

Energy Choice

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Pa. PUC Clarifies Electric Marketing Agents Do Not Require License

The Pennsylvania PUC has sent a letter to electric generation suppliers (EGS) clarifying that, when functioning as "marketing services providers," independent agents and contractors used by suppliers do not need to be individually licensed by the PUC.

The Commission noted that there has been uncertainty regarding whether entities or individuals under contract with suppliers must be licensed by the Commission in order to provide marketing services, such as telemarketing, direct mail, newsletters, brochures or door-to-door activities. Such uncertainty has led to reluctance among suppliers to proceed with marketing activities in PPL's service area, the PUC said.

The uncertainty is due in no small part to the position taken by Staff in the electric licensing proceeding of Just Energy, in which Staff questioned Just Energy's reliance on independent sales contractors who were not licensed by the Commission as brokers, with Staff suggesting that such agents should be licensed (Only in Matters, 5/26/09).

However, the Commission said that there have been "numerous" Chief Counsel opinion letters provided to suppliers over the past 12 years indicating that entities providing marketing services need not be licensed. Since competition began, suppliers have frequently relied upon independent third parties to market their services especially to residential and small business consumers, the Commission added, with such marketing services providers soliciting customers to purchase

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UGI Asks for Waiver of Default Service Load Cap due to Weak RFP Response

UGI Utilities has petitioned the Pennsylvania PUC to waive a one-third load cap applicable to wholesale suppliers serving its Group One customer electric default service load, in order to attract more bidders to a contingency RFP it will hold for swing supplies after results from an earlier RFP were rejected by the Commission.

Under UGI's existing default service plan, UGI uses a swing service (an hourly load following service) for 25% of the default service load of Group One customers (customers with peak loads less than 100 kW). Additionally, the default service plan prohibits any wholesale supplier from serving more than one-third of the estimated default load in a customer grouping.

UGI conducted an RFP for Group One swing service on November 30, but the results were rejected as non-competitive by the PUC, as there was only one bidder in the RFP.

"The rejection of this RFP ... could have serious repercussions for Group One Customers beginning January 1, 2010," UGI said. If the Commission does not grant UGI's waiver petition, UGI said that it could be required to procure Group One supplies on the spot market starting January 1, 2010.

"UGI does not believe that it is appropriate to rely on the spot market for 25% of default supplies for Group One Customers, especially in the winter months," UGI said.

To attract greater RFP participation, UGI asked the PUC to lift the one-third load cap applicable

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Pa. PUC Expands Office of Competitive Market Oversight to Electric Industry

The Pennsylvania PUC has expanded its Office of Competitive Market Oversight (OCMO), previously focused on the natural gas industry, to serve as the Commission's electric retail choice ombudsman.

Specifically, OCMO will be responsible for responding to questions from electric generation suppliers (EGSs), monitoring competitive market complaints, and facilitating informal dispute resolution between default service providers and EGSs. In performing these functions, OCMO will assume only an advisory and informal mediation role.

OCMO plans to hold periodic conference calls or meetings to identify and resolve issues that may be hindering the development or proper functioning of the electric retail market. The first such meeting is planned as a conference call for December 18, 2009 at 9 a.m.

The expanded OCMO is to be headed by Karen Moury, the PUC's Director of Operations, who has an extensive background in retail issues.

Delaware Raises Threshold Which Triggers Waiver of Net Metering Obligation

The Delaware PSC has approved several revisions to its regulations applicable to net metering, which must be offered by competitive electric suppliers, to incorporate recent statutory changes (Reg. Docket No. 49, Matters, 9/25/09).

As only reported by *Matters*, the PSC imposed expanded net metering obligations on competitive suppliers last year, including a requirement to offer net metering at non-discriminatory rates that are identical, with respect to rate structure and monthly charges, to otherwise applicable rates (Only in Matters, 9/8/08).

Among other things, the approved changes raise the waiver cap applicable to net metering by holding that, "If the total generating capacity of all Customer-generation using net metering systems served by an electric utility exceeds 5% of the capacity necessary to meet the Electric

Supplier's aggregated Customer monthly peak demand for a particular calendar year, the Electric Supplier may elect not to provide Net Metering services to additional Customers." The previous cap at which suppliers could seek a waiver was 1%.

The final revisions also create a specific cap on the size of customer-sited generation for farm customers eligible for net metering, of 100 kW per utility meter. The prior rule had set limits of 25 kW for residential customers and 2 MW for non-residential customers, with no farm customer carve-out.

Additionally, the final rules hold that suppliers, upon the request of the customer, must refund any excess customer generation at the end of an annualized billing period, with such payment calculated by multiplying the excess kWh credits by the customer's Supply Service Charges based on a weighted average of the first block of the summer (June through September) and winter (October through May) Supply Service Charges in effect at the end of the customer's annualized billing period and the preceding 11 billing periods, excluding non-volumetric charges, such as the transmission capacity charge and/or demand charges. If such payment is less than \$25, the supplier may credit the customer's account through monthly billing.

Previously, customers forfeited any excess generation credit at the end of the annualized period, with suppliers required to make a payment into the state's Green Energy Fund reflecting such excess generation at their avoided cost of wholesale power.

The final changes also strike a provision in the previous rule which assigned RECs from surplus generation to the electric supplier (with the customer retaining RECs associated with self-generation that they consume). Ostensibly, the revision is meant to grant the customer the right to all RECs, but the adopted language is ambiguous, because while certain language relating to suppliers is struck, the language assigning RECs to customers is the same as under the old rule which only assigned customers RECs from consumed generation. Specifically, the proposed language states, "The Customer shall retain ownership of RECs associated with electric energy produced *and*

consumed by the Customer" (emphasis supplied). The term "and" could be read as requiring two conditions necessary for the customer to retain RECs: the customer must produce the energy and the customer must consume the energy, which is what the same language meant under the old rule.

While the final rule does strike the language, "The RECs associated with [net excess generation] convey to the purchasing Electric Supplier," nothing in the adopted rule explicitly states where these RECs from surplus generation now go in the absence of this provision. While PSC broadly states in an order accompanying the proposed rule that the changes, "allow customers to retain ownership of 'renewable energy credits,'" that policy isn't clear from the adopted language.

The final rule adds a provision governing net metering for plug-in electric vehicles. Per the adopted rules, a retail electric customer with a Grid-Integrated Electric Vehicle shall be credited in kWh for energy discharged to the grid from the plug-in vehicle's battery at the same kWh rate that the customer pays to charge the battery from the grid. Excess kWhs will be governed by the same net metering provisions as for any other type of distributed renewable generation.

FERC Won't Require Restitution for 2008 NYISO PAR Errors

FERC will not require the New York ISO to make restitution to correct values incorrectly introduced into the NYISO's Security Constrained Unit Commitment software for the Waldwick-Ramapo Phase Angle Regulator (PAR) for several days in January 2008, finding that a "rough justice" proposal supported by NYSEG and Rochester Gas & Electric was not sufficiently accurate to be a just and reasonable solution (ER10-65).

As only reported in *Matters*, the incorrect PAR inputs resulted in the redispatch of generation, causing an increase in Locational-Based Marginal Prices west of the Total East interface, and a decrease in LBMPs east of Total East. The error caused certain western LSEs to pay in the aggregate \$10.5 million in balancing congestion residuals.

NYSEG, RG&E, and several munis had

recommended that the negatively impacted LSEs be partially reimbursed for the \$10.5 million using \$3.5 million in congestion rents received by other LSEs due to the error, under a rough justice form of remediation. Most stakeholders and NYISO opposed any such restitution (Only in Matters, 8/11/09).

FERC agreed with the NYISO, finding that, "the ramifications of the error in question are too complex to enable NYISO to equitably and fairly rebill its customers."

In particular, the Commission agreed with the Long Island Power Authority that the rough justice proposal, "addresses only a subset of a larger, more complex error, and in so doing fails to account for offsetting factors that would reduce the calculation of harm to load-serving entities."

"The Commission finds LIPA's arguments particularly convincing given that LIPA, apparently one of the largest net beneficiaries under the rough justice' proposal, nonetheless states that the Rough Justice Proposal is an unbalanced and unjust methodology, rewarding very few LSEs, while not taking into account the effects on other stakeholders," FERC said.

FERC explained that accurate calculation of restitution, "is complicated by the need to account for market participants' hedging devices and derivatives and by the numerous assumptions related to what market behavior would have been absent the error."

Power Marketers Oppose Position Limit in CAISO Convergence Bidding

Power traders opposed the California ISO's proposal to impose a position limit on convergence bidding, arguing that CAISO hasn't justified concerns about market power and illiquidity, and arguing that convergence bidding will instead alleviate market power.

As part of its implementation of convergence bidding, CAISO proposed to impose position limits equal to (a) for generator nodes, 10% of the maximum normal capability of the generator connected to that node; (b) for demand nodes, 10% of (1) the maximum megawatt (MW) volume that flows over that node or (2) the

megawatt-hour volume of the peak demand volume at that node; and (c) for interties, 5% of the Operational Transfer Capability of that intertie point.

"[T]he concept of market power as it relates to convergence bidding does not make any sense," the Western Power Trading Forum said, since, "[t]here is no limit to the participation nor any 'ownership' or ability to concentrate convergence bids." WPTF noted that there is no precedent in any other market to suggest that bidders can exercise market power with virtual bids, while arguing that position limits will hinder convergence bidders' ability to curb the market power of physical generation.

Calpine cautioned that position limits may actually decrease the desired liquidity in the virtual market, by diluting interest in convergence bidding.

Position limits, WPTF added, can adversely affect certain market participants, in particular generation owners seeking to hedge risks of physical deliveries. Generation owners will rely upon virtual bids to mitigate the risks from outages after the day-ahead market. With the position limits proposed by CAISO, generation owners would only be able to hedge 10% of their full output positions at nodes, forcing generators to submit virtual bids at other generating nodes to hedge production at their own generation nodes beyond 10% of full output levels. "This so-called 'dirty hedge' would be an inefficient and potentially ineffective means generation owners will be forced to use in order to hedge transactions under convergence bidding," WPTF said.

Noting that the position limits are to sunset after two years, Dynegy questioned their initial need. "If position limits were truly warranted or necessary, Dynegy presumes the CAISO would impose them with no pre-defined sunset date, and seek to have them removed only after analyzing their effectiveness."

SESCO Enterprises, Jump Power, Silverado Energy, and JPTC argued that the position limits are actually bid limits, since CAISO would apply the limits at the time of bid submission. "Therefore, they limit the bids a market participant can place, not the market participant's position after the market has cleared," the financial marketers noted.

"Because only a fraction of a market participant's bids can be expected to clear, the 'bid limits' are far more restrictive and anti-competitive than they might otherwise appear. To illustrate the point, in the first eight months after implementation of convergence bidding, no market participant could place a virtual bid for more than ten percent of the maximum normal capability (PMax) of the generator at a generator node. Since not all convergence bids clear, it would take more than ten convergence bidding entities bidding at the maximum allowed amount to fully constrain the generator's market power at the node. Thus, the proposed restrictions would greatly limit the ability of convergence bidding to act as a meaningful check on the exercise of market power by incumbents," the financial marketers said.

However, Southern California Edison supported the position limits, "as a means to help mitigate the potential exercise of market power by any one market participant that could occur, absent a deep and liquid market for convergence bidding." Furthermore, SCE opposed CAISO's "arbitrarily defined" timetable for phasing out the position limits. "In fact, as with many other financial markets, some level of position limits may need to be a permanent feature of the market," SCE said.

SCE opposed allowing convergence bids on the interties in the absence of a mechanism that can clearly distinguish between physical and virtual bids at the interties. "Without such a distinction the market software has the potential to create scheduling and pricing discrepancies that would allow 'implicit' virtual bids to crowd-out physical bids in the Integrated Forward Market," SCE said.

Pacific Gas & Electric also urged FERC to delay convergence bidding at the interties until CAISO has completed a stakeholder process to address several concerns, including the potential crowding out of physical imports by virtual imports, and potential unintended results from adding a constraint on physical intertie schedules that is not reflected in prices.

PG&E further contended that additional local market power mitigation provisions should be developed to better protect against the use of local market power in connection with convergence bidding.

Briefly:

BlueStar Energy Services Seeks to Expand Pa. Electric License to Include Residential Customers

BlueStar Energy Services filed an amendment to its Pennsylvania electric supply license (Only in Matters, 11/9/09) to expand its license to include marketing to residential customers and commercial customers under 25 kW.

Detroit Edison Hits Choice Cap

Last week, Detroit Edison reached the 10% cap on electric choice, with some 4,930,685 MWh of load served competitively. Detroit Edison's queue still contains 153 enrollments consisting of 142,827 MWh.

RBS Receives Delaware Electric License

The Delaware PSC granted The Royal Bank Of Scotland an electric supplier certificate.

WindStreet Energy Seeks Pa. Broker License

WindStreet Energy applied for a Pennsylvania electric broker/marketer license to serve commercial customers above 25 kW and industrial customers at PPL and PECO. WindStreet is an affiliate of NCG Energy Solutions. WindStreet said that it would primarily focus on brokering green supply contracts and RECs.

Superior Plus Closes on Griffith Energy Acquisition that Will Be Springboard for U.S. Supply Marketing

Superior Plus has closed on its \$75 million acquisition of certain assets of Griffith Energy Services, giving the Canadian marketer 47,000 heating oil, HVAC service, and motor fuel distribution customers in Connecticut, Pennsylvania, and Rhode Island (Only in Matters, 11/5/09). As only reported by *Matters*, Superior said that it intends to cross sell its fixed-price commodity supply contracts to its new customers, initially focusing on selling electricity contracts to its new heating oil customers (Only in Matters, 11/6/09).

Revised DPUC Draft Would Grant ResCom Energy Electric License

A revised Connecticut DPUC draft would grant

ResCom Energy LLC an electric supplier license, after ResCom submitted supplemental financial information (Only in Matters, 12/2/09).

WGES, Clean Currents Partner on Solar System for Bullis School

Washington Gas Energy Services has entered into a contract with the Bullis School in Potomac, Maryland under which Bullis will purchase from WGES the output of a 111-kW solar photovoltaic system installed at the school on a 20-year PPA. Clean Currents Solar will install the solar panels. The PPA price is 12¢/kWh for the first year, with the price increasing by 3% annually. The solar panels are expected to generate 143,000 kWh of electricity annually, supplying 6% of the school's annual electricity needs.

Delaware Approves IRP Regulations

The Delaware PSC adopted final regulations to govern Delmarva Power's integrated resource planning process (Regulation Docket No. 60, Only in Matters, 8/20/09). The final regulations are an outgrowth of stakeholder discussions and a prior proposal released in January 2009. Under the adopted rules, Delmarva must file an integrated resource plan every two years, starting on December 1, 2010, using a 10-year planning horizon. The rules require that at least 30 percent of the proposed resource mix shall be acquired through the regional wholesale electricity market via a bid procurement or auction process held by Delmarva.

Delaware PSC Approves Minor RPS Change

Consistent with recent legislation, the Delaware PSC updated its RPS regulations to reflect that the three-year compliance life applicable to RECs shall be tolled during the period in which a REC is held by the Sustainable Energy Utility, a statutorily defined nonprofit entity that develops and coordinates programs for end-users (Regulation Docket No. 56, Matters, 9/25/09).

Calif. ALJ Rejects Motion to Dismiss PG&E-GWF Energy Novation Application

A California ALJ denied a motion to dismiss Pacific Gas & Electric's petition to novate the Department of Water Resources' supply contract with GWF Energy and to enter into a

new supply agreement with GWF Energy (Only in Matters, 10/21/09). The Alliance for Retail Energy Markets and the California Large Energy Consumers Association argued that entering into a new supply agreement as part of the novation compelled dismissal because D.07-12-052 requires all PPAs to be sourced through competitive solicitation (A. 09-10-022). However, the ALJ found that PG&E has, "presented colorable arguments that the New Power Agreement is consistent with existing law and Commission policy," and thus denied dismissal, in a procedural ruling not addressing any substantive issues. PG&E has argued that the Commission has not ruled on whether novations may include new agreements, as PG&E noted that the PUC had said each novation will be addressed on a case-by-case basis.

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electricity from the supplier with whom the marketing services provider is under contract.

"As long as third parties entities [sic] are working directly for an EGS, as an employee or independent contractor, and their activities are limited to providing marketing and sales support services, they are not engaged in the sale of electricity or related services to consumers. As marketing services providers, these entities need not be licensed by the Commission," the PUC clarified.

Such marketing agents would be required to become licensed if they become, "involved in arranging for electric service to be provided to end users, including the collection or payment of supply costs," the Commission added.

The Commission reminded suppliers of their responsibility for any fraudulent, deceptive or other unlawful marketing or billing acts performed by their employees, agents or representatives. "For instance, if an independent marketing services provider under contract with the EGS misrepresents an offer to a consumer or uses deceptive practices to attract the customer to the EGS, the Commission will hold the EGS responsible," the PUC said. Such actions of a third party marketing services provider could result in the imposition of civil penalties on suppliers, including fines, license suspension, or license

revocation, the Commission added.

"The Commission is aware that the business model of using independent contractors for marketing and sales support has caused customer service concerns in some states. Through OCMO (Office of Competitive Market Oversight), the Commission will be closely monitoring the issue in Pennsylvania and will evaluate this business model by November 30, 2010 to determine if steps are necessary to restrict or prohibit this practice," the PUC said.

The Commission had previously, in codified regulations, exempted from the licensing requirements entities that provide marketing and sales support services to licensed natural gas suppliers under a contract.

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to the Group One class for the period January 1, 2010 though May 31, 2011. UGI said that the petition was not opposed by any party to its previous default service settlement, including Trial Staff, the Office of Consumer Advocate, and Constellation Energy.

UGI has scheduled another RFP for swing service on December 16, and intends to inform potential bidders that even if they would be above the one-third limitation contained in the default service settlement, they should submit bids that are contingent on the Commission granting the waiver. UGI believes that such a provision will attract additional bidders, reporting that two wholesale suppliers are nearing the one-third limitation.

UGI said that it will file a subsequent petition to lift the one-third load cap for all other customer groups at a later date, but kept the instant petition narrow to facilitate an expeditious resolution. UGI asked the PUC to rule on its petition at its December 17 meeting.