Energy Choice Matters

February 16, 2010

NYSEG/RG&E Agree with Staff Proposal to Add Costs to POR Discount Rate

NYSEG and Rochester Gas & Electric have agreed to modify their Purchase of Receivables discount rates (for both commodities) as recommended by New York PSC Staff, in order to ensure that retail access customers on utility consolidated billing do not avoid commodity-related credit and collections costs, and a portion of call center costs.

In direct testimony in the two utilities' electric and gas rate cases (09-E-0715 et. al.), Staff had noted that, under the current design of the Merchant Function Charge, all retail access customers, even those on utility consolidated billing, currently avoid commodity-related credit and collections costs, and a portion of call center costs. These costs, for customers on utility consolidated billing, should not be bypassable since the utility and not the ESCO performs billing and collection services, Staff said.

Staff proposed two remedies: introducing such costs into the POR discount rate (with such amounts credited back to bundled service customers), or developing two separate Merchant Function Charges: one for customers in the POR program, and another for customers outside of the POR program.

In rebuttal testimony, NYSEG and RG&E agreed that, "Staff raises a valid concern that a retail access customer taking service from an ESCO that participates in the Companies' POR programs would inappropriately avoid commodity-related credit and collections and a portion of call center costs."

NYSEG and RG&E have proposed adopting Staff's preferred method of remedying this problem by including such costs in the POR discount rate.

NYSEG had proposed implementing an annual reconciliation and deferral of the difference

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National Grid Requests N.H. PUC Develop Rules for In-Person Solicitations by Suppliers

The New Hampshire PUC has opened two rulemakings to revise its licensing and consumer protection rules for competitive electric (10-014) and gas (10-015) suppliers and aggregators, and National Grid has recommended that the PUC add rules to govern in-person solicitations of customers.

The current electric rule and draft gas rule contain a section governing telephonic solicitations by competitive suppliers (mostly relating to Do Not Call provisions and time restrictions), but do not include any specific section concerning in-person marketing.

"Based upon National Grid's experience in New York, it is concerned that the use of unethical or misleading marketing tactics and other consumer abuses will occur if the Commission does not adopt similar standards for in-person solicitation by competitive suppliers or their agents," National Grid said.

National Grid recommended adding the following rules applicable to in-person marketing occurring at a location other than the supplier's place of business:

A supplier's "marketing representative" must, as soon as possible and prior to describing any

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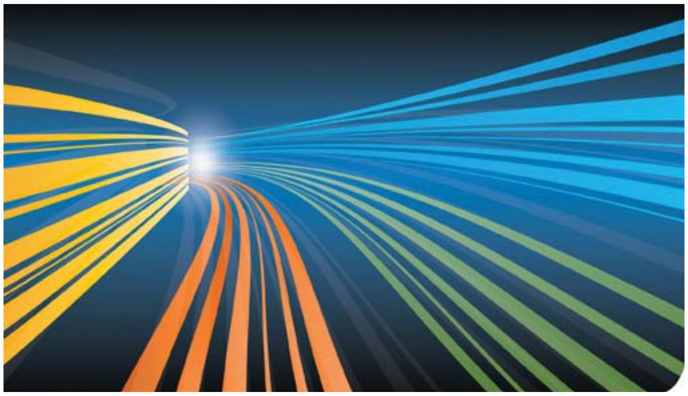

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2010 Confirmed Speakers:

- Hon. Joe Barton, (R-TX), US House of Representatives
- John Young, President and CEO, Energy Future Holdings
- Chris Weston, CEO, Direct Energy
- Hon. Don Nickles, Co-Chairman, COMPETE Coalition
- Hon. Barry Smitherman, Chairman, PUC of Texas
- Hon. Robert Powelson, Commissioner, Pennsylvania PUC
- Hon. Maureen Harris, Commissioner, New York Public Service Commission
- Jason Few, President, Reliant Energy
- Michael Kagan, President, Constellation NewEnergy
- Jim Burke, CEO, TXU Energy
- Mark Radtke, CEO, Integrys Energy Services
- Jere Thompson, CEO, Ambit Energy
- Tammy Nikoltcheva, Director, Merrill Lynch Commodities
- Tim Enwall, Co-Founder and President, Tendril Networks
- Jay McLellan, Founder and CEO, Home Automation, Inc.
- Kevin Greiner, CEO, Gas South
- Deryl Brown, CEO, Hudson Energy Services
- Tom Leverton, Chief Operating Officer, TXU Energy
- Craig Sutter, Senior Vice President, GDF SUEZ Energy
- David Roylance, President, SaveOnEnergy.com
- Phil Adams, President, World Energy
- Katie Fehrenbacher, Editor, Earth2Tech.com
- Gene Alessandrini, Senior Vice President, PPL EnergyPlus
- Tony Banks, Vice President, FirstEnergy Solutions
- Jay Kooper, President, Retail Energy Supply Association and Director of Regulatory Affairs, Hess Corporation
- Jordan Frugé, Co-Founder, Standard Renewable Energy
- Craig Adams, COO, PECO Energy
- Paul Hudson, Chairman, Center for Commercialization of Electric Technologies
- Brian Lloyd, Energy Policy Advisor to Governor Rick Perry
- Brandon Schwertner, CEO, MP2 Energy
- Bob Manning, Director of Energy & Industrial Facilities, H-E-B
- Jeff Nottingham, Director of Major Accounts, Power Brokers
- Glen Thomas, President, GT Power Group
- Jim Vonderhaar, Vice President and General Manager, Summit Energy

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Briefly:

WMECO Posts Updated Basic Service Rates

Western Massachusetts Electric Company filed with the Massachusetts DPU basic service rates for medium and large commercial and industrial customers for the three-month period beginning April 1.

Rates G2, T4, T2, I1, I3, PR	
April 2010	$0.08642 per kWh
May 2010	$0.08594 per kWh
June 2010	$0.08343 per kWh
Fixed Price Option	$0.08528 per kWh

The rates include a Default Service Cost Adjustment and Uncollectible Tracker rate of $0.00109 per kWh.

Champion Energy Services Receives N.J. Electric License

Champion Energy Services has received an electric supply license from the New Jersey BPU, to serve customers in all service areas.

EP Energy, LLC Seeks N.H. Aggregator License

Start-up EP Energy, LLC applied for a New Hampshire electric aggregation license to serve all service territories. The Auburn, New Hampshire-based EP Energy, LLC is not affiliated with Texas broker EP Energy Consulting.

RBS-Sempra Sells European, Asian Units to J.P. Morgan; North American Energy Business Not Included

Sempra Energy announced this morning that it and The Royal Bank of Scotland have agreed to sell the European and Asian operations of their RBS-Sempra Commodities joint venture to J.P. Morgan Chase & Co. for an expected $1.7 billion, subject to distributions prior to closing. Sempra Energy's share of the sale proceeds is expected to be approximately $940 million. Through the transaction, J.P. Morgan will acquire RBS Sempra Commodities' global metals and oil businesses, and European natural gas and power businesses. The sale does not include RBS Sempra Commodities' North American natural gas and power businesses, though RBS must eventually exit that part of the joint venture as well. Sempra Energy has retained J.P. Morgan as its financial advisor to review potential alternatives for the remaining businesses. Sempra could elect to assume RBS' share of the North American unit itself, while Deutsche Bank and Macquarie Group, previously cited as suitors for the entire joint venture, could be candidates as well.

Gas South, College Park, Ga. Enter Marketing Agreement

Gas South announced that it has entered into a marketing alliance with the City of College Park, Ga. which provides residential customers in the city with a 2¢/therm discount off of Gas South's standard rates. Both new and existing Gas South customers are eligible for the discount. College Park operates a municipal electric utility serving 10,000 residential and commercial customers.

PUCO Approves Extension of Dayton Power & Light Green Option

The Public Utilities Commission of Ohio approved Dayton Power and Light's request to extend its existing Green Pricing Program for an additional two years through December 2011, maintaining the same prices, terms and conditions. The program allows customers to purchase 100 kWh blocks of RECs at $1.00 per block.

Energy Choice Matters published an issue on February 15. Stories included:

- Illinois Bill Would Exempt Brokering to "Competitive" Customers from Licensing Rules
- NEM Says Demand Response Load Profiles Would Jumpstart Mass Market Offerings
- DPL Energy Resources to Expand Outside of Affiliate Footprint This Quarter
- N.Y. PSC Approves Central Hudson Hourly Pricing Implementation Plan
- And more

Generators, Financial Marketers Say Poletti TCCs Should be Terminated

Grandfathered Transmission Congestion Contracts (TCCs) held by the New York Power

Authority in the amount of 600 MW should be terminated because the Charles Poletti Power Plant has been retired, which is one of the events which triggers the termination of the grandfathered agreements, generators and financial marketers said in filings at FERC.

As only reported in *Matters*, the New York ISO petitioned FERC for a declaratory order on whether 600 MW of grandfathered TCCs should be terminated since the Poletti unit was retired on January 31, but is being replaced with a new 500 MW plant (Astoria) at the same site (Only in Matters, 1/11/10). Under the grandfathered agreements, the TCCs terminate upon the earlier of i) December 1, 2017; ii) the termination of NYPA's obligation to serve Southeast New York government loads, or iii) the sale or retirement of both of the Indian Point No. 3 Nuclear Power Plant and the Poletti plant. The TCCs (from St. Lawrence and Niagara to East Fishkill) are valued at about $40 million.

DC Energy argued that the plain meaning of retired means that the grandfathered status should be terminated, regardless of whether a replacement plant is being built. "Retirement" is defined in the Edison Electric Institute glossary as a "[c]ost of utility plant retired from service whether or not it has been physically removed or replaced," while Black's Law Dictionary defines "retirement" as the "[r]emoval of fixed asset from service," DC Energy noted.

Moreover, the Independent Power Producers of New York said that the new Astoria plant cannot reasonably be thought of as a replacement plant for Poletti since, "NYPA did not intend to build Astoria to replace Poletti ... NYPA's decision to close Poletti was purely a concession to environmental groups to expedite the permitting process for Astoria."

The Astoria plant is not electrically connected to the same bus as the retired Poletti plant nor is it serving the same load, DC Energy noted. The Poletti plant was connected to the 345 kV bus that is electrically connected to the East 13th Street substation in Manhattan, while the new plant is electrically connected to the 138 kV bus serving the Astoria, Queens load pocket.

"Furthermore, there is no single connection between the Poletti P-O-I [point of interconnection] and the Astoria P-O-I. The shortest electrical path from Poletti to Astoria is via the Farragut 345 kV Substation (in Brooklyn), to the Rainey 345 kV Substation (in Queens), through 345-138 kV transformers at Rainey (in Queens), to the Vernon 138 kV substation (in Queens), and lastly, to the Queensbridge 138 kV substation (in Queens)," IPPNY added.

Market participants are harmed by continuing grandfathered treatment when it should be terminated because such treatment, "unfairly subsidizes NYPA," IPPNY said.

"NYPA should be required to pay market value for the TCCs as all other market participants must do," IPPNY added. DC Energy noted that permitting NYISO to release the NYPA capacity into the TCC auctions will maximize TCC auction revenues which are allocated back to transmission customers.

DC Energy raised two other issues for FERC adjudication. First, DC Energy said that no analysis has been presented to determine whether NYPA qualifies as a load serving entity eligible to convert the grandfathered TCCs into fixed-price TCCs if grandfathered status is revoked. Second, DC Energy argued that 600 MW of grandfathered TCCs from East Fishkill to Zone J under a 1989 agreement must terminate upon the termination of the grandfathered St. Lawrence/Niagara to East Fishkill TCCs pursuant to NYISO OATT Attachment K, "which provides that if a leg in a grandfathered path is not maintained, grandfathered rights may not be sustained on another leg in series on the path."

IPPNY charged that by waiting until the eleventh hour to file its petition for a declaratory order, "the NYISO has not acted in good faith."

IPPNY noted that the January 31, 2010, Poletti retirement date has been known since 2002, or at very latest since 2007, when NYPA sought and received from the NYISO a written determination which found that closure of Poletti on February 1, 2009 would cause the aggregate in- City electrical generating capacity (exclusive of Poletti) to be less than 80% of the total in-City projected peak demand for the summer of 2009. The NYISO could have addressed any ambiguity regarding the termination of grandfathered status during the past three years, so that the market would have had certainty prior to the ongoing TCC auctions, IPPNY noted.

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between POR discounts and actual write offs, which already occurs at RG&E. This new annual reconciliation and deferral would replace the 0.15% financial risk adder that is currently included in the NYSEG POR discount rate.

Staff, however, opposed the reconciliation and deferral of any differences, arguing that it would remove the incentive to vigorously pursue collections. Staff supported elimination of the 0.15% adder.

On rebuttal, NYSEG and RG&E argued that reconciliation is appropriate because, "retail energy markets are now sufficiently mature and, thus, the utility should not bear any financial risk (nor reap any financial reward) associated with the ESCO's commodity uncollectibles."

"[A] reconciliation and true-up of the discount rate paid to ESCOs for the purchase of their receivables [is] a fair and balanced approach to maintain revenue neutrality," NYSEG and RG&E said.

NYSEG and RG&E further noted that, in the Commission's 2008 retail market order (07-M-0458), the Commission held that "generally, on-going costs associated with POR programs are funded by ESCOs through either a discount rate by the utility to the ESCO's receivables or a lower merchant function charge (MFC)." Uncollectibles are, "clearly one of the primary on-going costs associated with a POR program," NYSEG and RG&E said.

Working Capital Costs in MFC

NYSEG and RG&E have proposed to include in the electric Merchant Function Charge (MFC) a working capital component related to purchased power costs, which Staff has opposed.

Staff has argued that the working capital costs, "are attributable to delivery service only," and thus should not be included in the Merchant Function Charge. Otherwise, "the MFC price, which is supposed to serve the purpose of comparing the cost of utility commodity supply service to ESCO commodity supply, will be set too high," Staff said. Under NYSEG and RG&E's proposal, "[t]he full service customers subject to the MFC will be paying for a working capital cost that is not related to providing their commodity supply service," Staff contended.

However, NYSEG and RG&E cited Commission precedent for including the purchased power-related working capital costs in the Merchant Function Charge. First, NYSEG and RG&E noted that the Commission's Unbundling Policy Statement and Order, "allows working capital to be included as an MFC component."

Furthermore, NYSEG and RG&E noted that the Recommended Decision issued on March 24, 2003 in the Unbundling Proceeding states the following: "the historical FERC approach to the calculation of working capital for the purpose of setting rates is not controlling. So long as there is a lag between payment for purchased power and the receipt of revenues to cover those payments ... there is a need for working capital and there will be an associated cost."

"In addition, in Case 05-E-1222, NYSEG included a Working Capital for Purchase Power component in its electric MFC. Staff did not dispute the inclusion of working capital for purchase power and it was approved by the Commission," NYSEG and RG&E noted.

On the gas side, NYSEG and RG&E have similarly sought to include working capital costs related to purchased gas in the Merchant Function Charge. Though the Unbundling Policy Statement did not specifically address purchased gas, NYSEG and RG&E said that the, "Unbundling Policy Statement and Order was intended to be generic on this issue and not electric specific," and thus argued that including purchased gas working capital in the MFC is consistent with the Policy Statement.

Staff, however, claimed that allowing working capital in the gas Merchant Function Charge, "will definitely create an inaccurate price signal for customers as they choose among the providers of services in the competitive market." Staff noted that only the KeySpan LDCs currently include working capital costs of purchased gas in the Merchant Function Charge.

Capacity Release

NYSEG has proposed to consolidate its three gas supply areas into a single gas supply area. In direct testimony, Staff said that, if such consolidation is approved by the Commission, the cost and ramifications of releasing capacity to the ESCOs at the system Weighted Average

Cost of Capacity (WACOC) under any such consolidation should be examined in a collaborative process. RG&E should also participate in the process in order to consider pricing releases at the Weighted Average Cost of Capacity, Staff added. In rebuttal testimony, NYSEG and RG&E confirmed their willingness to institute such a collaborative process.

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products or services offered for sale by the supplier:

(1) Produce identification, to be visible at all times thereafter, which:

a. Prominently displays in reasonable size type face the full name of the marketing representative;

b. Displays a photograph of the marketing representative and depicts the legitimate trade name and logo of the supplier they are representing; and

c. Provides the supplier's telephone number for inquires, verification and complaints.

(2) Shall identify the supplier which they represent as an independent energy marketer, and shall identify him or herself as a representative of that specific supplier. During the sales presentation, the marketing representative must also state that if the customer purchases supply from the marketer, the customer's utility will continue to deliver their energy and will respond to any leaks or emergencies. This requirement may be fulfilled by either (a) an oral statement by the marketing representative, or (b) written material left by the marketing representative.

(3) A marketing representative shall leave the premises of a customer when requested to do so by the customer or the owner or occupant of the premises.

(4) A marketing representative shall provide the customer with written information immediately upon request setting forth the name and telephone number for inquiries, verification and complaints.

(5) Where it is apparent that the customer's English language skills are insufficient to allow the customer to understand and respond to the information conveyed by the representative or where the customer or another third party informs the marketing representative of this circumstance, the marketing representative shall either find a representative in the area who is fluent in the customer's language to continue the marketing activity in his/her stead or terminate the in-person contact with the customer. The use of translation services and language identification cards is permitted.

Staff Draft

Among the revisions included in Staff's draft electric rules is that suppliers would be prohibited from undertaking any mass marketing or marketing to any specific customer prior to licensing. Currently, only marketing to residential customers is prohibited prior to licensing. The draft gas rule would impose the same new requirement prohibiting all pre-licensing marketing. Currently, pre-licensing marketing is allowed by gas suppliers to all customers if the supplier discloses that it has not completed the registration process yet.

Under the draft rules, the supplier must obtain monthly (rather than semi-annually) updated do-not-call lists from the National Do Not Call Registry. The existing electric and draft gas rule further require that the supplier, or its agent, provide daily updates to their Do Not Call lists to reflect customers informing the supplier or its agent that they do no wish to receive solicitations.

The telephonic authorization permitted for gas enrollment would be amended to include, under the draft, the customer's service address and account number or meter number that the customer wishes to switch to the new gas supplier. These two items are currently not required for gas telephonic authorizations (but are required for electricity enrollments). Additionally, both the electric and gas draft rules would add a requirement that the supplier must disclose to the PUC the name, address, telephone number, and e-mail address of the person or entity acting as a third party verifier for purposes of verbal enrollment authorizations.

For written authorizations, both draft rules omit the currently present terms "electronic or faxed" in describing the written authorization form. Additionally, the draft gas rule would require the written authorization to list the customer's service address and account or meter number (which is currently not required).

TransCanada Power Marketing noted that the existing electric rule requires that, for written authorizations for a switch, the authorization must identify the current and new electric supplier by name. TransCanada requested that this provision be eliminated, "because a [supplier] almost never knows the name of the supplier that it is replacing."

The draft gas rule would state that customers cannot waive the provisions of the consumer protection rules (Puc 3004). A similar rule is already in place for electricity.

The draft gas rules would further add a new disclosure requirement for aggregators. Within five days of entering an agreement with a customer, the gas aggregator would be required to provide each customer with a written statement disclosing the following information:

(1) The name, business address, telephone number and e-mail address of the aggregator;

(2) The nature of any business relationships or affiliations with any gas supplier or LDC;

(3) The toll free telephone number of the Commission's consumer affairs division and a statement that customers may contact the Commission if they have any questions about their rights and responsibilities; and

(4) A statement of the customer information that will receive confidential treatment.

Electric aggregators are currently subject to similar requirements.

Additionally, gas aggregators would be subject to the provisions of the rule governing telephonic solicitation of customers by suppliers. Electric aggregators are already subject to these requirements.

Both electric and gas suppliers would be subject to new reporting requirements.

Electric suppliers would be required to file, by January 31, April 30, July 31 and October 31 of each year, a confidential report of their sales activity which occurred during the quarterly period just ended. Such reports would include, but not be limited to, sales of electricity made to customers in each utility's franchise area segregated by the same rate classes by which the particular utility reports its own sales; the total kilowatt-hours sold; the number of customers in each rate class to which sales were made; and the total number of customers purchasing electricity.

TransCanada Power Marketing asked that the reports not require data at the utility rate class level, since the primary information source for kilowatt-hour sales is metered usage, which is transmitted via EDI which does not contain rate class designations. TransCanada suggested a simple residential/non-residential breakdown. TransCanada also asked that the reports be made annually rather than quarterly.

In fact, the gas supplier draft rule would only require annual reporting. Each gas supplier would be required to file annually by March 1 a report of its sales in the prior calendar year including the number of New Hampshire accounts (by month), and aggregate sales volumes to New Hampshire customers, in dekatherm units (by month).

In comments on the Staff draft, National Grid has recommended that Puc 2003.01(c)(10) be revised such that, in addition to listing the utility service areas that a supplier intends to serve, an applicant for an electric supply license be required to list the zip codes in which the supplier intends to operate. "This will further clarify the application requirements and minimize post-registration confusion, as there can be multiple zip codes within a particular town or region and frequently applicants do not plan to operate throughout a utility's service territory," Grid said.

TransCanada Power Marketing, however, called National Grid's proposal "overly burdensome" and unnecessary. "National Grid's suggestion may arise out of the unique nature of business activities in New York where it also operates, where there are tax implications at the local level (i.e, at the zip code level). Such issues are not germane to New Hampshire," TransCanada said.

National Grid also sought changes to the draft electric rule's provision that states, "Nothing shall prevent a [supplier] from requesting an off-cycle meter reading."

"National Grid is concerned that this may be interpreted to require a utility to respond to unlimited off-cycle meter reading requests by competitive suppliers. It requests that this provision be modified to state: (1) either that it imposes no obligation upon any utility, or to allow a utility to deny such requests if certain prerequisites are not met; (2) require a period of advance notice; and (3) permit the utility to impose a reasonable charge for the service."

TransCanada replied that, rather than granting the utilities full discretion as to whether or not they will comply with an off-cycle request, the Commission should require that a utility shall provide an off-cycle meter read upon request, but only for customer accounts with time of use meters. "This greatly reduces the accounts that would qualify, and greatly reduces utilities' potential work load," TransCanada said.