Energy Choice Matters
April 22, 2010

ICC Staff Oppose Electric Exit Fee Cap But Affirm Need for No-Cancellation-Fee Period

Illinois Commerce Commission Staff do not believe that a cap on electric supply contract termination fees is warranted, but were unconvinced with suppliers' arguments to eliminate a proposed extended no-fee cancellation period lasting until 10 business days after a customer is issued their first bill (09-0592).

As only reported by *Matters*, draft electric consumer protection rules issued by the ICC would provide small volume customers (annual usage equal to or less than 15,000 kWh) with the opportunity to terminate their agreement without any termination fee or penalty within 10 business days after the date of the first bill issued to the customer (Only in Matters, 12/4/09). In initial comments, suppliers warned that the extended no-cancellation-fee period would invite gaming and discourage suppliers from offering long-term fixed products (Only in Matters, 3/5/10).

Staff, however, affirmed its belief that the no-cancellation-fee period, "is important and necessary to further encourage a competitive electric supply market," and recommended maintaining the proposal. However, Staff recognized that customers, or more likely agents and intermediaries, could game the no-cancellation-fee period in a decreasing price environment by using the period to repeatedly opt-out of higher price contracts without penalty as prices fall.

"In order to foreclose this possibility, Staff recommends providing a customer the opportunity to cancel a contract without incurring an early termination fee one time per 12-month period." Staff did

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UGI Central Penn Gas Seeks to Use WACOG Accounting for Gas in Storage

UGI Central Penn Gas (CPG) petitioned the Pennsylvania PUC to allow it to revise its accounting methodology for gas in storage inventory from a modified last-in/first-out (LIFO) methodology to the weighted average cost of gas (WACOG) methodology. CPG said that the change should reduce purchase gas cost (PGC) rate volatility for its sale service customers (P-2010-2171611).

Specifically, using the WACOG accounting methodology, "will significantly enhance CPG's ability to forecast PGC costs and reduce associated PGC rate volatility."

Under the modified LIFO method, CPG cannot with certainty price the value of either: (1) storage costs that are factored into the PGC, or (2) the price for winter storage withdrawals until after the fiscal year is complete and the quarterly LIFO adjustments are made. This requires CPG to forecast a storage withdrawal rate for the winter season, but CPG noted that in times of high wholesale gas market volatility, "the variance between forecasted price and actual annual prices under LIFO can significantly increase the under/over collection position for CPG and its customers."

The potentially distorting effects of the LIFO methodology on gas costs are exacerbated by the timing difference between the LIFO year, which ends September 30, and the PGC year, which for CPG is the 12 months ending November 30. CPG noted that for the March 2010 accounting close that was final on April 8, 2010, the LIFO adjustment resulted in a decrease of approximately $3.4 million in PGC costs. However, this information was not known until well after the time that CPG

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PPL Reports Prices from Fourth Default Service Procurement

PPL Electric Utilities' fourth procurement of default service supplies for the period beginning January 1, 2011 resulted in a winning price of $74.82 per megawatt-hour for residential customers and $76.99 per megawatt-hour for small and mid-sized businesses, for 14-month, full-requirements contracts. The prices include state taxes and other charges.

Twenty-one bidders competed for tranches in the procurement, PPL said.

Additionally, PPL purchased two 25-megawatt blocks of around-the-clock electricity supply at an average price of $46.59 per megawatt-hour to serve residential customers from Jan. 1, 2011, to Feb. 29, 2012. The price for these supply blocks is for energy only and does not include capacity and other charges, which the company will purchase separately from PJM. PPL secured alternative energy credits needed for these blocks of supply in the following amounts:

- 132 Tier 1 solar energy credits at a cost of $355 per credit
- More than 15,000 Tier 1 non-solar energy credits at a cost of $1.63 per credit
- More than 29,000 Tier 2 alternative energy credits at a cost of $0.13 per credit

With more than two-thirds of supplies for the first quarter of 2011 procured, PPL said that the average winning price to date is about 16 percent below the current price.

Md. SOS RFP Sees Increase in Ratio of Bids vs. Need

The April 19 Maryland SOS RFP saw acceptable participation and an increase in the average number of megawatts bid versus megawatts available, bid monitor Boston Pacific said (9056, 9064). The solicitations included a mix of residential, Type I and Type II load at each of the investor-owned utilities.

A total of 13 bidders participated in at least one of the product offerings, while seven bidders won some share of supply. The October RFP, which was the most recent RFP for comparable products, also saw 13 bidders, but saw eight winning suppliers.

Each product category in the April RFP had acceptable participation. The entire RFP received approximately 5.6 MW bid for every MW needed. For the residential products alone the ratio was 5.9 to 1. These represent increases from last October's procurement, which saw 5 MW for every block needed overall and 5 MW bid for every residential MW needed. The April results also represent a continued trend toward greater participation since the bid monitor warned of waning participation in the late 2008 and early 2009 procurements, which at the time prompted the bid monitor to question the continued viability of the current RFP and product structure. In the April RFP, the lowest participation was in the Allegheny residential products, which saw ratios of 4.0 to 1.

All winning prices came in below the Price Anomaly Threshold. Though retail rates will not be published for several days, the generation bids would generally result in residential and Type I rates 10-12% below current rates.

CenterPoint Invites REPs to Join In-Home Display R&D Pilot

CenterPoint Energy is developing an Energy Efficiency Research and Development Pilot Program with the Electric Power Research Institute, and invited competitive retailers within its service territory to participate.

The pilot program is designed to evaluate the impacts of in-home display devices, in order to determined deemed savings estimates that can be made, and incentive payments that can be calculated, to support a potential future full-scale CenterPoint energy efficiency program. The impacts will consist of the magnitude of average effects (kW and kWh), and the persistence of these effects.

Key elements of the program design are:

- To give EPRI the best chance of getting credible results, EPRI intends to use one Zigbee-enabled in-home device with "basic" functionality vs. multiple devices. (EPRI has not yet selected the specific device). Any future program could utilize any device with this "basic" functionality. EPRI estimates a total sample size up to 1,000 devices.

- CenterPoint Energy/EPRI will pull a random sample of customers who have advanced meters. Participating REPs would furnish customer names and addresses back to CenterPoint Energy/EPRI.
- Devices will be mailed to participants along with an information package. The preference is to recruit customers and mail in-home devices from one location. All customer mailings would go out under the REP's name, and REPs can review all material prior to mailing.
- There will be no out-of-pocket costs to REPs. CenterPoint Energy will pick up all recruitment and program implementation and evaluation costs.
- The program will last two years with the first year focusing on impacts and the second year on persistence of impacts.
- EPRI will evaluate in-home devices impacts through meter data analysis and customer surveys.

REPs interested in participating in the pilot must contract CenterPoint's Shea Richardson by April 30.

Calif. PUC Approves PG&E Solar Photovoltaic Program

The California PUC approved Pacific Gas & Electric's solar photovoltaic program to develop facilities in the range of 1 MW to 20 MW, under which 250 MW will be owned by the utility, and 250 MW will be owned by independent power producers (A. 09-02-019).

The merchant solar capacity will be solicited via RFP in increments of 50 MW per year, which will set the price merchant developers receive for their power under a 20-year PPA with PG&E. The PUC rejected PG&E's proposal for a fixed price for all merchant projects. However, PPA costs are capped at $246/MWh, before application of time of delivery factors, based on PG&E's feed-in tariff.

Unlike an earlier draft decision, the final order reverts to the cost of service model as originally proposed by PG&E for the utility-owned portion of the photovoltaic program. For the utility-owned generation, PG&E will conduct competitive solicitations for turn-key and engineering, procurement and construction projects that it will then own and operate. The PUC authorized expenditures of up to $1.454 billion for the capital costs associated with the utility-owned portion of the photovoltaic program, subject to certain conditions.

PG&E is also permitted recover the costs of a 2 MW pilot project that the utility built to demonstrate the viability of the program.

PJM Submits Tariff Language on Opportunity Costs

PJM submitted a revised compliance filing containing specific provisions to include opportunity costs for energy and environmental limitations in mitigated offer prices, prompted by a March FERC order which found that leaving the procedures to the business practice manuals was unacceptable (EL08-47, Only in Matters, 3/24/10).

Under PJM's proposal, unit-specific Energy Market Opportunity Costs would be calculated by forecasting Locational Marginal Prices based on future contract prices for electricity using PJM Western Hub forward prices, taking into account historical variability and basis differentials for the bus at which the generating unit is located for the prior three year period immediately preceding the relevant compliance period, and subtracting therefrom the forecasted costs to generate energy at the bus at which the generating unit is located, as specified in more detail in PJM Manual 15, Section 8: Cost Development Guidelines. If the difference between the forecasted Locational Marginal Prices and forecasted costs to generate energy is negative, the resulting Energy Market Opportunity Cost shall be zero.

"Energy Market Opportunity Cost" would be defined as the difference between (a) the forecasted cost to operate a specific generating unit when the unit only has a limited number of available run hours due to limitations imposed on the unit by Applicable Laws and Regulations (as defined in the PJM Tariff), and (b) the forecasted future hourly Locational Marginal Price at which the generating unit could run while not violating such limitations. Energy Market Opportunity Cost therefore is the value associated with a specific generating unit's lost opportunity to produce energy during a higher valued period of time occurring within the same compliance period. Energy Market Opportunity Costs shall be limited to those resources which are specifically delineated in Schedule 2 of the Operating Agreement.

Notwithstanding the above, a Market Participant would be permitted to submit a request to PJM for an alternative method of calculating its Energy Market Opportunity Cost if the standard methodology does not accurately represent the Market Participant's Energy Market Opportunity Cost.

Briefly:

ConocoPhillips Receives Pa. Electric License
The Pennsylvania PUC granted ConocoPhillips Company an electric generation supplier license as a load serving entity as well as an aggregator serving industrial customers at PECO.

Gateway Energy Services Launches Online Efficiency Store
Gateway Energy Services has added an online store to its website offering energy efficient products. Gateway has partnered with EFI, a leading residential distributor of energy efficient products, to manage the store.

Panda Energy, Con Edison Development Reach Agreement to Develop Solar Projects
Panda Energy International Inc., and Con Edison Development have signed an agreement to develop, construct and operate utility-scale solar electric power projects in the northeast United States. The agreement initially calls for the development of two solar photovoltaic farms, between 15-20 megawatts in size, with the prospect of additional solar projects to be announced at a later date. Under terms of the agreement, each company will be equal partners to the joint venture. Panda will assume primary responsibility for managing the development, engineering and construction of the projects, and will contribute the solar projects currently under development to the joint venture's portfolio. Con Edison Development will assume primary responsibility for managing the operation, maintenance and financing of the solar facilities. Con Edison Development will also market the Solar Renewable Energy Credits and the electricity generated by the projects.

IMM Analysis Finds Savings from Northeast RTO Broader Regional Markets Initiative
A preliminary analysis from the New York ISO Independent Market Monitor reported that annual savings of $302 million are possible from the "Broader Regional Markets" initiative, which is designed to address loop flows and related problems among neighboring RTOs in the Northeast (See Matters, 1/13/10). The $302 million excludes an adjustment for $6/MMBtu natural gas which would bring savings to $386 million. Estimated savings associated with New York are $174 million a year (excluding an adjustment for fuel prices). The analysis of benefits focused on coordinated congestion management, "buy through" of congestion, and the improved utilization of external interfaces. Coordination of Scheduled Interchange benefits were estimated at $261 million across the neighboring RTOs. Coordinated Congestion Management savings were estimated at $41 million across the neighboring RTOs. The NYISO analysis is available on its website.

Champion Energy Services Supplies Renewable Energy for All Residential Texas Usage
Champion Energy Services on April 22 provided 100% renewable energy to all of its Texas residential customers at no additional charge.

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not elaborate how a customer's exercise of a cancellation within the no-cancellation-fee window would be tracked, or how suppliers could enforce the limited, one-time ability of a customer to avoid termination fees in a 12-month period.

As only noted in *Matters*, the Illinois Attorney General and Citizens' Utility Board have recommended a cap of $50 for early termination fees, mirroring gas market regulations. Staff, however, "recommends that the Commission exercise caution when it comes to eliminating or capping early termination fees."

"Capping or eliminating early termination fees could have the consequence that certain types of services, such as multi-year, fixed price offers, will not be offered to residential and small commercial customers or that those offers would be priced at higher levels. Without discussing the merits of long-term contracts, which are used in both the wholesale and retail markets, there appears to be demand for offers that guarantee a certain price for a longer period of time," Staff said.

The Retail Energy Supply Association affirmed that the CUB/AG termination fee cap, "would eliminate the availability of certain fixed-price offerings, or at the very least severely limit the terms of such products, which defeats the purpose of such a product - budget certainty." While CUB and the AG argued that electricity and natural gas products should be treated the same when it comes to termination fees, suppliers noted various differences in commodities which warrant unique treatment -- principally that electricity cannot be stored and thus electric suppliers long on power due to early customer terminations face even greater challenges than gas suppliers.

CUB and the AG, however, argued that not applying the $50 termination fee cap would provide, "inequitable treatment of competitive energy suppliers based on the type of commodity supplied."

"Moreover, disparate protections would unnecessarily confuse customers," CUB and the AG said.

"The limited exposure to retail energy competition has been on the gas side, and both CUB and the AG can report that that experience has been fraught with deceptive marketing, unreasonable contract termination fees and higher bills in general. The inexperience these customer classes have in purchasing their energy supply, combined with a lack of knowledge about what it might mean to their total monthly bill if they agree to purchase the commodity separately at a rate different than what they are accustomed to paying from their distribution utility may contribute to 'buyers remorse,'" CUB and the AG said.

Rescission Period

Regarding the rescission period, which the draft rules would extend from three business days to 10 calendar days, Staff affirmed that the rescission period should begin after the utility "processes" an enrollment, rather than the date of the contract signing, which suppliers noted will effectively extend the rescission period even further. While RESA urged using the date of the contract signing to start the rescission period, Staff said that, "RESA's proposal would fundamentally change the structure of the rescission period and would be impossible to implement solely with the changes proposed by RESA."

RESA had noted that using the date on which the utility "processes" an enrollment as the start date for the rescission period will result in months-long rescission periods for customers signing contracts with forward start dates, since the Illinois utilities currently do not accept forward enrollments beyond 45 days, meaning the supplier must withhold submitting a forward enrollment until that window opens, extending the date upon which the rescission window starts. Staff said that it is not fundamentally opposed to exploring the potential for expanding the 45-day limit on future enrollments, but said that such changes should be addressed in another proceeding.

Commonwealth Edison cautioned against expanding the current 45-day limit on future enrollments, noting that, when combined with the state's first-in enrollment rule, future-dated enrollments could lock customers out of the market for prolonged periods of time.

Staff also recommended adding ComEd's language to the rescission section stating, "Nothing in this section prohibits a utility from accepting a request to rescind a pending enrollment by a [retail supplier] from customers other than residential customers or small commercial customers."

Door-to-Door Marketing

As only reported in *Matters*, Dominion Retail recommended a series of additional protections and procedures applicable to door-to-door marketing, including requiring any door-to-door solicitation to be conducted by employees and not independent contractors. CUB and the AG supported Dominion Retail's proposals, citing their, "experience with a variety of complaints regarding the door-to-door marketing practices of alternative retail gas suppliers."

Additionally, CUB and the AG said that Dominion Retail's proposed requirement that the first statement made by a door-to-door agent shall be that the agent does not work for the utility, a governmental office, or consumer organization should be applied to telephonic solicitations.

Staff, however, said that Dominion Retail's additional door-to-door marketing provisions are unnecessary given the various uniform disclosures required under the draft rule. RESA also opposed the measures, particularly the proposed requirement for agents to be employees of the supplier. RESA argued that, even if it is granted that independent contractors have had a poorer record than employees in conducting door-to-door sales, this record is likely due to the fact that such independent agents were not previously required to be licensed, while they will now be licensed under the ABC act and subject to license revocation, or (if an exclusive agent), subject to the various draft customer protection and disclosure rules before the ICC.

Sales Agents

As previously reported, RESA cited confusion on the applicability of the draft rules to "sales agents," and the interaction with the code of conduct for ABCs licensed under Part 454 of the administrative rules. RESA said that all agents, whether licensed ABCs or exclusive agents of a supplier, should be subject to the same requirements, but said that this outcome would be best accomplished by moving the rules for sales agents into the ABC rules under Part 454. In reply, BlueStar Energy Services agreed that it is confusing whether the draft rule's definition of sales agents is limited to supplier employees and exclusive supplier agents, or also includes licensed ABCs, and agreed that the rules should apply to all types of agents.

Staff, however, rejected RESA's approach of moving the sales agent rules to Part 454, stating that the draft rule applies to all types of agent entities. Staff said that the supplier, "is ultimately responsible for complying with the statutory consumer protections found in Section 16-115A of the Act; especially Subsections 16-115A(b) and (e) and Staff recommends that the Commission make this clear by adopting Staff's proposed definition of 'sales agent.'"

Staff revised the requirement that a sales agent must cease marketing to a customer at the customer's request in response to confusion regarding what occurs if the agent is marketing on behalf of multiple suppliers. Staff's revised language reads, "Upon a customer's request, the [retail electric supplier] shall refrain from any further marketing to that customer," striking the phrase "and its sales agents" from the requirement.

Small Commercial Customer

Staff disagreed with RESA's proposal to define a small commercial customer as a customer with annual consumption of 15,000 kilowatt-hours or less in the state of Illinois, rather than in a particular service area, because Staff said that the statute defines a small commercial retail customer as, "those nonresidential retail customers of an electric utility consuming 15,000 kilowatt-hours or less of electricity annually in its service area."

Other Issues

Staff rejected CUB and the AG's request for codifying specific enrollment and authorization requirements in the rules since such requirements are already covered elsewhere in rules or statute, as noted by *Matters*.

Staff recommended adopting ComEd's suggestion that a retail supplier be required to inform Commission Staff before the supplier initiates marketing to residential and small commercial customers. However, Staff said that this information is not required to be disclosed to customers, since it would not be meaningful to customers.

RESA noted that, for products offering guaranteed savings, the Staff's requirement for a written statement of such savings could be read as requiring the statement prior to enrollment, precluding the use of telephonic enrollments. While Staff did not strike the word "written" from the description of the guaranteed savings requirement, Staff added language stating that for telephonic solicitations, the disclosure of the guaranteed savings shall be consistent with how disclosure is performed for other parts of the uniform disclosure statement for telephonic solicitations (e.g. a verbal customer acknowledgement of understanding)

Staff rejected RESA's request to not require the uniform disclosure statement with direct mail pieces; however, Staff clarified that for direct mail marketing which does not offer a specific service, no uniform disclosure statement is required since no specific offer is being made.

While the AG and CUB recommended requiring suppliers to disclose to customers how many force majeure events they have declared in the past decade, Staff rejected this proposal as not beneficial to customers.

The AG and CUB had also proposed a definition for renewable energy products, but Staff said that the AG/CUB proposal made little sense, and that the issue, "is more complicated than simply devoting one sentence in this rule stating what is not a 'green' product."

CUB and the AG had also recommended that all retail electric offers be expressed in a price per kilowatt-hour, which Staff opposed as unduly limiting product choice. BlueStar Energy Services, however, lent support to the CUB/AG proposal as promoting transparency.

Regarding the public posting of complaint statistics, suppliers reiterated their initial concerns with the reporting, and how it may provide an inaccurate portrait of the market based on a supplier's total customer count, types of customers served (mass market versus large customers), and other factors. While Dominion Retail had proposed a percentage index to address the problem of simply reporting raw numbers, RESA noted that Dominion Retail's proposal would include both the total number of complaints per supplier and a supplier's percentage of complaints as part of its customer base, which would allow market participants to determine the supplier's overall customer count, which RESA said is competitively sensitive information.

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computed its March 1, 2010 quarterly PGC rate. If CPG would have had this information in time, CPG said that it would have, in all likelihood, filed a lower PGC quarterly increase or possibly no PGC rate increase at all.

Conversely, under WACOG, storage injections are based upon actual purchases at the time of summer injections, and the value of gas in storage inventory to be used to price withdrawals is largely known and certain, since it is based on historic summer purchases. "This eliminates the need for quarterly and annual LIFO true-ups, and would significantly enhance CPG's ability to forecast PGC costs," CPG said.

CPG said that WACOG accounting would also allow it to make more informed gas purchasing decisions

Currently, CPG's affiliates UGI Utilities - Gas Division and Penn Natural Gas use WACOG accounting.