Energy Choice Matters

June 15, 2010

RESA Files Complaint Against Met-Ed/Penelec Supplier Tariffs

The Retail Energy Supply Association has filed a formal complaint (C-2010-2178216 et. al.) against Met-Ed and Penelec, contending that supplier tariffs filed by the distribution companies address issues outside of the scope of what is required for compliance with each company's default service settlement (P-2009-2093053 et. al.).

Specifically, RESA said that the tariffs address issues unrelated to the default service settlements, including (1) issues related to customer enrollments including the rescission period, change of address, and restricted information; (2) various processes for suppliers to request and receive data; and (3) billing options and requirements.

As such requirements are not mere compliance matters, RESA said that the PUC must suspend and investigate the tariffs, allowing for public comment.

Specifically, RESA's concerns are:

- New Section 3.1(h) addresses when the distribution companies will implement new rate codes for suppliers using rate ready billing who are newly registered suppliers depending on the request of the supplier, but the tariff fails to address the timeline for implementation of new rate codes after a supplier is registered
- New Section 5.2 related to interval meter data does not specify how the interval data will be provided, at what cost, and whether there will be restrictions placed on the ability of the supplier to receive certain data
- Revised Section 5.3 appears to create a 16-day rescission period through application of the 10-day enrollment confirmation period in violation of 52 Pa. Code § 54.5(d)
- Revised Section 5.3.3 fails to clarify that, consistent with the settlements, suppliers must provide a Letter of Authorization to receive customer information only for those customers who have

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REPs Say Proposed Texas Restriction on Trade Names Is Futile, Oppose Pre-Approval for M&A

A proposed rule that would limit Texas REPs to one certificated and one assumed name would destroy goodwill, discourage investment, and confuse customers, all without achieving the intended goal of helping customers and making the market more transparent, several REPs told the PUCT in comments on the proposed rule (37685, Only in Matters, 4/26/10).

Currently, the Substantive Rules permit up to five assumed names in addition to the name in which the certificate is granted.

Ultimately, Texpo Power, which markets under three distinct names, argued that the proposed trade name limitation would cause several problems without helping customers. Texpo and Reliant Energy noted that nothing in the current or proposed certification rules would prevent a single REP from creating multiple affiliates, each seeking their own certificate, to avoid the proposed limitation on trade names. However, customers would be worse off under this scenario, Texpo argued, as these affiliated REPs would not have any obligation to disclose their affiliates to customers, as

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Briefly:

Spark Energy Seeks Conn. Electric License

Spark Energy applied for a Connecticut electric supplier license to serve residential and commercial customers throughout the state. Spark is currently a registered gas supplier in Connecticut.

Md. Staff Recommends Striking Use Type from BGE Customer Lists

Maryland PSC Staff have recommended that the Commission strike the customer's "use type" from the information Baltimore Gas & Electric would provide to competitive suppliers under new residential customer lists, as Staff called the use type data (identifying the customer as electric, gas, or dual fuel) as going beyond the parameters authorized in the Commission's September 2009 customer list order.

In its September 2009 order, the Commission denied BGE's request to offer an expanded customer list, but said that BGE could offer, pursuant to previous orders, "names, addresses and telephone numbers" (Matters, 9/21/09). BGE has since re-applied to offer a revised residential customer list containing names and addresses while excluding phone numbers, but including the customer's use type (electric, gas, or combined service).

The Office of People's Counsel agreed with Staff that use type information should not be provided. OPC also said that it was "pleased" that phone numbers would not be included on the lists.

"Disclosure of an overabundance of personal information in the commercial arena is a pressing issue for consumers, particularly in an era of increasing instances of identity theft," OPC said.

However, BGE noted that pursuant to prior Commission orders, it is authorized to make available both electric customer and gas customer lists. "[A]s a combined utility, it is more efficient to offer a single list, and it is reasonable to identify fuel type in that list," BGE said.

The Retail Energy Supply Association asked that the customer's rate schedule be included on the lists, since a supplier may approach a BGE time-of-use customer with a different portfolio of product offerings than it would a BGE Schedule R customer.

"The more information in the lists, the more useful they will be," RESA said, adding that, "[t]he provision of customer lists will encourage the development of competition in the mass market, as lists allow retail suppliers to more effectively identify customers, communicate with and educate customers about available products, and to design products that satisfy customers' individual desires and budgets."

Citing published reports (see Matters, 6/14/10), RESA said that, "all signs point to more retail suppliers entering the Maryland residential market." Expanded customer lists (such as those with the more robust information proposed in 2009) would facilitate this market entry and, "increase customer education about savings and choice in general, and also increase the number, variety, and effectiveness of retail offerings," RESA said.

Staff noted that BGE anticipates that the cost to develop and distribute the combined list and to provide appropriate communication will be $20,000. Staff reported that BGE anticipates selling 28 residential lists, resulting in the proposed cost of $715 per list. Staff further said that BGE has noted that to the extent that any excess revenues fall within a test year, any revenues in excess of costs will act to reduce the revenue requirement.

Accordingly, Staff recommended that the Commission accept for filing the tariffed rates but direct that any revenues in excess of costs be credited to the appropriate electricity or gas choice funding mechanisms.

BGE opposed this request, as it would require BGE to track all incremental costs associated with the single task of developing, providing and maintaining the list. "[T]he benefit to be gained by this effort is not justified by the cost," BGE said.

BGE said that if it collects revenues in excess of the costs of providing the lists, the amounts will be minor, perhaps in the thousands of dollars. Similarly, if costs exceed revenues, the amount will also be de minimis, BGE said.

BGE instead proposed that any over- or under- collections be addressed in the context of

a rate case, if those over- or under-collections occur in a test year.

Morgan Stanley, Laredo WLE File Complaint Against ERCOT for Quick Start Unit Compensation

Morgan Stanley Capital Group Inc. and Laredo WLE, LP filed a complaint against ERCOT at the PUCT seeking resettlement to correct an alleged under-compensation totaling $306,000 in connection with the response by the Laredo Energy Center (LEC) Quick Start Units to ERCOT's Out of Merit Energy (OOME) Dispatch Instructions and OOME Verbal Dispatch Instructions. As the LEC quick-start units were off-line, Morgan Stanley (the units' QSE) and Laredo are seeking Out of Merit Capacity (OOMC) payments rather than Out of Merit Energy payments (38350).

The complainants said that the under-compensation resulted from a "work-around" procedure instituted by ERCOT. Specifically, in order to provide Balancing Energy Service from a Quick Start Unit, the work-around required the responsible QSE to show the Generation Resource as on-line with its Low Sustainable Limit as 0 MW, despite the fact that the unit is actually off-line until the unit is called on to provide Balancing Energy to the market. ERCOT instituted the work-around because of a limitation in its Scheduling, Pricing and Dispatch software systems that would have otherwise prevented Quick Start Units from offering Balancing Energy Service. As Quick Start Units, LEC Unit 4 and LEC Unit 5 were subject to this ERCOT work-around procedure.

On October 1, 2009, Protocol Revision Request 818 took effect which, "provides that a Quick Start Unit that is not synchronously interconnected to the ERCOT System that receives an Out of Merit Energy (OOME) Dispatch Instruction or Local Balancing Energy Instruction will be settled as providing Out of Merit Capacity (OOMC) Service." The complainants are essentially seeking the relief provided by PRR 818 for the period before October 1, 2009, specifically, from December 10, 2008 through September 30, 2009.

The complainants alleged that the work-around which resulted in the LEC units being settled as providing Out of Merit Energy service was inconsistent with the ERCOT Protocols because it required the QSE to present information in the Resource Plan that is physically impossible and inaccurate, which prevented the QSE from fulfilling its Protocol-defined duty, "to reflect the current and anticipated operating conditions of the Resources."

"The inaccurate information that the ERCOT Procedure requires to be included in the Resource Plan results in discriminatory compensation when the LEC Quick Start Units respond to ERCOT Dispatch Instructions," the complainants said.

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restricted their information

- Revised Section 5.3.5 and 5.3.6 fail to be clear that a supplier's customer who moves to another location within each company's service area will continue to be served by the supplier if the customer so desires. Additionally, the tariff does not provide the companies' process for handling account number changes
- New Section 8.4 does not address which customers are settled on actual hourly reads and which customers are settled on load profiles
- New Section 8.4.1 needs to be clear that the companies will provide suppliers with historical information on Unaccounted for Energy values
- New Section 8.5 fails to address how the companies will calculate capacity and Network Integration Transmission Service Peak Load Contribution values, the process and timing for notifying suppliers of the new values when calculated, and when the new values will appear on the customer list and in EDI data streams
- New Section 10.7.1 needs to be clear about what data the companies will provide. RESA said that the utilities should be able to provide both summary and interval usage (including for both historical usage requests and monthly billing usage) for customers with

interval meters. The tariff should provide a process for the supplier to designate what level of data it is requesting -- summary or interval

- New 12.1(c) fails to set forth the process by which budget billing will be offered through utility consolidated billing, including how the budget charges will be calculated and what charges will be paid to suppliers
- New Section 12.9(f) imposes the administrative costs associated with additional consumer protections related to POR on suppliers, but does not provide a cost estimate or set forth a methodology for assessing these charges.

Purchase of Receivables

The tariffs also contain program elements to implement non-recourse Purchase of Receivables as required under the default service settlements, and RESA generally raises no dispute with respect to the specific elements, except with the cost allocation described above under Section 12.9(f).

The POR payments to suppliers will not be discounted, and will be paid 40 days after invoicing the customer. However, as noted above, administrative costs associated with consumer protections, over and above Chapter 14 of the Public Utility Code and Chapters 55 and 56 of the Commission's regulations, 52 Pa. Code §§ 55.1 and 56.1 et. seq. as currently enacted, will be recovered from suppliers. Each supplier serving residential and commercial load will receive a monthly bill with their share of the costs; any costs will be amortized over a twelve month period. The bill will be based on each supplier's load weighted share of the total shopping load for the month.

Met-Ed and Penelec will only purchase receivables associated with basic electricity supply, which is defined to be energy (including renewable energy) and renewable energy or alternative energy credits (RECs/AECs) procured by a supplier, provided that the RECs/AECs are bundled with the associated delivered energy. For residential customers, basic electricity supply does not include early contract cancellation fees, late fees, or security deposits imposed by a supplier.

POR will be offered for the following customer classes: Residential Service RS; Residential Time of Day Service RT; General Service GS-Volunteer Fire Company and Non-Profit Ambulance Service, Rescue Squad and Senior Center Service; General Service GS-Small; General Service GS-Medium; Municipal Service; Borderline Service; Street Lighting Service; Ornamental Street Lighting Service; and Outdoor Lighting Service.

All utility consolidated bills for these classes will be subject to POR. Suppliers serving both industrial and commercial/residential customers on utility consolidated billing will need a separate DUNS number for industrial customers and a separate DUNS number for commercial/ residential customers.

Trade Names ... from 1

opposed to the current "pervasive" requirement that compels a REP using a trade name to disclose its certificated name in all materials, including printed and online advertising, terms of service, Electricity Facts Label, etc. Customers, therefore, would find it more difficult to determine a REP's standing, reputation, and complaint history if the Commission imposed a stricter limit on trade names, Texpo said.

Texpo, the Alliance for Retail Markets, and Reliant Energy all cited legitimate reasons for the use of several trade names such as differentiating brands based on product type (prepaid, time of use, renewable, etc.), customer class, or geography.

Texpo also said that a limit of two names could discourage beneficial mergers and acquisitions because the acquiring REP, if it already was at its two-name limit, would be prevented from using the valuable brand name it acquired unless it maintained a separate certificate for the REP it acquired, an undesired course of action due to logistical costs that would wipe out synergies from the acquisition.

Texpo argued that the proposed rule, "would destroy entire brand names, marketing systems, and other valuable property rights through what may be viewed by lenders and investors as a worrisome and dramatic change to Texas's retail electricity markets. With such precedent, such investors, lenders and market participants may also wonder what is next." Texpo said that it has

invested resources and assets worth several million dollars building each of its three brand names.

ARM agreed that REPs forced to abandon a trade name due to the new rule would, "experience diminished value in name/product branding and a loss of goodwill if they are limited to a single d/b/a designation. Customers will experience confusion and frustration in response to company name changes as REPs reduce the number of assumed names used in the market. Indeed, customers (and others) may wrongly perceive the reduction in assumed names as a mass exit of REPs from Texas as 2011 approaches."

Tenaska Power Services Co. asked that any new restrictions on trade names be limited to Option 1 REPs, as Tenaska uses several similar trade names in its Option 2 service to distinguish various customer accounts and as an accounting and organizational tool.

Change in Control

The proposed rule would also require REPs to seek PUCT approval prior to any change in control.

ARM and Reliant both argued that the Commission lacks statutory authority to impose any such pre-approval requirement on REPs. ARM contended that the Commission lacks both specific and implied powers to require pre-approval for mergers, noting that the legislature has specifically granted the Commission such authority over TDUs -- implying that the lack of specific authority with respect to REPs indicates such authority has not been granted.

ARM also noted that in the as-filed version of Senate Bill 7, proposed PURA § 39.158 required a REP to obtain Commission approval to merge, consolidate, or otherwise become affiliated with another REP. This provision, however, did not survive for inclusion in the version of the electric restructuring bill that ultimately became law, which, "evinces a legislative intent to permit REPs to transfer certificates without Commission approval," ARM said.

Moreover, ARM warned that the prolonged period for review of a change in control proposed in the rule (75 days) and attendant uncertainty of a contested case proceeding could discourage "white knights" from coming to the rescue of a failing REP on the verge of triggering a transition of its customers to provider of last resort service.

"The financial risk and exposure resulting from the adoption of the change in control provisions in proposed subsection (i)(3) will likely discourage new or continued investment in the Texas retail market. It will also work against achieving greater economic efficiencies in the market if it dissuades parties from entering into sale/transfer/merger transactions they would otherwise broker. Concerns about the confidentiality of competitively sensitive information will likely discourage future retail investment and retail sale/transfer/merger transactions as well. The pre-approval requirement in proposed subsection (i)(3) will, in effect, act as an artificial barrier to entry in the State's competitive retail electric market," ARM said.

Several TDUs, however, called the proposed change in control requirement necessary to close the "gap" in the current rule. Filing jointly were the AEP companies, CenterPoint Energy, and Texas-New Mexico Power.

Without Commission pre-approval, even if the acquiring party immediately applies for an amended certificate as required to reflect a material change, customers are placed at risk, since there will be a period in which the new acquiring party serves those customers despite the Commission not having deemed the acquiring party fit to serve customers. "If individuals applying for a certificate have a history of non-compliance, they should not be allowed to again put the market and retail customers at risk," the TDUs said.

"This is particularly important in light of the fact that some certificates have apparently been obtained with the specific purpose of being sold. A REP business should not be treated as merely a commodity or asset to be sold to the highest bidder, with no concern for whether the buyer is capable of performing as a market participant and following Commission rules. After the fact reporting of changes in control are not effective because removing a REP who does not meet required standards can be a long process during which the REP's customers and other market participants are at risk," the TDUs added.

The TDUs further said that the proposed rule,

"should be made clear that the practice of initiating an application for a REP certificate in order to obtain ERCOT testing certification, then declining to pursue the REP application and instead selling the ERCOT testing certificate, is not condoned."

"This practice has been observed in the Texas market. Without rule language prohibiting the practice, a party who cannot meet the financial requirements for REP certification may apply anyway, use the pending application to obtain ERCOT testing certification, then withdraw its REP application. The party then has a valuable asset - the ERCOT testing certification - which it can sell to a party who can meet the REP qualification standards. While such a scheme may not violate current Commission rules, it does place a burden on the Commission staff, as the staff must expend time and resources processing a certification request that will ultimately be withdrawn," the TDUs added.

The TDUs did not address any statutory arguments concerning the Commission's authority under PURA. Comments from the Office of Public Utility Counsel, which had indicated it would participate in the project, were not posted on the interchange as of Monday evening, nor were comments from consumer groups.

The TDUs also asked that the party acquiring a REP be required to resolve any outstanding financial obligations that the REP has to customers or other market participants prior to the transfer, stating, "a REP should not be allowed to profit from the sale of a certificate, and a transferee should not be allowed to benefit from assuming an existing certificate, until other market participants are made whole."

The rule would also specify that the erroneous imposition of a switch-hold on a customer by a REP would constitute grounds for suspending or revoking a REP certificate. ARM said that considering a single erroneous switch hold to be grounds for suspension or revocation would be "draconian," and said that the rule should only consider a pattern of erroneous switch holds as grounds for suspension or revocation.