Energy Choice Matters

January 14, 2010

Md. PSC Defers Action on Delmarva, Allegheny POR Compliance Filings

The Maryland PSC deferred action on the Purchase of Receivables compliance filings of Allegheny Power and Delmarva Power at yesterday's administrative meeting, taking both matters under advisement and directing the utilities to comply with Staff's data requests.

Chairman Douglas Nazarian spent much of the meeting criticizing suppliers as he has done at the two most recent administrative meetings addressing POR, again claiming that suppliers want zero risk from POR, but won't make a commitment to enter the market. Nazarian reiterated that suppliers, and not all distribution customers, should pay for POR implementation expenses.

Commissioner Susanne Brogan questioned Delmarva, which has included a risk factor in its POR proposal, why such a risk factor is necessary, as Delmarva is permitted to collect any unrecovered costs through a reconciliation. Commissioner Therese Goldsmith challenged Delmarva to justify why a risk factor of 50% of the implementation cost discount component is appropriate, versus 25%, or 75%. Brogan recognized that establishing a POR discount rate that is too high, in part due to the risk factor, may merely incent larger commercial customers, the bulk of choice load upon whom POR cost recovery is dependent, to switch to dual billing, precipitating an under-recovery of costs which the risk factor was purported to prevent.

At the same time, Brogan wondered why Delmarva's revised residential discount rate of 1.28% (reflecting lower uncollectible costs, lower implementation costs, and an attendant lower risk factor) is too high for suppliers, given that the residential discount rate at the wildly successful PPL market is 1.37%. Suppliers noted that the economics of the two markets are different.

As noted earlier this week, Staff has still not received some data from the utilities to inform Staff's recommendations. Nazarian criticized the Staff for recommending discount rates absent complete data, and said that the Commission should not act on any POR compliance filings until all the data is produced. Brogan, however, countered that the Commission has to implement a POR program

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PUCO Approves SCO Auction Results at Vectren Energy Delivery of Ohio

The Public Utilities Commission of Ohio approved the results of Vectren Energy Delivery's initial Standard Choice Offer (SCO) auction, which resulted in a Retail Price Adjustment (RPA) of $1.55/Mcf, which shall be added to the NYMEX monthly price to set the rate paid by non-shopping customers for the one-year period beginning April 1, 2010.

Under the SCO, winning suppliers bid on and serve actual customers as their retail suppliers, rather than providing wholesale gas to Vectren as under the former Standard Service Offer auction. In the auction, tranches of SCO customers were combined with customers who are ineligible for choice and must take Default Sales Service, though for these customers, suppliers will only provide wholesale gas to Vectren, and will not serve these customers individually at they will do for SCO customers. The rates for both customer types are identical.

Six bidders participated in the auction which consisted of six tranches, with a bid cap of two

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O&R Says ESCOs Not Ready to Commit to Funding Expanded Referral Program at This Time

New York ESCOs have concluded that they are not yet in a position to commit to funding the expansion of Orange & Rockland's PowerSwitch customer referral program to new service customers, O&R said in an update to the New York PSC (07-E-0949).

A September 21, 2009 PSC order authorizing expansion of the program to new service customers directed Orange & Rockland to consider alternative cost sharing mechanisms to allocate the costs of implementing the PowerSwitch enhancements among single commodity ESCOs, who receive different benefits from the program than dual fuel ESCOs (Only in Matters, 9/22/09). O&R had originally proposed allocating costs equally among participating ESCOs regardless of whether they were participating for only one commodity or both commodities. The PSC accepted this allocation pending the report on alternatives.

O&R reported that it has held a series of meetings with ESCOs regarding implementation of the expanded referral program and cost recovery. O&R, as requested by ESCOs, also provided additional statistics regarding the number of new accounts added in the company's service territory during a one-year time frame.

During a December 23, 2009 teleconference following the provision of such data, O&R reported that, "the ESCOs concluded that they were not yet in a position to commit to funding the expansion of the PowerSwitch Program to new customers. Rather, they requested that the ESCO group reconvene at a later date to consider instead what types of promotional activities associated with the PowerSwitch Program, if any, the ESCOs might be interested in supporting."

"Until such time as the ESCOs reach a consensus as to whether they will support financially the expansion of the Company's PowerSwitch Program, Orange and Rockland cannot propose alternative ESCO costs sharing mechanisms for single commodity ESCOs," O&R said.

O&R has previously estimated the costs of an expanded PowerSwitch program at $46,100 for the first year, including the costs to modify the existing systems, with ongoing maintenance costs of approximately $4,100 annually. Currently, 11 ESCOs participate in PowerSwitch.

San Francisco Requests Calif. PUC Prohibit Utilities from Marketing Against CCAs

The City and County of San Francisco urged the California PUC to prevent the investor-owned utilities from marketing to retain potential community choice aggregation (CCA) customers, arguing that a prior Commission decision needs to be modified because the basis of that decision -- that utilities are not actively opposed to CCAs -- is no longer true (R. 03-10-003). San Francisco recently issued an RFP for supplies for its proposed CCA.

In Decision 05-12-041, the PUC declined to prohibit the utilities from marketing against CCA service, reversing a proposed order which would have prevented the utilities from marketing to retain CCA customers. Although the final order did not discuss the rationale for the change, San Francisco did note that D.05-12-041 states the PUC has no reason to believe that the utilities will interfere with CCAs in any way, as all three utilities, at that time, expressed neutrality towards CCAs.

In particular, San Francisco noted that Pacific Gas & Electric had represented prior to D.05-12-041 that it did not oppose CCAs, and even suggested formalizing its position that it would not market against CCAs in the order. PG&E proposed a finding of fact stating that by marketing utility supply services specifically to CCA customers and providing information about a CCA's services and rates to customers, the utilities may create conflicts of interest and costs that may not be offset by benefits. PG&E also suggested a conclusion of law holding that the utilities should be ordered to refrain from marketing their commodity services to CCA customers by actively encouraging customers to opt out of the CCA program.

However, since D.05-12-041 was issued, PG&E's position on CCA service has changed. The utility is now opposed to their formation, and

is undertaking several efforts to prevent CCAs from forming, San Francisco noted. PG&E has stated that it has abandoned its "original position of neutrality" toward CCA programs and that its revised position "includes marketing its energy supply services to retain customers," San Francisco said, which San Francisco argued should prompt a revision to D.05-12-041.

In particular, San Francisco said that PG&E is the primary backer of a ballot measure that would require the vote of two-thirds of residents in a CCA for the aggregation to be formed, rather than allowing formation through ordinances of city councils or local governments, as is the case now. PG&E has thus far contributed over $5 million to the initiative campaign, San Francisco said.

Additionally, PG&E has issued marketing materials to potential CCA customers warning them of purported dangers from CCAs. In December 2009, San Francisco said that a six-page color brochure was delivered to San Francisco business addresses with a large, “foreboding” front-page headline reading "BUSINESS BEWARE."

"The mailer ominously warns 'DON'T BE LEFT IN THE DARK' and describes CCA as a 'risky scheme' that was '[c]reated by Sacramento legislation' that 'automatically enrolls you - whether you like it or not - unless you opt out," San Francisco said, arguing that such marketing efforts can confuse customers regarding PG&E's mandate to continue providing safe and reliable delivery service regardless of commodity supplier, particularly when phrases such as "Don't be left in the dark" are used. PG&E also developed a website with the same message: www.commonsensesf.com

PG&E has also sent at least one city a letter which San Francisco alleged intimated that PG&E would make various energy efficiency and public goods charge funds available if the city did not pursue a CCA (see Matters, 12/24/09). PG&E has conducted presentations opposing CCAs before city councils, and has solicited customers to opt out of CCAs prior to the timeline set forth in AB 117, contrary to the law's provisions that only CCAs are to issue opt-out notices, unless the CCA asks the utility for assistance, San Francisco said.

"Such marketing exploits the utilities' monopoly-conferred advantage with consumers and is contrary to the Commission's longstanding efforts to prevent such anticompetitive leveraging of monopoly advantages in markets where the Legislature has provided for competition," San Francisco said. Anti-CCA efforts also contravene AB 117's mandate that utilities must "fully cooperate" with CCAs, the city and county added.

For those reasons, San Francisco urged the PUC to:

(1) Prohibit utilities from engaging in marketing to retail customers regarding a CCA program or programs;

(2) Prohibit utilities from engaging in other conduct that is detrimental to and designed to thwart a CCA program or programs (except to the extent that such conduct is clearly constitutionally protected);

(3) Prohibit utilities from soliciting opt-out requests or dictating the opt-out mechanism, except when requested to do so by a CCA program;

(4) Prohibit utilities from making deceptive, misleading or untruthful statements regarding a CCA program or programs; and

(5) Establish an expedited process for CCA programs to obtain temporary injunctive relief against a utility that is alleged to have violated its obligations toward such programs.

"The Commission should also investigate PG&E's violations of California law and Commission rules in its anti-CCA marketing efforts," San Francisco alleged, stating that its instant petition is focused on prospective changes necessary to, "prevent further harm to the success of CCA programs, rather than on the appropriate sanctions for PG&E's misconduct."

Smitherman: LaaR Penalty Should be Based on Action, Not MW Shortfall

While sympathetic to Staff's argument that QSEs should be sufficiently penalized when they fail to meet their Load Acting as a Resource (LaaR) obligations, PUCT Chairman Barry Smitherman, in a memo in advance of today's open meeting, disagreed with Staff's recommendation to

impose a fine on Luminant based on the number of megawatts involved in its failure to supply LaaRs in a timely manner when instructed, as Smitherman believes the that penalty should be based on the single act of failing to meet the 95% response requirement within the 10 minute deadline (37634).

As only reported in *Matters*, Staff and Luminant have reached a settlement on the violation, but have left to the Commission the question of whether (1) an administrative penalty may be assessed on a per MW basis where each MW not timely deployed pursuant to a LaaR obligation following an ERCOT deployment instruction is a separate violation, or (2) an administrative penalty may only be assessed on the single wrongful act or inaction of failing to timely dispatch a LaaR obligation following an ERCOT deployment instruction (Only in Matters, 11/6/09).

Smitherman noted that a determination of what is a violation can be found in ERCOT Protocol 6.10.5.4, which includes compliance measures for LaaR deployment. A LaaR response must be not less than 95% of the Responsive Reserve Service requested within 10 minutes of ERCOT's Deployment Dispatch Instruction, and LaaRs providing a Responsive Reserve Service response shall return to their committed operating levels of Responsive Reserve Service as soon as practical. "In order to be in compliance with the protocol, either the LaaR response meets the criteria, or it does not. This is the basis of the violation, not the number of MWs by which a QSE failed to meet its obligation," Smitherman said.

"I want to emphasize the importance that QSEs meet the LaaR deployment criteria. LaaR deployment is an important tool for ERCOT in addressing reliability situations, and, in the worst case situations, could help prevent load-shedding events. I would welcome rule or protocol revisions that would help the Commission and/or ERCOT impose appropriate penalties to address egregious and repeated LaaR deployment violations," Smitherman added.

Supreme Court Affirms Mobile-Sierra Doctrine on Non-Contracting Parties

The U.S. Supreme Court reversed the D. C. Circuit's judgment that had rejected the application of the Mobile-Sierra "public interest" standard on non-contracting parties, in a ruling issued yesterday.

The case involves challenges to FERC's order approving a settlement establishing the ISO New England Forward Capacity Market. Specifically, FERC approved the settlement's provision that rates under the settlement could only be changed if such changes were found to be in the public interest under Mobile-Sierra, rather than merely found to be "just and reasonable." FERC applied this public interest test to both contracting and non-contracting parties, which, on appeal, the D. C. Circuit found to be inappropriate, as the Circuit said that Mobile-Sierra only applies to contracting parties.

The Supreme Court, however, affirmed that the Mobile-Sierra public interest standard is not an exception to the statutory just-and-reasonable standard; rather, it is an application of that standard in the context of rates set by contract. As such, the Mobile-Sierra standard is applicable to non-contracting parties as well as contracting parties.

"[T]he D. C. Circuit's confinement of Mobile-Sierra to rate challenges by contracting parties diminishes the animating purpose of the doctrine: promotion of 'the stability of supply arrangements which all agree is essential to the health of the [energy] industry,'" the Supreme Court ruled.

Justice John Paul Stevens dissented, arguing that, "the Court applies a rule - one designed initially to protect the enforceability of freely negotiated contracts against parties who seek a release from their obligations - to impose a special burden on third parties exercising their statutory right to object to unjust and unreasonable rates."

"The Court further reasons that 'confinement of Mobile-Sierra to rate challenges by contracting parties diminishes the animating purpose of the doctrine,' which is ensuring the stability of contract-based supply arrangements ... Maybe so, but applying Mobile-Sierra to rate

challenges by non-contracting parties loses sight of the animating purpose of the FPA, which is 'the protection of the public interest," Stevens added.

Briefly:

Energy Plus Seeks Maryland Electric License
Energy Plus Holdings applied for a Maryland electric supply license to serve all customer classes in all service areas. Energy Plus holds licenses in New York, Connecticut and Texas, and has a pending Pennsylvania license application.

Public Power & Utility Receives Ohio License
The Public Utilities Commission of Ohio granted Public Power & Utility an electric supplier license to serve all classes of customers in all service territories (Only in Matters, 12/8/09).

Consolidated Edison Revises Load Shapes
Consolidated Edison has informed ESCOs that, starting February 1, 2010, ConEdison plans to use new load shapes for Energy Reconciliation. No change has been made to the load shape selection criteria, as shape selection is still based on Day Type, Service Class, Stratum Category, and Temperature Reference. However, ConEdison has made changes within those four categories. For example, the Day Type was previously defined as weekday, Saturday, Sunday, or holiday. ConEdison will now define Day Type as day of the week or holiday (e.g. MON, TUE, WED, etc, HOL). While the Temperature reference calculation has not changed, the number of ranges and their band has changed for some Service Classes. The number of stratum and their range has also changed for some Service Classes. ConEdison has converted SC 21 to SC 1, and converted SC 29 to SC 9. SC 3 and 10 are inactive.

GSE Consulting Receives Ohio Gas License
The Public Utilities Commission of Ohio granted GSE Consulting, LP a natural gas aggregator/broker license to serve all sizes of commercial and industrial customers at all four LDCs (Only in Matters, 11/16/09).

VeriServ Seeks Conn. Aggregation License
VeriServ Corporation filed for a Connecticut electric aggregator certificate to serve non-residential customers. CEO James Coleman was an internal management consultant for Northeast Utilities for 13 years, and since then he has specialized in business consulting regarding cost reduction and operations improvements, including as CEO of PSC International.

First Innovative Power Seeks Ohio Broker License
First Innovative Power has applied for an Ohio electric broker/aggregator license to serve commercial, mercantile and industrial customers in all service areas. First Innovative Power said that its joint venture with Vickers Power has been selected as energy advisor to The Scotts Company.

TransCanada Seeks Ontario Retail Licence
TransCanada Energy Ltd. has applied to the Ontario Energy Board for an electricity retailer licence.

ePsolutions Principals File for Three REP Certificates
Principals at backoffice vendor ePsolutions have filed for REP certificates for three separate start-ups: Premier Power, LLC, Reliable Power, LLC, and Secure Energy, LLC.

Iluminar Seeks New Trade Names
Iluminar Energy has applied to the PUCT to add the trade names AllTex Power & Light and Premium Power & Light to its REP certificate

PUCO Approves Columbia SSO/SCO Tariffs
The Public Utilities Commission of Ohio approved the tariff filing of Columbia Gas to implement its Standard Service Offer and later Standard Choice Offer auctions, including the recent revisions reflecting a compromise regarding pipeline scheduling points (see Matters, 12/31/09).

Algonquin Power Completes Acquisition of Integrys Energy Services' Northern Maine Generation
Algonquin Power & Utilities Corp. and Integrys

Energy Services have closed on the sale of Integrys Energy Services' northern Maine and New Brunswick generating assets (some 75 MW). Financial terms were not disclosed. Integrys Energy Services expects to close the sale of its associated sales and Standard Offer service contracts in northern Maine to Algonquin on February 1, 2010. As previously noted, Integrys Energy Services' Standard Offer and retail electric sales contracts in the ISO New England region, including southern Maine, are not included in the sale (Matters, 11/11/09).

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per the adopted regulations, and cannot defer the question indefinitely. Brogan asked whether a proxy could be used in the initial implementation of POR, with corrections made as more experience with the program is gained.

As the Commission took the matters under advisement, it may elect to issue an order from the bench at any time. However, it is more than likely that the Commission will address the Allegheny and Delmarva plans at another administrative meeting before issuing letter orders on the compliance plans, to hear the additional data it directed Staff to obtain.

As much of the meeting was devoted to Nazarian's questioning of Staff regarding the lack of data, criticism of suppliers, and questions regarding the risk factor, Staff's proposal to defer recovery of start-up costs until later years, so they may be spread over a greater number of choice customers, was not discussed in depth.

Other Utilities

BGE has informed suppliers that it intends to file an updated POR compliance plan this Friday. Tentatively, the updated plan will likely breakdown the discount rates by SOS class, rather the than binary residential/non-residential split previously proposed. Pepco has told suppliers that it likely won't make its initial compliance filing in response to the PSC's October letter order until March.

Vectren ... from 1

tranches. Four winning bidders split the six tranches. Identities are confidential for 45 days to allow suppliers to arrange for transportation.

Similar to its findings at Columbia Gas, PUCO rejected late comments from the Ohio Consumers' Counsel opposing the SCO in favor of continuing the wholesale Standard Service Offer auction. PUCO noted that the OCC was a signatory to the settlement implementing the SCO, and found that it is too early to judge the SCO's effectiveness.

The current retail price adjustment under Vectren's SSO rate is $2.35/Mcf.

In order to judge the impact of the SCO on choice program participation, PUCO directed Staff to work with Vectren to develop information on customer migration from the SCO to a direct contractual relationship with a choice provider. Staff shall file a report summarizing its findings by October 1, 2010.

The descending clock SCO auction was conducted by World Energy Solutions