Energy Choice Matters

June 2, 2010

Md. OPC Asks for Higher Broker Penalties, Raises Concern Over Marketing Agents

The Maryland Office of People's Counsel said that the PSC, "needs to hold these unlicensed Companies [brokers] to a higher level of scrutiny when engaging in activities without a proper license, and impose a more significant penalty than $100, which has become routine," in comments on the natural gas broker application of Ellicott City Investments, LLC d/b/a Allied Power Services, in which OPC addressed several larger issues related to intermediary sales channels.

Since the PSC stepped up enforcement of the broker licensing requirement in 2008 (driven by the NCG Energy Solutions case), the penalty for unlicensed brokering activity has typically been the greater of $100 or the amount of the PSC assessment the broker would have paid (based on revenues) had it been licensed since the start of its Maryland operations.

OPC argued that a higher fine is warranted as there is "no excuse" for engaging in supplier activities in Maryland without first obtaining a license, "particularly when the law has been in effect for over a decade." According to OPC, Allied Power Services has conducted Maryland operations prior to licensing.

OPC further raised concerns regarding licensed brokers which are acting as marketing arms for a single supplier. "OPC has observed recently that some Companies, such as the Applicant, seeking a license to act as a broker for residential customers in effect are acting as marketing arms or agents for a licensed energy supplier. It is OPC understands [sic] that brokers have a responsibility to a party, in this case the utility customers, to locate the supplier offers that are the most appropriate or best for the customer," OPC said. According to OPC, Allied Power Services is acting as a marketing agent for Washington Gas Energy Services.

However, it does not appear Maryland electric law or regulation imposes such an obligation on a broker by definition, though the broker may be held to such a standard under other applicable laws

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Midwest ISO Maintains Preference for LSE Forecasts Despite Under-forecasting

Although up to 40% of load serving entities are not providing all the required information for load forecasting under the Module E construct, the Midwest ISO told FERC that it believes an LSE approach to load forecasting remains the optimal solution, though it is considering various proposals to improve load forecasting in retail choice states (ER08-394). MISO is examining several revisions to the forecasting process, including a possible requirement to "track" capacity obligations to new LSEs when load migrates.

Unlike in most other RTOs, MISO's Module E resource adequacy construct relies on LSE-provided load forecasts rather than a forecast developed by the RTO itself. Though MISO examined LSE forecasting results from June 2009 through February 2010, it said that any substantive conclusions on LSE load forecasting using such data would be premature given the short timeframe, the implementation learning curve for the Module E construct, lower-than-normal average temperatures experienced during the timeframe, and the economic downturn which has depressed

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Briefly:

O&R Files Updated Electric POR Rate

Orange & Rockland has filed, consistent with year three of its rate plan, to increase effective July 1 its electric Purchase of Receivables discount rate to 1.344%, versus the current 1.283%, reflecting a new credit and collections component of 0.910%.

Paetec Seeks Ohio Electric Broker License

Paetec Energy (Technology Resource Solutions, Inc.) applied for an Ohio electric broker/aggregator license to serve commercial and mercantile customers in all service areas.

Affinity Energy Management Seeks Pa. Broker License

Affinity Energy Management, LLC applied for a Pennsylvania electric supply license as a broker/marketer serving all sizes of non-residential customers in central and southeastern Pennsylvania. Affinity Energy Management said that it is currently operating in Delaware, Maryland, New Jersey, Connecticut, Ohio and Texas.

Devonshire Energy Seeks D.C. Electric License

Devonshire Energy LLC, a subsidiary of Fidelity Investments, applied for a District of Columbia electric supplier license to serve the load of company affiliates, such as the real estate assets owned and operated by Pembroke Real Estate, a wholly owned subsidiary of Fidelity. Devonshire Energy said that it will not serve unaffiliated customers. As only reported in *Matters*, Devonshire is currently seeking an Option 2 REP certificate in Texas (Matters, 5/20/10).

Citizens'/Wellsboro File Updated Generation Rates

Citizens' Electric Company of Lewisburg has filed a reduced Generation Supply Service Rate for the three month period beginning July 1, 2010 of 6.9464¢/kWh, versus the current 9.0550¢/kWh. Wellsboro Electric Company has filed a reduced Generation Supply Service Rate for the three month period beginning July 1, 2010 of 7.5398¢/kWh, versus the current 8.6542¢/kWh.

PUCT Affirms Option 2 REPs Must Present Customer Affidavit at Time of Certification

The PUCT has deemed the applications of TexRep9, LLC and TexRep10, LLC deficient because the Commission said that, per SUBST. R. § 25.107(d)(2)(A), applicants for an Option 2 REP certificate must provide a signed affidavit from a customer, with whom the REP has contracted to provide one megawatt or more of electric capacity, that states that the customer is satisfied the REP meets the standards required by PURA § 39.352 (b)(1)-(3) and (c). The two REPs, both held by Energy Services Group (typically for test flight purposes), had applied for amendments to transition to Option 2 status, which would relieve them of the otherwise applicable new financial requirements of Option 1 REPs (Only in Matters, 5/12/10). Both REPs said that they were in discussions with several potential customers to provide service as an Option 2 REP.

PUCT Schedules Meeting on Energy Efficiency Rulemaking

The PUCT will hold an open meeting/hearing regarding its energy efficiency rulemaking (37623) on June 30. REPs have recommended a cost cap on energy efficiency spending, and have opposed a lost revenue adjustment for TDUs (Matters, 3/16/10).

ERCOT Posts ESI ID Data to be Used for POLR Eligibility Filings

ERCOT has published the total count of active ESI IDs as of March 31, 2010 that fall into each POLR Customer Class (Residential, Small Non-Residential, Medium Non-Residential, and Large Non-Residential) within each TDSP service territory, as well as the total kilowatt-hours for each POLR Customer Class by TDSP service territory for the period April 1, 2009 through March 31, 2010. ERCOT said that the most current POLR Customer Class assignment for each ESI ID by TDSP territory can be found in the TDSP ESI ID Extract FULL files that are scheduled to be posted by Tuesday, June 8, 2010. REPs are to use this information for their POLR eligibility filing to the PUCT for 2010.

Reliant Energy Offers Voluntary Summer Disconnect Moratorium

Reliant Energy announced yesterday that it will again offer a voluntary moratorium on disconnections for low-income seniors, critical-care, and other low-income residential customers.

Low-income customers will not be disconnected if they call Reliant and agree to pay 33 percent of their outstanding balance for each bill between July 1 and September 30 and establish a payment plan.

Low-income seniors (at least 65 years of age) may avoid disconnection by deferring their payments until October, and paying 25 percent of deferred bills with the first electric bill after October 1. The remaining balance can be paid in equal installments over the next five billing cycles. The same deferral and payment terms would apply to critical care customers seeking to avoid disconnection.

Reliant announced several other measures to help customers this summer including:

- Deposit waivers for new residential service for qualified senior citizens;
- Deposit installment plans for qualified low-income residential customers;
- Extensions and payment plans for qualified residential customers;
- Dedicated agents to help customers who need social agency assistance or special payment arrangements;
- Average billing to help manage bill payments during the hottest months of the year for qualified residential customers

Maine Munis/Co-ops Protest Emera Acquisition of MPS

The Northern Maine Customer Group opposed the FERC merger application of Bangor Hydro-Electric's parent and Maine & Maritimes Corporation, claiming that under the acquisition a transmission link between northern Maine and ISO New England is "inevitable," which would lead to a "staggering" rate increase. The group, which includes Houlton Water Company, Van Buren Light and Power District, Eastern Maine Electric Cooperative, and the Office of the Maine Public Advocate, said that the merger should not be approved absent adequate assurance of ratepayer protection (EC10-67).

The Customer Group presented an expert affidavit arguing that, "only by connecting the Northern Maine market to ISO-NE could the Merger provide economic value to Emera (the parent of BHE), and thus ... it must be seen as a motivating and integral basis for the Merger."

"Given the relatively small size of [Maine Public Service] compared to Emera, the declining Northern Maine market, the deteriorating financial condition of MPS, and the relative isolation of Northern Maine, the Merger alone could not provide any measurable increase to Emera's shareholder value. Significantly, BHE has not publicly asserted that the Merger alone would create value. However, by building and owning a transmission line between northern Maine and ISO-NE, Emera, through BHE, will add to rate base and thus make the transaction worthwhile to Emera shareholders. In addition, Emera is a wind power developer, and such a line could be used for it to access the New England market. In short, the Merger must be based on increased transmission rate base or it would not provide value for BHE," the Customer Group claimed.

The Customer Group also pointed to less ethereal evidence of the intent to build such a transmission line, noting that BHE has stated that its capital expenditure plans for 2012 include a transmission line between northern Maine and ISO-NE. Additionally, the Customer Group said that BHE's CEO is now a participant on the Development Team for the Maine Power Connection transmission line between northern Maine and ISO-NE.

The Customer Group described MPS as a "low-cost" transmission provider with transmission rates (taking into account revenue credits) less than one third of the ISO-NE transmission rates paid by BHE's customers. The group presented a study finding that the transmission rates for northern Maine transmission customers will increase by at least three-fold over the current rates if they are subjected to ISO-NE transmission rates.

The Northern Maine Independent System Administrator also filed a limited protest, agreeing that the integration of MPS with ISO-NE is "inevitable" under the acquisition. NMISA asked that FERC require the merging firms to hold Northern Maine customers harmless, and to engage in any necessary coordination with the NMISA prior to a change in MPS management.

BGE Files Updated Amounts for Rider 8

Baltimore Gas & Electric filed updated amounts for bypassable Rider 8 (Energy Cost Adjustment) for the period June through September 2010. Aside from the true-ups related to actual supply costs, the new rates include refunds, with interest, from an over-collection earlier this year due to an incorrect calculation (for R, ES, G, TN).

Rider 8	$/kW	¢/kWh
Residential (R, ES)	-	(0.012)
Residential (RL-1, RL-2)	-	0.026
G - Type I	-	(0.135)
GS - Type I	-	(0.093)
TN - Type I	-	(0.135)
SL - Type I	-	0.092
G - Type II	-	(0.124)
GS - Type II	-	(0.082)
GL - Type II	($0.07)	0.027
P - Type II	($0.07)	0.027
Hourly Service	-	0.043

Md. ... *from 1*

(e.g. fair representation) due to its own marketing or branding as an independent agent. But as far as market structure is concerned, COMAR defines a gas broker as, "an entity or individual that acts as an agent or intermediary in the sale and purchase of gas but does not take title to the gas." COMAR imposes no obligation on such intermediaries to act as the customer's agent or represent the customer's interest. The definition for electric broker is essentially verbatim.

The COMAR definition for broker is markedly different from the definition for aggregator which is, "an entity or an individual that acts on behalf of a customer to purchase gas." Moreover, it is clear that marketing agents selling commodity from only one supplier must obtain a license per COMAR, so it seems reasonable that these entities would be classified as brokers absent a specific definition for marketing agent. Specifically, COMAR's definition of gas supplier, which requires a license, includes any entity that, "[p]urchases, brokers, arranges, or markets gas or gas supply services for sale to a retail gas customer." The electric supplier regulations are essentially identical.

However, despite the COMAR definition of broker not defining for whom the broker intermediary is an agent, the Maryland gas supplier application does suggest that brokers must act as the customer's agent. Specifically, applicants for a gas license must select one of these three options:

- "Gas Supplier/Marketer of natural gas"
- "Aggregator acting on behalf of customers to purchase natural gas "
- "Broker acting as an agent or intermediary on behalf of customers in the sale and purchase of natural gas and who does not take title to natural gas"

Regardless of whether licensed brokers may legally act as a supplier's marketing agent, OPC said that, "at a minimum this [relationship] can be a source of confusion for customers, as to whose interests the broker is representing."

Additionally, if the broker is acting as a marketing agent for a supplier, "the broker must be bound by all of the marketing and solicitation rules that apply to the energy suppliers," OPC recommended.

MISO ... *from 1*

peak load.

"[W]hile on a system-wide basis the Midwest ISO is forecasted well above demand, on an individual LSE basis, there is room for improvement in forecasting," MISO said in its report to FERC.

Specifically, "a number of LSEs, accounting for between 30 percent to 40 percent of the LSEs and at least 20 percent of the aggregate peak demand, are not providing certain required information," MISO said. The number of LSEs that under-forecasted their obligations for at least one Commercial Pricing node from June 2009 through February 2010 was as high as 44 per month, and never lower than 18 per month. About one-half to two-thirds of those under-forecast LSEs were in retail choice states, depending on the month.

Using Theil's U1 Statistic, Commercial Pricing Node forecasts in retail choice states have been less accurate than comparable forecasts in non-retail choice states, MISO added. For example, 25 percent of the non-retail choice states had a Theil's U1 value of 0.05 or less, while only 13 percent of retail choice states achieved the same level of accuracy.

MISO has exercised its authority to examine substantiating data for under-forecasting LSEs' load forecasts, and has not observed any systemic under-forecasting, it reported.

In response to the under-forecasting, MISO has already launched an effort to examine the retail choice states of Illinois, Michigan and Ohio in order to determine components of the resource adequacy construct that could be modified, enhanced, or implemented to better accommodate retail choice procedures. "The Midwest ISO is approaching the effort with the goal of improving the construct for retail choice LSEs but not at the expense of degrading reliability in the other states in the Midwest ISO footprint," MISO said.

For example, MISO is examining possible changes to the resource adequacy construct that would make it possible to "track" load switching, so that the appropriate power supplier is responsible for the resource adequacy of the switched load. "The Midwest ISO does not believe that such switching has been, or will be in the near future, detrimental to the overall resource adequacy of the system."

MISO said that the available data provided by LSEs in the Module E Capacity Tracking tool, "suggests that such load switching represents a very small percentage of the total market (less than 4000 MW in any given month), and also represents a small percentage (7 percent or less) when considered only in those states that allow retail choice (IL, MI, OH, PA)."

In discussion with LSEs regarding their forecasting performance, MISO reported that a number of primary reasons for the under-forecasting were provided including:

- For retail choice states such as Ohio, Illinois and Michigan, there is a degree of uncertainty as to how to incorporate the load that a given retail choice entity will be serving due to retail switching. While the Module E Capacity Tracking tool offers the possibility to account for the added or lost load after-the-fact, "LSEs were unaware of this option," MISO said.
- Some LSEs have not historically calculated their peak loads at the Midwest ISO-defined load Commercial Pricing Node level, but rather have forecasted in aggregate for the LSE.
- LSEs in Retail Choice States sometimes have limited historic data and experience in peak load forecasting for their customers compared to traditional regulated LSEs.

Nevertheless, "[f]or many of the same reasons that the Midwest ISO identified during 2008 when the RAR provisions were being developed, the Midwest ISO continues to believe that LSEs are in a better position to develop accurate peak demand forecasts than the Midwest ISO would be if it employed a centralized forecasting process," MISO maintained.

"While currently LSEs are more aware of local trends and developments that would influence forecast accuracy than the Midwest ISO, the Midwest ISO is exploring other options to ensure the best processes are being used for the RAR construct," MISO added.

While certain LSEs were under-forecasted, MISO said that, as a whole, the market over-forecast load for every month except June 2009, with the June deficiency attributed to the 2009 FirstEnergy Ohio distribution utilities' POLR auctions. MISO attributed the over-forecasts to several factors, including the recession and relatively mild weather which reduced peak loads. Furthermore, MISO noted that over 33 percent of the LSEs are forecasting no transmission losses, either directly (by inputting a zero value) or indirectly (by leaving the field blank).

The MISO construct currently uses non-coincident peak demands. "While appropriate for certain distribution and transmission purposes, using non-coincident peak demands potentially focuses demand reduction efforts in ways that do not enhance resource adequacy.

Assuming no transmission bottlenecks, peak demands coincident with the Midwest ISO as a system would be a more appropriate value to target in resource adequacy assessments. By continuing to use non-coincident peaks as the element by which LSEs must acquire (and pay for) resources, the Midwest ISO encourages LSEs to reduce demand at a time that potentially provides no benefits toward resource adequacy. Current planning processes within the Midwest ISO recognize this issue, but account for it through the use of system-wide diversity factors, which may fail to appropriately incent individual LSEs to take actions that would enhance resource adequacy," MISO said.