Energy Choice Matters

November 26, 2009

PUCO Staff Raises Concern on Nonbypassable Rider GCR in FirstEnergy MRO Application

Staff of the Public Utilities Commission of Ohio has raised concern regarding the FirstEnergy utilities' proposed nonbypassable Generation Cost Reconciliation Rider (Rider GCR) under their proposed Market Rate Offer for the period beginning June 1, 2011, stating that, "[n]o rationale for the non-avoidable status of this rider is clearly present in the application." Staff also encouraged the FirstEnergy companies to file an electric security plan instead of a Market Rate Offer (MRO).

As only reported in *Matters*, the FirstEnergy utilities applied to offer three voluntary rates under the Market Rate Offer: real-time pricing, time-of-day pricing and critical peak pricing. While the time-of-day pricing option would fall under Rider GEN (the generation rate for default service), real-time pricing and critical peak pricing options would not fall under Rider GEN.

Reconciliation of the amounts billed under these two time-differentiated options and actual wholesale costs would be recovered through Rider GCR on a nonbypassable basis, meaning customers on competitive supply could potentially subsidize these utility-offered rate options, since these utility customers will be served on the same slice of system contracts which are priced at the flat retail rate in Rider GEN (Only in Matters, 10/21/09).

Staff raised additional concerns with Rider GCR, since it would be used recover from all customers the lost revenue from generation cost savings achieved by customers under the time-differentiated rate options. "To Staff, this appears inconsistent with the goals of a time differentiated

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Liberty Power Undertaking Broad Residential Marketing Effort at PPL

Liberty Power is conducting an extensive residential marketing campaign at PPL, including direct mail, radio, and print advertising, Tim LoCascio, Regulatory Affairs Manager at Liberty, told *Matters*.

As previously reported, Liberty is offering a fixed 12-month and 24-month product to PPL residential customers (Only in Matters, 11/17/09). However, at that time it was unclear if Liberty was conducting a widespread PPL residential effort, or was only offering rates but not actively seeking residential load.

LoCascio reported that Liberty is actively seeking to enroll residential customers at PPL through a variety of channels, and called serving residential customers, "a natural evolution and expansion of Liberty's marketing efforts."

LoCascio said that Liberty's initial focus is on offering products that provide customers with price certainty, and Liberty is not currently offering a variable or hybrid rate, though Liberty will gauge customer feedback to determine if additional products are warranted. Liberty is not initially offering a renewable product to residential customers, but LoCascio said that if customers express a greater interest in renewable energy, Liberty will examine expanding its product suite.

Both of the fixed products offered include early termination fees, based on the length of the remaining contract term and any difference between contracted rates and market rates at the time of termination.

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United Illuminating Revises GSC Rates for 2010

United Illuminating revised its previously posted Generation Services Charge (GSC) for all classes for various periods in 2010 to reflect an increase in the GSC adder of 0.2477¢/kWh to recover the GSC-allocated costs. Standard Service GSCs were also increased to recognize that UI's wholesale procurements for Standard Service for 2010 now contain "Type B" bids. UI estimated that the appropriate adder is 0.0353¢/kWh. Revised GSC rates are below:

Standard Service
Generation Services Charge (GSC)
January - June 2010

Rate	Rate ¢/kWh	On-Peak Rate ¢/kWh	Off-Peak Rate ¢/kWh
R	11.9874		
RT		14.5282	11.0282
GS	11.9243		
GST		13.9445	10.9445
LPT		13.9433	10.9433
M	11.7632		
U	11.7632		

July - December 2010

Rate	Rate ¢/kWh	On-Peak Rate ¢/kWh	Off-Peak Rate ¢/kWh
R	11.6699		
RT		14.2145	10.7145
GS	11.7689		
GST		13.7588	10.7588
LPT		13.7189	10.7189
M	11.2106		
U	11.2106		

Supplier of Last Resort Service
2010 Generation Services Charge (GSC)

Month	On-Peak Rate ¢/kWh	Off-Peak Rate ¢/kWh	Total ¢/kWh
January	10.0767	10.0767	10.0767
February	10.3232	10.3232	10.3232
March	9.3991	9.3991	9.3991

Direct Seeks DPUC Confirmation of Right to Terminate Supply to C&I Gas Customers

Direct Energy petitioned the Connecticut DPUC to issue a ruling pursuant to Conn. Gen. Stat. 16-20, confirming Direct Energy's right to terminate service to commercial and industrial gas customers with delinquent accounts, and confirming that Direct Energy may not be subjected to penalties by any local distribution company as a result of a reduction in the volume of gas delivered as a result of any customer terminations (09-11-15).

Direct reported that it has several customer accounts that have fallen into "serious" arrears. "These accounts have outstanding balances that are causing significant economic harm to Direct Energy," Direct said. Direct's terms of service provide that it may terminate service and the customer agreement upon 10 days notice if the customer fails to pay amounts as they fall due. Under the contract, the customer is required to pay an early termination fee equal to a $100 processing fee, plus direct damages determined by Direct.

However, Direct reported that Southern Connecticut Gas and Connecticut Natural Gas have informed Direct that they believe that Direct is prohibited from terminating customers who have received service from a Third-Party Supplier for less than 12 months. The LDCs point to a "reverse minimum stay" in their tariffs which provides that, "[f]or an initial period of not less than one year, firm customers receiving service under rate RMDS, SGS, GS or LGS cannot switch between either the Third-Party Supplier Service Option or the Company Supply Service Option before fulfilling 12 months of continuous service under either Supply Service Option."

The LDCs also noted that the transportation "enrollment document" signed by the customer supports a minimum stay, since it states that, "[w]ith the exception of rate/tariff IS/IT, the term of Third - Party Supply is for an initial period of not less than one year."

However, Direct noted that while the tariffs plainly require a customer to take a minimum of 12 months of transportation service, "[t]here is nothing that binds a supplier to this term for any customer account." While the customer cannot return to LDC supply for 12 months, nothing mandates that a specific supplier must continue to provide supply to the customer.

Third-Party Suppliers are not parties to the transportation agreements, Direct said. "Third-Party Suppliers do not sign the 'enrollment' documents. As such, the agreements lack the legal 'privity' of contract necessary to impose any obligations on Third-Party Suppliers, let alone one that would require suppliers to continue serving customers who do not adhere to the requirements of the Direct Energy Agreement," Direct argued.

Direct further requested that it not be subjected to any imbalance or Failure to Deliver (FTD) charges stemming from changes in its delivered quantities as a result of customer terminations pursuant to the terms of its underlying contracts. "Failure to exempt marketers from such penalties would present marketers with a 'Hobson's Choice' - terminate the customer, and be subjected to onerous penalties by the LDC; or refrain from terminating a delinquent customer (who may be paying nothing and whose balance may accrue to appreciable levels) in order to avoid the LDC's imbalance/FTD penalties," Direct said.

REPs Request that Customers Be Allowed to Use Password to Verify Account Access

Texas customers should be allowed to use a password to access their account in addition to several methods currently permitted in the Substantive Rules, several REPs recommended in comments on the PUCT's periodic review of the Chapter 25 rules (37230).

Specifically, the REP Coalition recommended that "password" be added to the list of permissible account access verification data set forth in P.U.C. SUBST. R. §25.474. Currently, §25.474 lists acceptable verification data as the last 4 digits of the customer's social security number, mother's maiden name, city or town of birth, month and day of birth, driver's license number, or government issued identification number; and for non-residential customers, federal taxpayer identification number.

Certain customers are more comfortable using a password as a method of verification than disclosing the other, more personal types of information required by the rule, such as portions of the customer's social security number and mother's maiden name, the REPs said.

Additionally, the use of a password, in some instances, would be a more secure form of authorization from the customer's perspective, the REP Coalition added. For example, the current rule provides that a federal taxpayer identification number is a proper form of account access verification for a non-residential customer, but the REPs noted that this number is potentially accessible by others through relatively easy means, such as an internet search.

The comments were jointly made by CPL Retail, WTU Retail, Direct Energy, Reliant Energy, TXU Energy, the Alliance for Retail Markets, REPower, and the Texas Energy Association for Marketers.

DPUC Orders CNE to Hold Turris Commission Payments in Escrow Pending Refunds

The Connecticut DPUC ordered Constellation NewEnergy to withhold and escrow all commission payments it receives from customers for the benefit of Turris Associates as security for expected reimbursements to be paid by Turris to customers, in the absence of either: 1) an agreement between Constellation and Turris regarding financial responsibility, or 2) appropriate surety or bond by Turris for the projected reimbursements (08-10-69).

The reimbursements are to provide restitution to customers who were charged a higher aggregation fee than disclosed in their contracts (Only in Matters, 10/16/09).

Although Turris and Constellation have reached an informal agreement on how to provide restitution to customers, through reduced rates going forward, and a direct payment of any outstanding refunds at the end of the customer's contract, both Constellation and DPUC Prosecutorial Staff are alarmed by the level of expected reimbursement amounts that will be outstanding when most of the contracts expire. Most of the overbillings will not be paid down to zero by the date of contract expiration, which is December 31, 2009.

Staff thus recommended, and the Department accepted, that Constellation should hold in escrow commission payments it receives from customers for the benefit of Turris to act as security in case Turris is unable to provide full restitution at the time the contracts expire.

PUCT Staff Posts Revised Draft REP Certification Form

PUCT Staff submitted a revised draft REP certification application that would clarify, among other things, that REPs are only required to list any principals or employees who had previously been a principal at a REP that experienced a mass transition if the applicant is using that individual to meet requirements for prior experience in the competitive electric or gas market (37053).

The prior draft certification form would have required the REPs to list any individuals who managed a REP that experienced a POLR transition regardless of whether that individual was being used to comply with managerial competency requirements or was even in a managerial position with the applicant. Several REPs had called such a requirement burdensome (Only in Matters, 8/25/09).

Staff also deleted from the proposed certification form requirements that would have applied to any customer notices regarding a mass transition sent out by a REP to its customers. The original draft had included a list of requirements to be included in the cessation of operations notices sent by REPs to customers, such as date of exit, contact information, any arrangements to transfer customers to another REP, and POLR information. Staff removed such requirements in the revised draft since the Substantive Rules do not contain any such requirements. Several REPs had noted that the original proposal to inform the customer of their POLR would have been problematic, since the assignment process is random and would occur after the notices were sent.

Additionally, Staff clarified that REPs must only provide the Commission with a representative sample of the cessation of operations notification letter sent to customers. Several REPs had noted that the prior language could have been interpreted as requiring the REP to send the Commission a copy of each notice sent to each individual customer.

Cessation of operation notices would still be required to be sent to the Texas Comptroller's Office, the Texas Secretary of State, and the administrator of the Texas Universal Service Fund in addition to ERCOT and the PUCT's Customer Protection Division, rejecting a recommendation from REPs to only provide notices to ERCOT.

Briefly:

Lower Electric Seeks Pa. Broker License, Receives Illinois ABC License

Lower Electric LLC applied for a Pennsylvania electric supply license as a broker/consultant to serve all sizes of non-residential customers in all service areas. Lower also received authority from the Illinois Commerce Commission to act as an electric agent, broker and consultant. Per the terms of a prior Commission order, Lower's ABC license is to be subject to an immediate one-month suspension for violations of the ABC law (Only in Matters, 8/27/09).

Your Choice Energy Receives Illinois ABC License

Your Choice Energy, LLC was granted authority from the Illinois Commerce Commission to act as an electric agent, broker and consultant.

Energy Alliances Seeks Ohio Gas License

Energy Alliances, Inc. applied for an Ohio natural gas broker/aggregator license to serve all customer classes at all LDCs. Energy Alliances has a pending Ohio electric broker application as well (Only in Matters, 11/4/09)

ICC Grants Ameren Request to Remove Daily Capacity Requirement from Contracts

The Illinois Commerce Commission granted the Ameren Illinois utilities' petition to amend their existing capacity agreements executed under the Illinois Power Agency procurement process to remove the current daily capacity requirement, as the requirement is no longer necessary due to FERC and NERC rulings (Only in Matters, 8/24/09). Ameren said that alleviating suppliers from the administrative burden of the daily capacity requirement will, "send a clear signal to the supplier community that the [Ameren utilities] are willing to work with them to help reduce inefficiencies in the process," Ameren said, which could encourage greater supplier interest in its procurements.

Priority Power Reports Higher Earnings

Broker-consultant Priority Power generated earnings of $566,000 for the third quarter of 2009, an increase of approximately 211% versus the same quarter in 2008, parent Amen Properties said in a quarterly filing. This increase in earnings was caused primarily by a 45% increase in revenue driven by a large power reengineering consulting project coupled with a 29% decrease in general and administrative expenses.

FirstEnergy ... ***from 1***

program," Staff said, suggesting that the FirstEnergy companies should be required to revise this aspect of Rider GCR.

Additionally, Staff noted that the expenses from conducting the competitive bid process (CBP) under the MRO will be included in Rider GCR. "Although this is permissible under the statute, there is potential that costs of existing routine day-to-day functions of the Companies could become included in Rider GCR because of a relationship to the CBP process," Staff cautioned. Staff suggested that itemizing all of the proposed charges included in Rider GCR would help to avoid the potential for double recovery of certain costs.

Staff further noted that offering the time-differentiated options in the manner proposed by the FirstEnergy companies, "may detract from the clarity of the product definition," in the competitive bid process. "Numerous residential and commercial customers potentially could be served on dynamic rate structures, with no corresponding load shape data available to CBP bidders ... which could potentially and detrimentally affect the final prices resulting from the auction," Staff said.

Other than the issue related to time-differentiated options, Staff found that the slice-of-system, full requirements product procured through the MRO is clearly defined as required by statute. Staff also believes that the statutory requirement for availability of electricity pricing information has been satisfied.

While the FirstEnergy utilities proposed that there would be no load cap in the procurement, Staff said that a load cap should be evaluated and considered by the Commission.

Additionally, Staff cited the significant uncertainty regarding the RTO that the FirstEnergy utilities will ultimately be in, as American Transmission Systems Inc. (ATSI) seeks to join PJM under certain conditions. While either PJM or the Midwest ISO would meet statutory mandates for RTO membership and market monitoring required for Market Rate Offers, Staff said that it, "cannot recommend approval of the Companies' MRO at this time," given several outstanding RTO issues.

Staff noted that the Fixed Resource Requirement (FRR) integration plan, which would procure capacity for the FirstEnergy companies' loads as they transition to PJM, is subject to FERC approval, and its implementation according to the timeline proposed by the FirstEnergy utilities as part of the MRO is dependent on FERC. In addition to the uncertainty in the FRR schedule, Staff cited uncertainty regarding ATSI's ultimate decision to join PJM, which is contingent on whether FERC relieves ATSI of certain transmission expansion costs. "The level of uncertainty of risk among potential suppliers/bidders in the energy and capacity auctions should be a factor in the decision as to any recommendation," regarding the MRO, Staff said.

Electric Security Plan

"FirstEnergy should consider an electric security plan SSO [Standard Service Offer] option," Staff said, in stating that it will issue a strawman for an electric security plan at a December 1, 2009 pre-hearing conference.

An electric security plan, "offers significant advantages for the Applicants, the ratepayers of the Applicants and the public at large," Staff argued. Staff said that an electric security plan could:

- Include a competitive procurement process;

- Utilize options to hedge rates;
- Encourage economic development;
- Provide a means of encouraging energy efficiency and the use of renewable energy sources;
- Add flexibility to change rate treatment within rate classes;
- Improve distribution reliability and safety through incentive ratemaking or direct modernization; and,
- Provide a process where stakeholders can seek resolution of specific issues

"The success of the current electric security plan for these applicants shows that the benefits of a competitive energy auction can be preserved while also encompassing the value of the additional attributes of the electric security plan," Staff contended.

FirstEnergy's MRO is docketed as Case 09-906-EL-SSO.

Liberty ... from 1

LoCascio reported that Liberty has seen an "excellent" response among residential customers to Liberty's radio spots.

Additionally, LoCascio said that Liberty is seeing customers inbound from the Pennsylvania PUC's utility choice website, which lists Liberty as one of only four residential suppliers, along with Direct Energy, Dominion Retail, and Community Energy. Community, however, is not currently offering to serve residential load at PPL and is only marketing a REC block product as an add-on to default service, though Community is licensed to serve customers as an LSE. Anthracite Power & Light, which is conducting limited residential marketing particularly to customers of affiliate heating oil companies, is not listed as active on the utility choice website.

Liberty's various sales channel partners are also selling residential products in concert with their business-to-business efforts. Liberty's direct mail, radio and print campaign is also soliciting business customers as well as residential. Liberty Power is the preferred supplier of the Hispanic Chamber of Commerce of Lehigh Valley, LoCascio added.

Licensed in nearly every state with an active retail electric market, Liberty has focused most of its growth in new territories on commercial and industrial sales, with residential sales generally limited to New York, Texas, and to a more limited extent, Maryland.

Notably, even though the Connecticut market has many features in common with PPL (Purchase of Receivables foremost among them), Liberty has only a handful of Connecticut residential accounts, and it's not clear if these are simply residential meters from a commercial property.

LoCascio said that a number of factors accounted for Liberty's decision to enter the PPL residential market versus other residential markets. Asked whether the lack of any existing supplier with a significant amount of residential accounts at PPL (compared to Dominion Retail/Levco's early mover status in Connecticut which had a sizable residential book before statewide POR was implemented), LoCascio agreed that the lack of any long-standing entrenched competitive supplier in the PPL mass-market arena played a role in Liberty's decision. There are currently no residential customers shopping at PPL, per the Office of Consumer Advocate's October migration data.

"To a certain extent, PPL provides a level playing field to all retail suppliers who are looking to expand, which adds to the attractiveness of market entry," LoCascio said.