross receipts taxes imposed pursuant to the authority of General City Law §20-b and Village Law §5-530, regardless of whether the commodity and the delivery of the commodity are sold by different parties."

Tax and Finance reasoned that, while the State phased out the gross receipts tax imposed on behalf of the State, no change was made in the authority of the cities and villages to impose the tax. In response, NiMo filed the tariff changes to collect these municipal and village gross receipt taxes from customers who purchase only delivery services from the utility, in addition to collecting the tax from bundled customers.

While NiMo will collect the local gross receipt tax from delivery-only customers, it reserves the

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Delmarva to Conduct Second Supplier Call on POR, Amenable to 30-Day Delay

Delmarva Power intends to conduct another conference call with representatives from retail suppliers regarding electric Purchase of Receivables, as the duration of a prior call was limited and prevented substantive negotiations regarding the discount rate (Only in Matters, 11/10/09).

Delmarva's report came in response to a request from Maryland PSC Staff for additional information regarding its proposed discount rate, and a delay of 30 days for implementation of POR at Delmarva, as only reported in *Matters*.

Delmarva said that it does not object to Staff's requested 30-day delay of POR implementation, but asked that if the Commission orders any delay, any such order be entered prior to December 3, 2009. Delmarva applied to begin POR on December 7, 2009, and says to be ready to commence POR on that date (which it is prepared to do), it would need to begin various system transitions on December 4.

Delmarva objected to Staff's request that Delmarva report on each stakeholder's position taken during negotiations of the POR discount rate, noting that negotiations are meant to be confidential, and that the reporting of positions could chill negotiation and compromise in future cases.

Additionally, Delmarva asked that it be given more time than Staff's suggested five business days to respond to various Staff data requests. In particular, Delmarva noted that it had requested that Staff submit informal requests for information while Delmarva was preparing its second compliance filing. "It is Delmarva's experience that often an informal question and answer session with the Staff provides more complete and better responses to questions, and allows for better discussion and understanding, particularly in a situation with an abbreviated time period for filing and review. Despite the attempts to work with the Staff informally, the only written questions from the Staff (or any party) were presented to the Company in the Staff's letter of November 17, 2009."

Delmarva also rebutted Staff's claim that Delmarva's use of an EDI 820 transaction for POR constituted a unilateral new EDI process, as Delmarva stated that it specifically did not institute any new EDI standard or protocols in its POR compliance plan.

Pa. PUC Approves Peoples Natural Gas Sale, Clock Starts on POR Decision

Reversing an ALJ's interim order, the Pennsylvania PUC approved the sale of the Peoples Natural Gas Pennsylvania LDC from Dominion Resources to SteelRiver Infrastructure Fund North America (Only in Matters, 10/19/09). The two transacting firms, the Office of Consumer Advocate and Office of Small Business Advocate had entered into a settlement to approve the sale, but the stipulation was opposed by the PUC Office of Trial Staff.

Of note to the retail market is that the settlement calls for Peoples Natural Gas to convene a collaborative to develop a strategy to promote retail gas competition within 12 months of the close of the transaction, with participation by retail suppliers, OCA, OSBA and OTS (Only in Matters, 9/7/09).

Additionally, because of the uncertainty in its future ownership while the case was pending, Peoples elected not to pursue a voluntary Purchase of Receivables program in response to the Commission's December 2008 order directing LDCs to file either a POR program or a cost-of-service study to permit unbundling of rates, as Peoples did not wish to make a commitment while its future ownership was unknown.

A settlement in People's recent 1307(f) proceeding holds that within 30 days of a PUC order regarding the sale of Peoples to SteelRiver, Peoples will file either a notice of intent to establish a POR program, or a notice of intent to file an updated cost of service study (Only in Matters, 9/25/09). If Peoples elects to offer a voluntary POR program, it will file the plan within 90 days of an order in the acquisition proceeding. If Peoples does not elect to institute a POR program, the updated cost of service study will be filed at the earlier of its next base

rate case, or the annual purchased gas cost 1307(f) proceeding scheduled to be filed on or about April 1, 2011.

Peoples will also conduct an investigation into Unaccounted for Gas to be completed for its 2011 1307(f) proceeding as part of the settlement.

NRG Doubts Ability of U.S. Utilities to Acquire IPPs, Looks to European Utilities

NRG Energy will remain active in mergers and acquisitions, NRG CEO David Crane said during an investor conference, but doubts that major U.S. utilities will be able to make any offer acceptable to NRG that would not dilute the buyer's earnings per share.

NRG estimated that four, unnamed major "hybrid" utilities with regulated transmission/distribution and unregulated generation would not be able to pay more than \$30/share in 2010 for NRG without diluting their earnings per share. Indeed, NRG said that such hybrids are more inclined to sell unregulated arms or enter into joint ventures rather than consolidating in the future. NRG listed Exelon, PSEG, FPL, Allegheny, Entergy and Edison International as examples of such hybrids.

In a slide presentation to shareholders, NRG said that such hybrid utilities are, "grappling with multiple issues: T&D capex, recession, falling wholesale prices, carbon / renewables strategy, regulatory issues, [and] POLR contract run-off." Such hybrid utilities are also facing the, "[g]rim recognition that rating agency concerns could thwart combos with IPPs," NRG said. The end result, NRG speculated, may be renewed attempts for joint ventures or exits from the generation business, as the hybrids attempt to refocus investors on rate base growth.

Crane also said offers from vertically integrated utilities (Xcel, Southern, AEP, etc.) are unlikely due to regulatory constraints.

Large European utilities, however, could acquire NRG in a transaction that optimizes value for NRG as seller, Crane said, but Crane noted that interest among players such as Enel, EDP, EDF and Iberdrola in U.S. existing generation owners has been limited due to concerns over environmental footprints of

potential targets. NRG's solar, electric vehicle and other renewable ventures reflect an effort to change that perception, Crane said.

Crane also said that NRG will continue to pursue disciplined acquisitions as it remains a buyer's market.

Crane reported that NRG has applied for a patent on quick-start, gas-fired generation technology, which Crane said will be necessary to firm intermittent resources such as wind. The so-called CC-Fast technology is designed to achieve 75% of baseload output in 10 minutes of startup, NRG said. NRG cited California, New England and New York as potential markets for the technology.

TexRep7 Under New Ownership

TexRep7 is under new ownership after being purchased from Energy Services Group, it said in a REP certificate amendment, though the exact legal structure of the new ownership is unclear. While one of TexRep7's new Managing Members is also a principal at Green Line Power LLC, the amendment application is not explicit in whether Green Line Power has purchased TexRep7, or two new Managing Members individually purchased TexRep7.

All individuals associated with TexRep7 have a Green Line Power email address, but TexRep7 did not seek to add that name, or any other new trade name, as part of its amendment.

Clayton Fowler, Managing Member and founder of Green Line Power LLC, is one of TexRep7's new Managing Members. Fowler previously founded REP Andeler Corp. and served as its president for eight years. Green Line was formed in 2008, and has focused on creating a new procedure for the capture of waste and low quality natural gas, and the generation of electricity from low quality natural gas. TexRep7's other new Managing Member, James Phillips, is a veteran of the oil and gas drilling industry.

Rosalie Day, former Andeler Corp. vice-president for wholesale operations, will serve as operations manager at TexRep7. Day has also held several positions at APX, and was previously a regulatory policy manager at Reliant Energy.

TexRep7 is not currently serving any

customers. TexRep7 will act as its own QSE, and will continue to use Energy Services Group for billing.

RESA: FERC Demand Response Plan Ignores Competitive Barriers

FERC's draft National Action Plan on Demand Response fails to address three potential barriers to optimal deployment of demand response resources, Jay Kooper, President of the Retail Energy Supply Association and Director of Regulatory Affairs for Hess Corporation, said in comments before a FERC technical conference (AD09-10, Matters, 10/29/09).

First, Kooper noted that competitive neutrality in accessing advanced meter data is an essential element in allowing competitive providers to optimize the level of demand response participation.

Second, the development of policies and rules that enable maximum customer flexibility in participating in the demand response program of the customer's choosing is critical to maximizing participation, Kooper said.

Finally, consistency of demand response rules and programs across RTOs based on best practices would allow greater provider and thus customer participation in load response, Kooper noted. The draft action plan does not address any of these three issues.

Kooper added that the competitive retail energy industry has been encouraging demand response development, and said that such experience should be drawn upon in various collaborative efforts under the action plan. Education efforts related to demand response should inform customers of their energy options, retail choice, and the ability of customers (where applicable) to choose their provider of energy services, Kooper said.

FERC Offers Limited Clarification, Denies Rehearing of Exceptional Dispatch Order

Services provided by a generator in response to any California ISO outage or de-rate are considered capacity-type services that warrant

Interim Capacity Procurement Mechanism (ICPM) designations, because such services are providing a reliability benefit by contributing capacity to the grid, FERC clarified in an order on rehearing and clarification of its prior CAISO exceptional dispatch order (ER08-1178 et. al.).

Generators had noted that unforced or planned outages of a short duration that cannot be modeled were absent from the list of capacity-type services that warrant ICPM designations identified by FERC in the exceptional dispatch order, and thus had requested clarification.

FERC also clarified the meaning of the word "volume" as used in the Commission's order regarding reporting requirements related to exceptional dispatch. However, FERC declined to adopt the generators' proposed definition, and instead reiterated the clarification provided in a September 2, 2009, order in which FERC said that CAISO must provide three volumetric measures (megawatts, hours, and megawatt-hours) for each instance of exceptional dispatch, including commitments and dispatches for incremental and decremental energy. Generators had asked that the term "volume" be defined as requiring a report on the quantity of capacity required by the CAISO, including: (1) the dispatched megawatts; (2) megawatts of capacity required by the CAISO; and (3) total capacity made available, including non-resource adequacy capacity that was made available when a unit was committed through exceptional dispatch, but only part of the unit's capacity was offered an ICPM designation.

FERC denied a rehearing request from generators and wholesale suppliers, who had asked for the elimination of a four-month cap on exceptional dispatch supplemental revenues. FERC also denied Southern California Edison's request that the cap be extended for more than four months.

The Commission denied rehearing on all issues raised by generators related to partial-unit designations under exceptional dispatch.

Briefly:

U.S. Gas & Electric Receives Pa. Gas License
U.S. Gas & Electric, Inc. received a natural gas supplier license from the Pennsylvania PUC to

market to all sizes of customers (Only in Matters, 8/4/09). U.S. Gas & Electric, which will market as Pennsylvania Gas & Electric, applied to market to customers at National Fuel Gas Distribution, Columbia Gas, UGI, and PPL Gas Utilities (now UGI Central Penn). A final order was not available, but a meeting summary posted by the PUC lists U.S. Gas & Electric as only receiving approval to supply customers at National Fuel Gas Distribution, UGI, and UGI Central Penn. Absent a written order, it's not clear if the exclusion of Columbia was an error. Though it sought authorization to serve residential customers, U.S. Gas & Electric said it does not plan to market to residential customers initially.

Patriot Energy Group Receives Pa. License

The Pennsylvania PUC granted Patriot Energy Group an electric supplier license as a broker/marketer and aggregator to serve all sizes of non-residential customers at PPL, Duquesne Light, PECO, Met-Ed, Penelec, and Allegheny (Only in Matters, 9/9/09).

PES Brokers Receives Pa. License

The Pennsylvania PUC granted PES Brokers (Prime Energy Services) an electric broker/marketer license to serve non-residential customers over 25 kW in all service areas (Only in Matters, 9/14/09).

Your Choice Energy Receives Pa. License

The Pennsylvania PUC approved the electric broker/marketer application of Your Choice Energy, LLC to serve all customer classes in all service areas.

Electric Advisors Receives Pa. License

Electric Advisors received a Pennsylvania electric broker/marketer license to serve commercial, industrial and governmental customers at PPL and Duquesne Light.

iZagg Energy Seeks Texas Aggregation Certificate

iZagg Energy, a multi-level marketing broker, applied for an aggregator certificate at the PUCT to pool all classes of customers.

Reach Energy Under New Ownership

Reach Energy filed for an amendment to its REP certificate to reflect that 100% of its stock has been sold Kenneth Watson, who is now the sole beneficial owner of the stock. Reach founder Andrew Leach will continue as Director of Business Management. Watson has 10 years of experience in the telecom industry, both with competitive local exchange carriers and incumbent providers. Tenaska Power Services serves as Reach's QSE, and performs various risk management and energy supply brokering functions as well. EC Infosystems handles Reach's EDI functions, and Competitive Assets serves as a regulatory consultant.

Hess Serving 350 MW in Demand Response Program

As of November 2009, Hess is serving 350 MW under its demand response product launched in early 2008, Jay Kooper, Director of Regulatory Affairs for Hess Corporation, reported in comments to FERC on the national action plan for demand response (see related story). The 350 MW is comprised of 281 customers on 511 meters at ISO New England, the New York ISO, and PJM. The demand response product, along with renewable and carbon options, are the fastest growing segment of Hess' electric marketing business, Kooper said.

FERC Approves Lower CAISO Unsecured Credit Limit

FERC approved, unmodified, the California ISO's proposal to lower the maximum unsecured credit limit for market participants to \$50 million, from the current \$150 million, effective January 5, 2010 (ER09-1681, Matters, 9/10/09). FERC found CAISO's proposal to be a reasonable mechanism to reduce risk, and denied protests from Pacific Gas & Electric and Southern California Edison.

Pace Global, Procurex Partner to Offer e-Procurement Supply Brokering

Pace Global Energy Services and Procurex have formed a strategic alliance under which Procurex's energy trading and procurement platform will be incorporated into the Pace Energy Zone energy management system,

which includes bill auditing, payment, contract management and risk management. The Procurex platform is an e-procurement technology that is said to increase supplier participation and reduce energy costs versus traditional blind bid and reverse auction purchasing strategies.

FERC Generally Accepts CAISO Order 719 Compliance Filing

FERC generally accepted a compliance filing from the California ISO dealing with all aspects of Order 719, except for RTO responsiveness, though much of the acceptance (particularly with respect to demand response) amounted to recognizing that CAISO has a roadmap in place for certain initiatives, with future products from such stakeholder efforts to be further evaluated against Order 719 (ER09-1048 et. al.). FERC said efforts in CAISO's Market and Performance (MAP) initiative are expected to result in measures to comply with Order 719's requirements for allowing demand response resources to provide ancillary services, and allowing the aggregation of retail customers for demand response. FERC did reject, however, CAISO's request to not allow demand resources to specify the number of times that they may be dispatched to different output levels during the day. FERC said that granting demand resources such flexibility is required for demand to be treated comparably with generation. FERC also found CAISO's roadmap for scarcity pricing in compliance with Order 719 insofar as it sets a process for CAISO to comply with the order's directives. FERC also accepted, either with modifications or further compliance filings, Order 719 compliance filings from the New York ISO and Southwest Power Pool, but did not release written orders regarding those two RTOs yesterday.

FERC Approves Withdrawal of Two Entergy Units from System Agreement

FERC approved requests from Entergy Arkansas (in 2013) and Entergy Mississippi (in 2015) to leave the Entergy System Agreement (ER09-636). The action is noteworthy since, as observed by FERC Chairman Jon Wellinghoff, the approval resolves a key Entergy System issue that will inform the cost benefit analysis

evaluating the future of the Entergy Operating Companies once Entergy's current Independent Coordinator of Transmission agreement with the Southwest Power Pool expires. As previously reported, state regulators are reviewing the costs and benefits of Entergy joining the SPP RTO. Any successor arrangement for Entergy Arkansas and Entergy Mississippi must be just and reasonable, FERC said, in encouraging negotiations.

FERC to Hold Technical Conference on SIL Studies

FERC directed Staff to convene a technical conference (AD10-2) on performing Simultaneous Transmission Import Limit (SIL) studies, in order to provide guidance to the industry so that prospective SIL studies will produce more consistent results. Among other things, the topics to be discussed at the technical conference may include development of seasonal benchmark cases, completeness of SIL study support data files (monitor, contingency, and subsystem files), scaling methodologies, identification of energy transfer limits, transfer distribution factors, OASIS practices, methods to identify available uncommitted generation, application of net area interchange, and alternative methods to adjust net area interchange for a study area with two, non-contiguous first-tier areas.

FERC Generally Affirms Initial Decision on Merchant Transmission RTEP Cost Responsibility

FERC largely affirmed an Initial Decision's determination that PJM's proposal for allocating the costs of transmission upgrades approved as part of PJM's Regional Transmission Expansion Plan to Merchant Transmission Facilities on a comparable basis as costs are allocated to other PJM zones is just and reasonable, with certain modifications (see docket ER06-456-006, et al.).

FERC Staff Sees Moderation in Winter Prices

FERC Staff, unsurprisingly given current and forward prices, reported that winter wholesale natural gas and electric prices are expected to be lower from weakened demand and robust storage, as part of a [winter market assessment](#).

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the residential market, and may not screen residential customers based on credit, or require deposits.

For small commercial and industrial customers taking service under Rate Schedules GS-1, GS-3, GH-1(R), GH-2(R), IS-1(R), BL, SA, SM(R), SHS, SE, TS(R) and SI-1(R), the POR discount rate will be 0.17%, reflecting an uncollectibles percentage of 0.12% and a POR administrative factor of 0.05%. The 0.12% uncollectibles rate related to generation supply will be unbundled from PPL's base rates and placed in a bypassable Merchant Function Charge, which will be incorporated into the Price to Compare.

Suppliers will not be subject to an all-in/all-out requirement for small commercial customers in the POR program. Suppliers may elect to place some small commercial customers on POR, and use dual billing for other customers, such as those with complex rates. POR will be mandatory for any small commercial customer on utility consolidated billing, however.

To prevent cherry-picking of high-credit customers for dual billing, PPL will monitor a supplier's small commercial uncollectibles rate for its POR customers, and retains the authority to apply a unique discount rate to a supplier if that supplier's uncollectibles under the program exceed 1.5%. A supplier selling all of its small commercial receivables to PPL will not be subject to such potential modification.

Regarding one of the two issues left for litigation, the Commission agreed that the definition of basic supply service shall be tied to the provision of generation, and shall not include ancillary programs that lack generation attributes which may be purchased by customers. Accordingly, the Commission ruled that REC-based or other attribute-based renewable products bundled with physical energy should be included in the receivables purchased by PPL. Charges excluded from POR are any ancillary services provided by a supplier, including products similar to PPL's Green Power Option (a REC block product not bundled with generation), termination fees, smart thermostat installations, refrigerator repairs, or other non-generation offerings.

The PUC also denied the Office of Consumer Advocate's argument that PPL should not be allowed to terminate customers on competitive supply for non-payment of charges in excess of what charges would have been under the default service rate.

In its order, the Commission found that it does not have the authority to compel any of the jurisdictional electric utilities to create and offer a POR program in the competitive electric generation marketplace; programs must be voluntary.

Vice Chairman Tyrone Christy voted to approve the settlement (making approval unanimous), but expressed concern that the POR program, "may result in increased uncollectible account expense that would further increase the rates paid by PPL's default service customers.

Christy requested that PPL provide periodic updates to the Commission regarding the following:

1. Whether the purchase of receivables resulting from customers who are paying rates above PPL's default service rate results in significantly higher uncollectible account expense, compared to capping receivables at PPL's default service rates;
2. Whether the discount rates under the settlement are adequate;
3. Whether the provision in the settlement pursuant to which suppliers will not reject new residential customers based on credit-related issues, and will not require deposits, results in increased uncollectible account expense;
4. Whether suppliers perform adequate credit checks of their other customers, and the extent to which uncollectible account expense increases due to inadequate credit checks;
5. Whether the requirement that PPL pay a supplier for charges to a large non-residential customer for 90 days, regardless of whether PPL receives payment, without the ability to terminate the customer or return it to the supplier, results in significantly higher uncollectible account expense.

"Although I have an open mind on the workability of a POR program, I believe that the alternative of unbundling the generation-related portion of the EDC's uncollectible account expense, and including this in the price-to-

compare, should be explored," Christy said.

Under the settlement, PPL revised the minimum stay requirement for customers billed through the POR program to coincide with the December 31, 2010 termination of the interim program. PPL clarified that the minimum stay does not prevent suppliers from offering short-term products and using POR for such products.

Supplier customers on consolidated billing will be eligible for budget billing. PPL will continue to remit to suppliers payment based on the supplier's actual charges (less the POR discount), rather than the amount charged to the customer under the budget payment plan.

PPL's current POR program for large non-residential customers will continue under the settlement.

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right to contest the tax, and the collections will be subject to refund if the tax is found to be inapplicable to delivery-only revenues in another venue (the Tax & Finance opinion is only an advisory opinion). NiMo contends that under the law delivery-only revenues are exempt from the tax since the delivery service originates outside the territorial limits of the city or village.

NiMo estimated that approximately 110,000 electric customers and 65,000 gas customers take supply service from an energy marketer and would receive bills that include an additional tax surcharge on their delivery bills due to the tariff changes. Based on data for the twelve months ending August 31, 2009, NiMo estimated the total annual revenue impact for its customers receiving commodity supply from an energy marketer as approximately \$5.4 million (\$4.9 million for electric customers and \$0.5 million for gas customers).