

Energy Choice Matters

February 15, 2010

Illinois Bill Would Exempt Brokering to "Competitive" Customers from Licensing Rules

A bill introduced in the Illinois Senate (SB3627) would exempt electric brokering to customers in classes deemed "competitive" from the licensing and disclosure requirements of the ABC law, but would also remove the current exemption given to brokers who act as the exclusive agent of a single supplier.

SB3627 would amend the ABC law (220 ILCS 5/16-115C) such that providing brokering services to customer classes that have been declared competitive by the Illinois Commerce Commission would be excluded from the definition of ABC under the law, and not subject to licensing or commission disclosure requirements with respect to those competitive customers only (brokers serving both large and small customers would still require a license). At Commonwealth Edison, all customers above 100 kW have been declared competitive. At Ameren, all customers above 400 kW have been declared competitive. Under the current law, this ABC license exemption related to customer size only applies to customers with demands in excess of 1,500 kW.

The bill would also remove the current exemption from licensing for brokers acting exclusively on behalf of a single electric supplier, and would subject such exclusive brokers to the same licensing and disclosure requirements applicable to non-exclusive brokers. The bill would also clarify that employees of an electric supplier, who are acting exclusively on behalf of that supplier, are not considered agents, brokers, or consultants under the law.

SB3627 would institute a new disclosure rule that requires, "[a]ll third-party sales representatives engaged in the marketing of retail electricity supply, including exclusive and non-exclusive agents," to, prior to the customer signing a contract, disclose in writing that they are not employed by the electric utility operating in the applicable service territory and, if applicable, "that they are

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NEM Says Demand Response Load Profiles Would Jumpstart Mass Market Offerings

State regulators should "jumpstart" retail load response programs and offerings ahead of the widespread installation of advanced meters by developing load profiles that would allow mass market customers to benefit from load shifting and reduction strategies in the absence of hourly settlement data, the National Energy Marketers Association said in a white paper released at the National Association of Regulatory Utility Commissioners (NARUC) winter meeting.

Transitional, demand response (DR) load profiles for residential and small commercial customers could be developed using the same rigorous statistical sampling and analysis used to develop standard load profiles and to determine peak load contribution of mass market customers, NEM said.

"Today's consumers who embrace existing home energy management technologies that increase their ability to reduce energy usage at peak demand should be offered a load profile that better reflects the cost savings of their DR usage behavior. Furthermore, consumers who invest in cleaner, more efficient Energy Star home electric appliances should also benefit from a modified profile that better reflects the cost savings of their reduced demand," NEM added.

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Briefly:

DPL Energy Resources to Expand Outside of Affiliate Footprint This Quarter

DPL Energy Resources will begin providing competitive retail electric service (CRES) to customers outside of its own territory in the first quarter of 2010, DPL said in a 10-K filed Friday. At one point in the filing, DPL broadly states that DPL Energy Resources will, "begin providing CRES services to business customers who are currently not in DP&L's service territory." As only reported in *Matters*, DPL Energy Resources has pending retail supply applications in Pennsylvania, Illinois and Michigan (Only in *Matters*, 12/30/09). However, elsewhere in the 10-K, DPL provides a narrower target for the initial expansion, stating that DPL Energy Resources, "will begin providing CRES services to business customers in Ohio who are not in DP&L's service territory." DPL reported that for 2009, less than 0.11% of sales in Dayton Power & Light's territory were served by an unaffiliated competitive supplier in 2009; DPL Energy Resources accounted for 99% of the total kWh supplied by competitive retailers within Dayton Power & Light's service territory in 2009.

N.Y. PSC Approves Central Hudson Hourly Pricing Implementation Plan

The New York PSC approved Central Hudson's plan to implement a lower mandatory hourly pricing cutoff of 500 kW effective May 1, 2011 (08-E-0887, Only in *Matters*, 9/23/09). As part of the approved outreach and education plan, Central Hudson will hold seminars with customers in the second quarter of 2011 that will, among other things, provide an opportunity for customers to speak with representatives of ESCOs operating in Central Hudson's service territory, in an expo-style format.

Dominion Retail, Constellation Win CMP Load

Central Maine Power reported that Dominion Retail won 100% of load in its recent medium non-residential Standard Offer auction. Dominion Retail also won 80% of the large non-residential class, with Constellation Energy Commodities Group winning the remaining 20% of the large non-residential class. All contracts

are for the six-month period beginning March 1.

Eisenbach Consulting Seeks Pa. Broker License

Eisenbach Consulting, LLC submitted an electric broker application to the Pennsylvania PUC to serve all customer classes in all service territories.

The Loyalton Group Seeks Pa. Broker License

The Loyalton Group Inc. applied for a Pennsylvania electric broker/marketer license.

Duke Energy Retail Sales Seeks Certification as Aggregator in Ohio

Duke Energy Retail Sales, LLC submitted a revised competitive electric supplier registration with the Public Utilities Commission of Ohio to reflect its intention to also function as an aggregator.

Duke Commercial Power Gains Partially Offset by Customer Migration

Duke Energy's Commercial Power unit reported higher fourth-quarter 2009 Earnings Before Interest & Tax from continuing operations of \$68 million, compared to a loss of \$9 million in the fourth quarter of 2008, from lower mark-to-market losses on economic hedges, non-native margin increases primarily as a result of higher coal sales, and favorable results from its Midwest gas assets. These increases were partially offset by lower retail sales volumes due to the economy and competition in Ohio. The effects of competition in Ohio were partially offset by customer acquisition efforts by competitive retailer Duke Energy Retail Sales, Duke said, which is holding its earnings conference call today.

StarTex Sponsoring PGA Tour Pro

StarTex Power has entered into a partnership with PGA Tour rookie Jerod Turner, a fellow Texan, to represent StarTex during the 2010 Tour. Citing the partnership as an opportunity to further build the StarTex brand, founders Bob and Marcie Zlotnik said that Turner is the perfect person to represent them as a "Texan pursuing his passion". Turner is the "underdog who worked hard, did the right thing, and succeeded

against all odds," said Bob Zlotnik, comparing Turner's rise to StarTex's own success, which made it the fastest growing energy supplier on the Inc. 500/5000 list (Only in Matters, 8/13/09).

Md. PSC Sets Hearing to Update Capacity Gap

The Maryland PSC scheduled for March 2 a hearing to update the Commission on the amount of capacity that is anticipated to be required in the years 2012-2016 to avoid any potential reliability problems in the state (Case 9149). The Commission asked PJM to update PJM's prior analyses of Maryland's potential capacity "gap" at the hearing.

CenterPoint Nears 200,000 Advanced Meters

CenterPoint Energy reported that as of January 31, 2010, 195,090 advanced meters have been installed in its territory.

FERC Accepts ISO-NE Proposal on Tie Benefits Value

FERC accepted ISO New England's use of a 1,860 MW tie benefits value and consequent Installed Capacity Requirement and related values for the final Forward Capacity Market reconfiguration auction for the 2010/2011 Capability Year, finding that continued use of the "as is" methodology to determine the value would trigger operational concerns, while concluding that a NEPOOL alternative tie benefits value (of 2,286 MW) was not adequately justified (ER10-438). FERC also directed ISO-NE to formalize its commitment to employ a stakeholder process during 2010 to address revising the tie benefit methodology used for the last reconfiguration auction preceding a commitment period.

EnerNOC Cites Pa. Electric Market for Supply Procurement Consulting Growth

EnerNOC reported a wider fourth quarter loss of \$15.2 million versus \$12.2 million a year ago on higher selling and marketing expenses of \$10.0 million, versus \$7.1 million a year ago. Gross profit for the quarter was \$8.8 million versus \$7.6 million a year ago. During an earnings call, executives cited the end of rate caps in Pennsylvania as an opportunity for the company to grow its energy procurement consulting business in 2010. Revenue from EnerNOC's

energy management services & products unit was \$1.8 million for the quarter, slightly lower than the quarter ended December 31, 2008. The bulk of this unit's revenues is derived from energy supply consulting and management, "a slow growth area that continues nonetheless to provide great customers for cross-selling opportunities in demand response and other services," executives said. EnerNOC's demand response megawatts under management were 3,550 MW as of December 31, 2009, versus 3,250 MW as of September 30, 2009.

Conn. DPUC Declines to Issue Ruling on Elm Electric Cooperative

The Connecticut DPUC, after being deadlocked 2-2 on a draft decision before it, elected not to issue a declaratory order regarding the ability of Elm Electric Cooperative, Inc. to take service under United Illuminating's retail tariffs in order to procure additional supplies to resell to its own retail customers in the cooperative (09-07-10).

As only reported in *Matters*, the draft decision before the DPUC (and not adopted) would have essentially provided an opportunity for developers and property owners, by meeting certain conditions such as use of renewable energy, to engage in submetering, which removes the ability of submetered customers to access the competitive retail market (Only in Matters, 12/3/09).

The case involved a petition for a declaratory order from Elm Electric Cooperative, which was recently formed to provide electric service to its members -- the tenants of a large, mixed use residential and commercial building now under construction and located at 360 State Street in New Haven, Connecticut. While Connecticut law generally prohibits creation of an electric cooperative in a franchised utility territory, in 1981 Conn. Gen. Stat. §33-219(b) was enacted, which holds that, "cooperative, nonprofit, membership corporations may be organized under this chapter for the purpose of generating electric energy by means of cogeneration technology, renewable energy resources or both and supplying it to any member or supplying it to, purchasing it from or exchanging it with a public

service company, electric supplier, as defined in section 16-1, municipal aggregator, as defined in said section, municipal electric energy cooperative, in accordance with an agreement with the company, electric supplier, electric aggregator, municipal utility or cooperative."

The draft decision would have found that, by virtue of supplying more than half of its power from a distributed fuel cell, Elm Electric Cooperative met the requirements of §33-219(b), and was entitled to take retail service from the utility while still serving its own retail customers.

FirstEnergy Ohio EDCs Propose Credit for Former Electric Heat Tariff Customers

The FirstEnergy Ohio utilities filed to institute an eight-year generation credit applicable to certain electric customers formerly on electric space heating and similar tariffs, who are now on Rate RS.

New Rider RGC would provide a monthly per kilowatt-hour credit during the winter billing months for all usage above a set threshold (1,250 kWh at Ohio Edison, 1,000 kWh at Cleveland Electric Illuminating). The credits are designed to phase out over the eight year period.

The former residential rate schedules eligible for the tariff are utility-specific (given their unique classification in each's tariff), but generally are those former tariffs for electric space heating, electric water heating, and optional time of day or load management rates. Credit amounts for each year and company can be seen in PUCO Docket No. 10-0176-EL-ATA.

Though the application states that it is was brought on behalf of all three FirstEnergy companies, revised tariff pages listing new Rider RGC are only included for Ohio Edison and Cleveland Electric Illuminating.

The credit under Rider RGC would apply to customers on competitive supply as well as Standard Service Offer customers. As such, recovery would be accomplished through nonbypassable Rider EDR (Economic Development Rider).

"This application should also be recognized as being part of the initial elements to be included toward developing a new electric

security plan for the Applicants, the development of which was suggested by Staff in its comments filed in Case No. 09-906-EL-SSO," the FirstEnergy companies said.

Complainants, Staff Move to Certify Questions in Gexa Variable Rate Case

The complainants against Gexa Energy in PUCT Docket 37569, regarding variable priced contracts (Matters, 2/1/10), have moved to certify the following question to the Commission:

"To what extent does the Commission adopt the interpretation of P.U.C. Substantive Rule 25.479(c)(1)(O) recently offered by Commission Staff, viz., 'that proper notice is a condition precedent to a legitimate increase in the price charged to a customer under a variable rate contract, [such that] an increase in the price charged, without adequate notice of such an increase that is in compliance with P.U.C. SUBST. R. 25.479(c)(1)(O) [as it existed in 2008]... would result in an overcharge?'"

Complainants said that adjudicating this issue first could preclude several complex factual determinations that would otherwise be required. Complainants reasoned that if the Commission were to rule that all increases absent notice were improper, and later found that, factually, notice had not been provided, then the Commission would avoid the need to adjudicate arguments over various contract provisions relating to the correct amount and frequency of increases (which will likely prove a complex and time consuming task), since the Commission would have concluded that any increase, regardless of amount, was improper due to the lack of notice.

PUCT Staff, who have argued that complainants are not entitled to some of the forms of relief which they have sought, also moved to certify the following questions to the Commission:

"1) Do the complainants have a remedy with respect to the claim that Gexa engaged in discriminatory pricing by subjecting its customers to discriminatory pricing by charging prices higher than the prices contemporaneously set for similarly situated

customers?

"2) Do the complainants have a remedy with respect to the claim that Gexa made misleading statements to complainants?

"3) Do the complainants have a remedy with respect to the claim that Gexa took adverse action against complainants after complainants filed complaints?

"4) Do the complainants have a remedy with respect to the claim that Gexa respond in good faith to complainants' customer complaints?

"5) If it is determined that the complainants do not have a remedy available to them with respect to a claim, should that claim be dismissed?"

Staff has argued that the case is essentially an overbilling dispute between three retail customers of Gexa, and, as such, PURA § 17.157 applies to it. While that statute provides that the Commission may require a refund or credit for the overcharges, Staff argued that the claims enumerated above do not give rise to an overcharge, and are thus not the types of claims that can be redressed by a refund or an overcharge pursuant to PURA § 17.051. Moreover Staff argued that the complainants are not entitled to any of injunctive, declaratory or admonitory relief which they requested.

Industrials, REPs Warn of Costs from Non-Wind Texas RPS Carve-Out

A PUCT Staff strawman which would create RPS tiers for non-wind renewable and solar resources, "will lead to inflated renewable energy credit (REC) prices for those technologies and increase costs for Texas customers," the Texas Industrial Energy Consumers said in comments on the strawman (35792, Only in Matters, 12/22/10).

As only reported in *Matters*, the strawman would create a 500 MW requirement for non-wind, non-solar renewables, and a 50 MW carve-out for solar resources.

"Adopting technology-specific RPS requirements is contrary to the plain language of PURA § 39.904 and the Legislature's intent in adopting that section," which sets forth only a "goal," not a mandate, for non-wind renewables,

TIEC said.

"The RPS should become obsolete as the market for renewable energy develops. To achieve this broader objective, the Commission should not adopt RPS requirements that would favor one technology over another, and should instead let the renewable energy credit market determine which technologies are the most viable," TIEC added.

TIEC called the carve-outs unnecessary, citing a December report by the ERCOT Reliability and Operations Subcommittee showing that there are more than 1,000 MW of solar capacity currently being developed in Texas, and more than 250 MW of biomass capacity.

The Alliance for Retail Markets also cited cost concerns, noting that the strawman's mandates would, "increase electric bills in a time of serious economic downturn."

"Subsidizing these costly resources through the competitive retail market and ultimately passing those costs on to consumers is inefficient, uneconomical, and burdensome," ARM added.

Particularly troubling, ARM said, is the aggressive schedule to reach the non-wind renewable and solar mandates under the strawman. "As a consequence, there will likely be an initial scarcity of these resources, which will drive retail entities to purchase alternative compliance premiums. In effect, these mandated purchases will become a hidden tax; the revenues from the alternative compliance payments are deposited in the State's general revenue account." These general fund payments are unlikely to serve the intended purpose of furthering renewable development, ARM noted.

The Office of Public Utility Counsel also raised concerns about the solar carve-out, stating that, "it seems that the Commission should await further guidance from the Legislature before taking a stand on a technology-specific mandate via this rulemaking."

The Solar Alliance argued that the, "the market could easily sustain a non-wind RPS target of 1,000 to 5,000 megawatts," and suggested raising the alternative compliance payment to \$400/REC (rather than \$100 for solar RECs) to support distributed generation.

Given the small 50 MW carve-out for solar, the Texas Renewable Energy Industries Association suggested allowing solar RECs to be used for compliance with either of the two other RPS Tiers (wind and non-wind, non-solar), so that solar development above the 50 MW mandate does not depress REC prices.

NRG Energy opposed the strawman's extension of non-wind RPS eligibility to facilities installed after September 1, 2005, rather than only providing eligibility to non-wind facilities installed after the amendments to the RPS rule.

Luminant was among several stakeholders suggesting that the strawman's capacity factor for solar resources (25%) is overly generous given actual solar operations.

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compensated in whole or part on a commission basis." For telephonic solicitations, this disclosure may initially be made verbally prior to the customer signing a contract, with a follow-up written disclosure required prior to any customer contract being finalized.

However, while adding the above requirement, SB3627 does not alter the existing requirement that ABCs which are subject to licensing must also disclose the *total* anticipated remuneration to be received for brokering (and not just a disclosure they will receive remuneration) in plain language to customers. SB3627 does make explicit, however, that this required total remuneration disclosure must be done in writing prior to the signing of a contract (a requirement which the ICC has interpreted as existing under the current law, but which had been subject to challenges).

The bill would remove the requirement that ABCs must file their verified financial statements with the ICC annually. Furthermore, SB3627 would relax penalty provisions, giving the Commission the discretion, in the case of an initial ABC law violation, to suspend an ABC's license, rather than compelling the Commission to do so as is the case now. Additionally, for an initial violation, the license suspension could be for no longer than one month, while currently the suspension is required to be for no less than one month. For a second violation, the bill would cap a suspension at a maximum of six months

(versus a minimum of six months), and for a third violation, cap the suspension at a maximum of 24 months (versus a minimum of 24 months).

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Retail Demand Response Load Profiles could be developed, NEM said, by using current utility metering systems and historical usage data combined with the sophistication and statistical reliability of data developed by utility smart grid pilot programs, as well as the successful ongoing RTO/ISO demand response capacity purchasing, measurement, verification and settlement processes and protocols.

NEM noted that in PJM, a capacity benefit is assigned to appliance cycle switches (such as for air conditioners and water heaters) without the need to sample the appliances' performance through smart metering. In Texas, NEM added, homes with photovoltaic solar panels are assigned a "deemed" demand response load profile with associated capacity and cost savings, even if no smart meter is installed. NEM cited ISO New England as utilizing a load-profile process that can reflect the capacity and cost savings from energy efficiency measures like home energy management systems and Energy Star appliances.

Energy marketers, "can provide competitive, low-cost DR products, services and technologies while smart meters, load-control equipment, and related utility telecommunications infrastructure investments are being considered, field tested and fully implemented," NEM said.

"Early-stage, competitive, retail DR program implementation strategies could save consumers money, yield generation, transmission and distribution capacity benefits, and reduce the national carbon footprint, even before smart meters, load control technology and sizable utility investments in related hardware, software and telecommunications infrastructure are approved, funded and installed at every home and small business," NEM added.

"Consumers' ability to do business when they want, with whom they want, and then to buy what they want is one of the greatest consumer protections that government can offer. The

availability of demand response, like the other pricing and value-added options that competitive energy markets yield, is another means to empower consumers," NEM said.