Energy Choice Matters

June 4, 2010

Pa. PUC Modifies National Fuel POR Settlement, Removes Risk Factor

The Pennsylvania PUC has modified the terms of a settlement which would institute a Purchase of Receivables program at National Fuel Gas Distribution, excising the risk factor from the residential and non-residential discount rates (P-2009-2099182). The settlement provides that National Fuel Gas Distribution, "may elect to withdraw its voluntary POR program if it is required to implement changes that deviate materially from the POR program as presented in the Settlement."

Under the original settlement, which was only reported by *Matters* (5/10/10), residential receivables would have been purchased at a discount of 2.7086%, which includes a 0.4156% risk factor. Non-residential receivables would have been purchased at a discount of 0.4766%, which includes a risk factor of 0.1852%.

However, in a motion adopted by the Commission, Chairman James Cawley said that the risk factor, "is contrary to our efforts to remove barriers to competitive market entry." Cawley's motion said that a risk factor was unnecessary given that (1) National Fuel Gas Distribution already has certain backoffice systems in place to facilitate POR from its New York program; (2) payment risk is unchanged since Distribution as a default service provider is still exposed to non-collection from customers regardless of whether they shop; (3) the Merchant Function Charge which is set as a percent will increase or decrease the bad debt allowance in concert with changes in supply costs versus the previous fixed allowance; and (4) the PUC guidelines expressly provide for recovery of incremental costs associated with program development, implementation, and administration.

When removing the risk factor, the residential discount rate would be 2.293%, and the non-residential rate would be 0.2914%.

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Pa. PUC Orders PECO to Implement Enrollment, HIU EDI Standards by January 1, 2011

The Pennsylvania PUC ordered PECO to develop, "appropriate enrollment and HIU [historical interval usage] transactions ready for testing by EGSs by November 1, 2010," further directing that final protocols shall be available for implementation by January 1, 2011, despite ongoing work on the provision of interval data on an alternate timeline by the Electronic Data Exchange Working Group (M-2009-2123944, Only in Matters, 5/18/10).

The working group expects to issue draft standards by November 1, 2010, with final recommended standards issued by January 31, 2011. In a dissent, Vice Chairman Tyrone Christy said that requiring PECO to "jump ahead" of the Electronic Data Exchange Working Group runs the risk of PECO developing standards that are not compliant with the standards ultimately adopted by the working group. Christy noted that the Commission's order requiring such acceleration directs PECO to continue coordinating with the working group to develop appropriate changes to its data exchange standards as needed due to any conflict -- changes which Christy said may potentially be costly.

Christy argued that there is no urgent need for the provision of interval data through an EDI

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Briefly:

Constellation Electric Offering Residential Wind Product at BGE

BGE Home Products & Services, branded as Constellation Electric, has begun offering renewable electric products to residential customers at Baltimore Gas & Electric. Constellation Electric's CleanEnergy products provide wind RECs for 100% of usage and are fixed for either one year (10.75¢/kWh) or two years (10.65¢/kWh). Both products include a $150 early termination fee. Current customers can add the 100% wind option to their existing product for an adder of 1¢/kWh. The product is a further extension of Constellation's piloting of residential products in select markets with supporting headroom, as only reported by *Matters* (Matters, 5/3/10). Aside from its entry into renewable and non-renewable residential electricity at BGE (and BGE Home's long-standing offering of residential gas in Maryland), Constellation is offering residential gas service at Dominion East Ohio.

Glacial Natural Gas Receives Maryland Gas License

The Maryland PSC granted Glacial Natural Gas, Inc. a natural gas supplier license to serve commercial and industrial customers at Baltimore Gas & Electric, Washington Gas Light, and Columbia Gas (Only in Matters, 3/9/10).

ConocoPhillips Receives Pa. Gas License

The Pennsylvania PUC granted ConocoPhillips Company a natural gas supplier license to serve large commercial (6,000 Mcf or more annually), industrial, and governmental customers in all service areas.

Power Management Co. Receives Pa. Broker License

The Pennsylvania PUC granted Power Management Co. LLC an electric broker/marketer license to serve all sizes of commercial and industrial customers in all service areas (Only in Matters, 3/5/10).

Evolving Energy Systems Receives Delaware Broker License

The Delaware PSC granted Evolving Energy Systems, LLC an electric broker license to serve commercial and industrial customers.

Call The World Telecommunications Seeks Conn. Aggregator License

Call The World Telecommunications, Inc., d.b.a. Bronson Energy-Independent Brokers, applied for a Connecticut electric aggregator certificate to serve all customer classes. Bronson Energy said that it will not administer an aggregation program, but will broker for multiple suppliers. Call The World Telecommunications is an international telecommunications company with monthly revenues averaging between $10,000 and $20,000.

Conn. Draft Would Grant License to Choice Energy, LLC

A draft Connecticut DPUC decision would grant Choice Energy, LLC an electric supplier license to serve residential, commercial and industrial customers throughout Connecticut (Only in Matters, 4/6/10).

Conn. Draft Would Grant License to Palmco Power

A draft Connecticut DPUC decision would grant Palmco Power CT, LLC an electric supplier license to serve residential, commercial and industrial customers throughout Connecticut (Only in Matters, 8/5/09).

Staff, Complainant Oppose Gexa Request for Dismissal in Variable Rate Complaint

PUCT Staff opposed Gexa Energy's request to dismiss a customer complaint regarding the pricing of a variable rate contract as moot, as Staff said that the Commission has not yet decided whether the customer is entitled to non-compensatory relief, such as a declaratory, injunctive, or admonitory order (37569). The complainant confirmed that he is still seeking non-compensatory relief, though he said that Gexa's refund offer represents a reasonable estimation of the requested compensatory relief. Gexa has sent a check for $914.85 to the complainant representing what Gexa believes is the maximum possible refund, and had sought dismissal by arguing that a refund is the only relief which the customer may seek (Only in Matters, 5/17/10). The complainant has alleged that the Uniform Commercial Code required Gexa to set its variable rate contemporaneously to changes in the wholesale price of energy (see Matters, 3/4/10).

Mich. PSC Approves Consumers PSCR Reconciliation, Pension Surcharges

The Michigan PSC has approved a one-time surcharge at Consumers Energy of $0.002076/kWh for bundled service customers and $0.001076/kWh for electric choice customers for the July billing month to recover pension and other post-employment benefit costs. Consumers will further reconcile a net under-recovery in 2004-2005 power supply cost recovery charges by imposing a surcharge of $0.00101/kWh on large commercial and industrial customers for the July billing month. The PSC also directed Consumers to roll an over-recovery of $13.9 million in 2008 power supply cost recovery revenue into its 2009 reconciliation (U-15415-R).

Calf. PUC Adopts Revised Direct CAISO Participation Draft

The California PUC adopted as final an agenda decision in R.07-01-041 that restricts bundled utility customers from participating directly in the California ISO markets (aside from current pilots) until ratepayer protections are developed, but allows customers of electric service providers to directly participate in the CAISO market (see full discussion of provisions in Matters, 6/3/10).

Mich. PSC Approves Michigan Gas Utilities Corporation GCR Reconciliation

The Michigan PSC approved a settlement agreement which found a net under-recovery of $5.3 million in Michigan Gas Utilities Corporation's 2008-2009 gas cost recovery (GCR) revenues and expenses, which shall be rolled into its 2009-2010 GCR plan (U-15450-R).

Pa. PUC Approves New AEPS Administration Contract with Clean Power Markets

The Pennsylvania PUC approved a contract under which Clean Power Markets will continue as the administrator of alternative energy credits (AECs) through at least Dec. 31, 2013, with the option for an extension. The anticipated cost is $2.7 million. Vice Chairman Tyrone Christy dissented from the approval, citing Clean Power Markets' "poor performance" under the current contract. Christy said that Clean Power Markets has failed to correct an inaccurate legacy registry of renewable facilities it inherited in March 2007 from the Department of Environmental Protection, which included several facilities that do not qualify to generate AECs. Christy said that Clean Power Markets did not attempt to send questionnaires to such legacy facilities to correct the list until last month, which Christy called "inexcusable." Christy suggested that two employees at a salary of $100,000 each could perform the functions of Clean Power Markets for a cost of only $1.0 million for the five years covered by the contract and extensions, or for about 35% of the cost of the contract.

PUCT Staff Energy Efficiency Proposal Omits Lost Revenue Adjustment Mechanism

PUCT Staff have issued a draft proposal for adoption to amend Subst. R. § 25.181, relating to energy efficiency, which would reject, for the time being, the use of a lost revenue adjustment mechanism (LRAM) for distribution utilities (37623, Only in Matters, 3/16/10).

Staff said that it is not prepared to adopt a lost revenue adjustment mechanism at this time, but said that such a mechanism could be considered within the context of a Commission review of ratemaking rules. Staff's proposal states that the Commission would also separately seek to develop a better estimate of lost revenues.

Staff's draft rejects the use of a lost revenue adjustment mechanism at this time since the large utilities have generally been successful in meeting their energy efficiency goals, "and the commission does not believe that the lack of an LRAM will impair their ability to meet the new goals or otherwise have an adverse impact on the operation of their programs in the near term."

However, since the revenue losses will clearly increase as the efficiency goals increase, Staff said that the following are important issues that need to be resolved soon: the impact of revenue losses from energy efficiency; how a lost revenue adjustment mechanism would work in connection with other changes in ratemaking that the Commission might adopt; and whether the Commission has the authority to adopt a lost revenue adjustment mechanism or decoupling. REPs have opposed a lost revenue adjustment mechanism.

Staff's proposal for adoption would reject any set-asides for specific efficiency programs, including a proposal from demand response providers for a specific set-aside, and a proposal from REPs who had recommended that at least 25% of program funds be directed to REP-delivered programs. Staff's draft would also not allow individual customers to opt-out of the energy efficiency programs, and associated cost responsibility, since tracking the self-directed efforts from customers would be difficult. "[T]here is a risk that a customer would opt out after obtaining the benefits of the program, so that it would not share the costs in the same way that other customers do," Staff added.

Staff's draft would retain the use of budget caps for the efficiency programs (though at a higher level due to the increased goals), as opposed to a per megawatt-hour rate cap as suggested by REPs. Staff said that rate caps would introduce factors which would be difficult to control in the budgeting process, requiring forecasting of budgeted expenses for energy efficiency divided by projected future consumption "It is true that using a budget cap provides less certainty for REPs and customers, but the commission believes that it is important not to introduce an additional challenge for the utilities, beyond the challenge of higher goals, in managing the energy efficiency program," Staff's draft says.

The Staff proposal would reject the suggestion from Texas Legal Services Center to assign to REPs the administrative costs incurred by TDUs to facilitate REP participation in the energy efficiency programs.

Staff would permit utilities to directly advertise standard offer and market transformation programs to retail customers, which was opposed by REPs. "The commission is not adopting the proposal of the REP Coalition to limit utility information activities to areas 'only where retail customer choice is not available' in subsection (l) or subsection (m)(2)(J). The bigger goals in the program will be more difficult to achieve if the utilities cannot conduct programs to call the attention of consumers to the program," Staff said.

More generally, the Staff draft would gradually raise an electric utility's energy efficiency goal from 20% of growth in demand to 50% of an electric utility's annual growth in demand by program year 2014. The Staff proposal also includes a revised calculation of the bonus that a utility may earn for achieving its goal. An earlier proposal included a goal based on total peak demand, but Staff is not recommending adoption of that goal at this time.

Calif. PUC Affirms One-Year Forward Obligation, Bilateral Approach for Resource Adequacy

The California PUC yesterday approved continuation of the current one-year forward, bilateral approach to resource adequacy, rejecting a multi-year forward commitment through either a bilateral mechanism or a centralized capacity market (R.05-12-013).

The PUC adopted the most recent agenda decision which, as only reported by *Matters*, softened some of the language of earlier drafts against a centralized capacity market, and explicitly directed Staff to continue to study the potential for a multi-year forward procurement obligation (see Matters, 5/27/10).

Otherwise, the adopted decision largely tracks the March draft order (see Matters, 3/30/10), which found that a multi-year forward commitment obligation would harm competitive electric service providers (ESP). Specifically, the final order retains the finding that a multi-year obligation under the bilateral approach, "would be more difficult for ESPs than IOUs to comply with because ESPs lack ratepayer-guaranteed funding and may be less creditworthy than IOUs, and because load forecast and load migration issues associated with the current program could be accentuated with a forward commitment greater than one year."

Though no multi-year forward obligation is adopted, the decision does call for the development of a collaborative forward assessment of capacity need with a multi-year horizon. "Even though we are not prepared to impose a multi-year procurement obligation on LSEs through the RA program, we see the forward assessment as an indispensible [sic] tool that would assist all market participants by providing high-quality official supply and demand information," the PUC said.

The final decision endorses several key elements of the Bilateral Trading Group's one-year bilateral approach, but refrains from implementing any of the elements at this time since many are being addressed in other proceedings. Such endorsed elements include an electronic bulletin board, a tradable capacity product, and a durable backstop mechanism that builds off of (and modifies as appropriate) the Cost Allocation Mechanism adopted in D.06-07-029. Since a proposal from retail suppliers to allow retailers to opt-out of the Cost Allocation Mechanism did not receive adequate attention in the instant proceeding, the PUC declined to order any changes to the Cost Allocation Mechanism, and said that the Cost Allocation Mechanism procedure adopted in D.06-07-029 will remain in effect.

Michigan PSC Denies Pooling at MichCon

Consistent with a proposed decision, the Michigan PSC denied Constellation NewEnergy's petition to implement pooling at Michigan Consolidated Gas, in a final order on MichCon's rate case (U-15985, Only in Matters, 4/5/10).

The Commission found that the pooling proposal would reduce customers' flexibility, as the PSC said that it would inhibit customers' current ability to take supply from more than one supplier in a given month. "CNE failed to show that pooling would benefit anyone other than marketers," the Commission added.

The Commission also adopted MichCon's proposal to add the month of November to the period during which the utility's end-use transportation customers are barred from injecting more than 1.43% of their respective annual contract quantity into load balancing storage (versus the current period in which the restriction applies of September and October).

Reversing the ALJ's recommendation, the PSC ordered that MichCon's gas customer choice (GCC) tariff shall include language providing that, if a customer is in arrears, the customer may not participate in the choice program until the arrearages are paid in full.

The PSC order relied on a cost of service study based on the design peak day, rather than the actual peak day in 2008 as proposed by Staff. MichCon and ABATE had said that Staff's calculation would have shifted $7 million in costs of service from sales customers to transportation customers.

NFGD POR ... *from 1*

Vice Chairman Tyrone Christy dissented, finding it inappropriate to disturb an uncontested settlement, especially since a variety of natural gas suppliers signed and supported the stipulation, and the POR program is voluntary rather than mandated by the PUC. "I am very concerned that the Commission's actions will send the wrong message to parties considering entering into settlements in the future ... Today, the Commission is placing its interests over the interests of the parties involved in the details of the proceeding."

The Commission did not alter other terms of the settlement. As only reported by *Matters*, suppliers marketing to customers under the POR program, if implemented, would be required to follow a set of interim marketing standards similar to those adopted by the New York PSC in 2008. Among other things, the interim marketing standards require that for door-to-door sales and other sales outside of the supplier's place of business, agents shall provide a photo identification prominently indicating their name and the supplier's name prior to introducing an offer. Agents shall clearly identify that they are marketing on behalf of a competitive supplier as well.

Supplier agents shall not conduct any door-to-door sales presentations before 9:00 a.m. or after 8:00 p.m., unless arranged by appointment with prior customer consent.

For telephonic solicitations, the agent must provide their first name and, on request, identification number, and shall state the name of the supplier on whose behalf the call is being made. Agents must also state the purpose of the telephone call. Marketing representatives shall not conduct any telephonic customer contacts before 9:00 a.m. or after 8:00 p.m.

The interim standards require suppliers to ensure that any product or service offerings contain information written in, "plain language that is designed to be understood by the customer."

Receivables would be purchased without recourse, except for unpaid charges that exceed the otherwise applicable utility supply charges. Distribution will be permitted to terminate service to a supplier's customers for failure to pay the lesser of: (1) the actual bill including the supplier charges, or (2) the otherwise applicable default service charges had the customer obtained supply from Distribution.

A complete discussion of the settlement's terms for the POR program may be found in our 5/10/10 story.

PECO ... from 1

protocol at PECO since such data is available on the SUCCESS website, or through manual requests to PECO.

However, the Commission agreed with suppliers that these current processes for providing interval usage data, "are inefficient and inadequate." As only reported in *Matters*, suppliers noted that the manual process can take days or a week to complete, while the data available on the SUCCESS website is limited.

"In order to ensure the efficiency of the market for generation resources in PECO's service territory, we believe that PECO needs to develop a better methodology for providing customers, their agents, licensed generation suppliers and other interested parties with interval usage data," the Commission said in its order.

Consistent with its order at PPL, the Commission ruled that in accessing customer information via EDI, suppliers will not be required provide documentation to PECO that the supplier has received authorization from the customer for PECO to release historical usage data to the supplier. PUC Chairman James Cawley stressed that he, "fully expect[s] EGSs to continue to meet their regulatory obligations to obtain customer authorization for access to customer account data." Furthermore, Cawley said that suppliers should retain such customer authorizations for a minimum of three years.

Christy said that not requiring suppliers to produce authorization, "may result in the unauthorized release of confidential information with negative results for both residential and commercial customers." Christy stated that providing authorizations to PECO is not unduly burdensome.