Energy Choice Matters

December 28, 2009

Suppliers Say Pa. Gas Market Changes Should Apply to All Customers

Various retail gas market improvements under consideration by the Pennsylvania PUC under its SEARCH rulemakings should not be limited to small volume customers, the Retail Energy Supply Association said in reply comments (L-2008-2069117 et. al.).

As only reported in *Matters*, various parties, including National Fuel Gas Distribution Company, argued that the proposed changes should be limited to mass market customers, citing the greater migration among large volume customers as evidence of a workably competitive market (Only in Matters, 12/2/09).

RESA countered that limiting the changes to the mass market, "will result in the continued existence of impediments to competition in the C&I retail gas supply market, which contradicts the Commission's stated objective in the SEARCH Order to facilitate competition in all of Pennsylvania's retail natural gas supply markets."

"Although the C&I natural gas supply market may be more competitive than other customer classes, i.e., a greater percentage of C&I customers may be purchasing natural gas from a Natural Gas Supplier ('NGS') than customers in other classes, there are many business practices that are overly restrictive and unnecessarily costly, which impedes further development of competition in this sector. Thus there is still a need to facilitate competition in the C&I market," RESA said.

"Indeed, NGDC operational rules/business practices currently in place, such as extremely tight

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Pa. OCA Opposes Exclusion of UGI - Gas POR Development Costs from Discount Rate

The Pennsylvania Office of Consumer Advocate is "strongly opposed" to UGI Utilities - Gas Division's petition to recover development costs of a proposed Purchase of Receivables program from all customers, rather than through the discount rate applicable to purchased receivables.

As only reported in *Matters*, UGI Gas has filed to implement a POR program for small volume customers under which uncollectibles and administrative costs would be included in the discount rate, but development costs would be applied to all customers on a nonbypassable basis. UGI said that if development costs were included in the discount rate, the discount rate would be prohibitively high, because UGI only has 9,000 customers participating in its choice program. UGI estimated that, if included in the discount rate, the development cost component would be 1.05%, increasing the total discount rate to 3.83% for residential customers and 2.0% for commercial customers (Only in Matters, 12/7/09).

However, OCA noted that, "UGI - Gas's proposal to recover these costs from its customers because it does not expect sufficient participation by [suppliers] to recover the costs in a reasonable timeframe calls this entire proposal into question." OCA recommended recovering development costs through the discount rate, similar to uncollectibles and administrative costs.

The Office of Small Business Advocate also questioned whether any increased shopping opportunities are worth the $800,000 development costs. "Non-shopping customers of UGI should

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Delaware PSC Approves Revised Retail Margin for Delmarva

The Delaware PSC approved as final Delmarva Power's updated Reasonable Allowance for Retail Margin (RARM), which was approved on a temporary basis in February and has been charged to customers since billings as of March 2, 2009, subject to refund (docket 09-9).

The new RARM factor is $.0027727/kWh, which is embedded in SOS rates for non-hourly supply customers. For large customers eligible for hourly pricing, the RARM is recovered via a nonbypassable delivery rate, regardless of whether the customer takes Delmarva hourly pricing or competitive supply. Under the new RARM, the impact to an average residential customer using 1,000 kWh is $0.32 per month, or an increase of 0.2%.

The RARM includes recovery of the incremental expenses Delmarva incurs in providing fixed price SOS and hourly priced service, and $2.75 million per year. Such incremental expenses include Estimated Annual Ongoing Costs, Net Uncollectibles and other taxes, Amortization of Implementation Costs, Amortization of Prior Year Under or Over-Collections, and Cash Working Capital.

As part of its RARM application, Delmarva entered into a settlement with PSC Staff under which parties agreed to reduce the Rate of Return for the amortization of the Year 2 (ending May 31, 2008) under-collected amounts from the 10.49% Rate of Return allowed in the company's last rate case to 6.4%.

Delmarva also agreed that, in Year 3 (ending May 31, 2009), actual uncollectible SOS supply and transmission-related expense allowed to be recovered shall not exceed $7.28 million. In Year 4 (ending May 31, 2010) and subsequent years, the RARM uncollectible expense shall be the actual uncollectible SOS related expense for a three year normalized average ending with the period covered by the application.

In Year 4 and subsequent years, the parties also agreed that, unless the total RARM costs increase or decrease by at least 5.25%, the allowed RARM total costs will not change from year-to-year.

Direct Cites DPUC Precedent in Bringing Termination Petition Under §16-20

Connecticut DPUC precedent explicitly recognizes that gas marketers may bring disputes with LDCs before the Department through a request for a declaratory order under Conn. Gen. Stat. §16-20, Direct Energy said in an answer to the DPUC (09-11-15).

As only reported in *Matters*, Direct petitioned the DPUC to issue a ruling pursuant to Conn. Gen. Stat. §16-20 regarding whether the LDCs can prevent Direct from terminating supply to non-paying commercial customers. 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, since the tariff requires customers to stay on third party supply for 12 months. Direct countered that while terminated customers may not be able to return to sales service, nothing in the tariff obligates the same supplier to serve a specific customer for the entire 12 months that the customer is on third party supply (Only in Matters, 11/26/09).

The Department asked Direct to further justify its standing to seek relief under Conn. Gen. Stat. §16-20, as the DPUC said that the issue appears to relate to the interpretation of an agreement between Direct and an end-use customer (Only in Matters, 12/22/09).

Direct stressed that it is not asking for an interpretation of its own agreement with end-use customers, as the agreement is clear in granting Direct the right to terminate supply for non-payment. What Direct Energy is requesting is confirmation from the Department that terminating such customers is not at odds with the 12-month minimum stay for customers on third party supply service, and an order directing the LDCs to refrain from refusing to process drop requests based on an erroneous interpretation of their tariffs.

"Moreover, the Department itself has held that Conn. Gen. Stat. § 16-20 is the appropriate vehicle for such claims for relief," Direct said, noting that in Docket No: 06-04-04 (DPUC Review of Cost Allocation Issues Related to Natural Gas Transportation Services), Direct

Energy and Santa Buckley Energy argued for the establishment of an efficient, fair, and balanced process to settle disputes arising between gas local distribution companies and marketers over the application of tariff provisions. In that docket, the DPUC found that, "the existing Conn. Gen. Stat. § 16-20 statute provides for the efficient, fair and balanced process to settle disputes sought by marketers."

"The Department does not believe that an additional, parallel or alternative process is necessary," the order stated in directing any disputes to follow the §16-20 relief process.

The Department also stated that, to the extent Direct is asking for a ruling waiving any Failure to Deliver penalties imposed by the LDCs for no longer supplying the terminated customers, the DPUC believes that the question is not ripe for adjudication.

However, Direct said that it should not be required to first terminate the customers and expose itself to the Failure to Deliver penalties in order to then have standing to seek relief and defend against potential penalties imposed by the LDCs due to changes in Direct's delivered quantities, as a result of customer terminations pursuant to the terms of its underlying contracts, and due to the LDCs' "incorrect and overbroad" interpretation of their tariffs.

"Such a result clearly will not promote the further development of a competitive market for natural gas sales in Connecticut," Direct said.

Moreover, the Department deferred setting a policy on issues regarding balancing penalties in Docket No. 05-05-10, Direct noted, adding that the petition "is precisely the type of issue that the Department held in abeyance for consideration under Conn. Gen. Stat. § 16-20 should the need arise in the future."

Briefly:

Direct Energy Services Clarifies Conn. Complaints

Direct Energy Services clarified, in a response to the Connecticut DPUC, that an increase in Connecticut electric complaints that prompted a letter from the DPUC relates to Direct Energy Services, and not Direct Energy Business, to whom the original DPUC letter was addressed (Only in Matters, 12/9/09). Aside from redacted responses to seven specific complaints listed by the DPUC, Direct noted that in October, Direct Energy Services enrolled some 6,000 residential customers in the state, representing solicitations to tens of thousands of customers. Direct said that with such a high level of marketing activity, and a low ratio of complaints to new enrollments, a fair amount of variability in the raw number of complaints from month-to-month is inevitable.

Publication Note

Energy Choice Matters published issues on Dec. 24 and Dec. 25. Stories included:

Dec. 25

- Algonquin Power Fund Seeks CPCN for Merchant Line to Link Northern Maine, ISO-NE
- CMP Opposes Customer Lists for Small Commercial and Residential Customers
- Ontario Board Denies Enbridge Request to Ratebase Non-Delivery, Renewable Investments
- O&R Says Hourly Pricing Schedule Not Affected by Month Delay in Customer Usage Tool

Dec. 24

- Calif. Draft Would Prohibit Utilities from Tying Efficiency Funds to City's CCA Decision
- Calif. ALJ Releases Updated Tradable REC Draft, Mostly Impacting Utility Compliance
- Calif. 2011 RA Obligation Proceeding to Examine Local Load True-Up
- DPL Energy Resources Seeks Illinois, Michigan Electric Licenses
- Wind Generators Seek Rehearing of Dismissal of Complaint on ERCOT Protocol Interpretation

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imbalance tolerance bands and unreasonable imbalance penalties, serve only as a revenue stream for the NGDCs or as a subsidization of the Purchased Gas Cost ('PGC') rate paid by sales customers," RESA added

However, the Energy Association of Pennsylvania warned that, "To the extent that the Commission includes larger suppliers in the ambit of this rulemaking, it should also recognize that certain of the proposals advanced by the

Retail Energy Supply Association to primarily benefit larger marketers would not only lead to increased costs for NGDCs and PGC customers, but would also raise issues of system reliability."

Imbalances

In particular, EAPA pointed to RESA's proposed "no harm, no foul" imbalance penalty mechanism (whereby imbalances that are opposite of the system condition are not penalized). EAPA argued that the mechanism, "would provide an incentive to customers to engage in arbitrage opportunities rather than deliver system supplies since no penalty might be imposed, leading to a deterioration in system reliability."

RESA defended the proposed 10% imbalance tolerance band, which National Fuel Gas Distribution, and others, said is vulnerable to gaming.

"[T]here has not been a scintilla of evidence provided that [suppliers] are 'gaming,' including in the Columbia service territory where the tolerance level for interruptible customers is 5 or 10%," RESA countered

"This gaming accusation is precisely the kind of baseless and unproven accusation that has been leveled throughout the SEARCH proceeding in an effort to discredit [supplier] efforts to avoid inappropriate penalties for fulfilling their agreements [with] customers," RESA added.

Without imbalance trading, suppliers, "would be required to pay additional fees and penalties for imbalances that create no net harm to the system but would serve to subsidize the PGC rate," RESA said. "The Commission should ensure a level playing field that removes unfair and unreasonable subsidization of the PGC rate by transportation customers."

Regarding the imbalance tolerance, the Office of Consumer Advocate in its initial comments pointed to the 0% imbalance tolerance at Columbia Gas as a reasonable benchmark for other LDCs. However, RESA stressed that the 0% tolerance at Columbia is for firm (non-interruptible) customers only. Since, for these customers, the LDC provides the supplier with a daily delivery requirement, which the supplier is typically able to meet absent extreme circumstances, a low or zero imbalance tolerance level is reasonable for these firm customers. RESA said.

For customers not subject to a daily delivery requirement, for whom the supplier must forecast usage, "suppliers must have more liberal tolerance bands," RESA said.

Due to the unpredictable nature of weather forecasts, customer conservation, production schedules, plant outages, and various other factors, it is "nearly impossible" to successfully game a 10% imbalance tolerance, because the supplier would have to predict usage with accuracy that is not achievable to do so, RESA noted.

In its initial comments, National Fuel Gas Distribution read the proposed language regarding imbalances as pertaining to both a daily and monthly level, but now realizes that this interpretation may have been, "overly broad." National Fuel Gas Distribution said that the daily imbalance, in cases where an LDC specifies the daily quantity to be delivered by the supplier, should more accurately be thought of as a performance measure against a fixed target designed to match projected customer consumption for a given day. Actual daily customer consumption will not change the daily target after the fact, National Fuel Gas Distribution said. For these targets, suppliers should have a small margin of error, since the amount does not vary due to actual consumption, National Fuel Gas Distribution added. If the LDC does a reasonably accurate job forecasting the daily specific quantity, the resulting monthly imbalance should be within the proposed 10% tolerance band, National Fuel Gas Distribution observed.

National Fuel Gas Distribution opposed the first-of-the-month cash out pricing proposed by Interstate Gas Supply, Dominion Retail, and Shipley Energy (collectively IGS) in their initial comments. IGS had said that a first-of-the-month index is more readily known and less subject to question after the fact, compared with the proposed gas daily average.

However, National Fuel Gas Distribution claimed that using a first-of-the-month pricing mechanism would invite arbitrage. "First of the month pricing would provide [suppliers] a competitive advantage unavailable to the [LDC] which will have to adjust its purchases to offset [supplier] under or over deliveries in response to market price changes since the start of the month. As a result, non-shopping customers would subsidize shopping customers. To ensure a level playing field, for daily imbalances, a daily cash out price based upon the daily market price at a liquid trading point is essential," National Fuel Gas Distribution said.

National Fuel Gas Distribution dismissed IGS' contention that first-of-the-month pricing is less subject to question after the fact. "Such a generalist statement may have had merit 15 years ago but daily pricing is currently available from a multitude of sources. The calculation of a daily cash out price is based upon a formula tied to a daily market index price and can readily be audited," Distribution said.

IGS countered that, "since the advent of natural gas competition there has been no evidence of this type of arbitrage. The reason is simple - arbitrage is a short term strategy. Suppliers who invest in acquiring and serving customers will not readily throw those customers away for the potential of a short-term profit that could result in its inability to continue to serve customers."

However, "Distribution believes the lack of evidence is more likely a result of the tight daily tolerances currently in its tariff which are designed to prevent such abuse and help protect system reliability," National Fuel Gas Distribution said. A call for first-of-the-month pricing, "looks more like a long-term strategy designed to give [suppliers] a discriminatory advantage at the expense of non-shopping [LDC] customers," National Fuel Gas Distribution claimed.

Other Issues

IGS, as well as a group of suppliers known as the NGS Parties (consisting of Agway Energy Services, Gateway Energy Services and Vectren Retail) recommended various changes to capacity release in their initial comments, which National Fuel Gas Distribution called outside the scope of the instant rulemaking. Citing comments made by the NGS Parties in docket L-2008-2069114 (relating to capacity release), National Fuel Gas Distribution said that the NGS Parties' recommendation to prohibit the LDCs' optimization of pipeline assets (with capacity following the customer), "could hinder an [LDC's] ability to purchase on a least cost basis as is required by statute." National Fuel Gas Distribution contended that it is "evident" that the Parties, "wish[] to create some headroom between their rates and those of the [LDCs] under least cost procurement programs." The Parties' proposal, "could lead to a stealth-like increase in costs to all customers," National Fuel Gas Distribution claimed.

Columbia Gas disagreed with suppliers recommending that all customers be charged for implementation costs associated with the rulemaking, arguing that it has not been shown that all customers will benefit from such rule changes. "[I]mplementation costs should be limited to the beneficiaries of the proposed regulations - the [suppliers] and their customers," Columbia said.

RESA urged the Commission to dismiss calls to defer work on a standard choice tariff through a stakeholder process in favor of addressing issues in individual LDC rate cases. UGI, in particular, suggested addressing operating rules and business practices in rate cases, but RESA, "finds this argument ironic when considering that in individual cases before the Commission, UGI repeatedly has argued that these supplier issues should be deferred to and addressed as part of SEARCH."

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not be required to pay costs that will subsidize the shopping customers of the Company," OSBA said.

Similar to its protests of other POR programs, OCA objected to UGI's petition for authority to disconnect customers for non-payment of purchased supply-related receivables, even when such receivables exceed default service charges. Similar to the program at Duquesne Light, OCA said that termination for non-payment of supplier receivables should be limited to the amount that the customer would have paid under sales service.

OCA also argued that suppliers participating in UGI's POR plan must be required to waive any deposit requirements and not credit screen customers placed on POR.