Energy Choice Matters

June 23, 2010

Kentucky LDCs Oppose Mandatory Requirement for Small Volume Choice

Kentucky should not mandate that natural gas LDCs implement small volume choice programs, several LDCs told the Kentucky PSC in testimony in the Commission's investigation of retail choice programs (2010-00146, Matters, 5/17/10), arguing that mandatory choice programs would raise costs to consumers and expose them to more risk.

Duke Energy Kentucky opposed a mandatory state-wide retail natural gas choice program, "because the circumstances in each utility's service area are different." Duke favors allowing the LDCs to elect a choice program at their discretion.

"Given the likelihood of low participation based on the experience of most states, and the significant costs, as well as risks that may be incurred to implement further unbundling, requiring and creating retail choice programs does not appear to be a meaningful, efficient, or effective use of the customer's, the LDC's, or the Commission's resources," Louisville Gas and Electric said, which also testified that any decision regarding the offering of small volume choice should be left to the LDC.

"[C]onsidering the results of other choice programs, particularly the pilot program presently in existence in Kentucky, we believe that retail choice programs are not in our customers' best interests," Delta Natural Gas Company testified.

While not opposing retail choice, Columbia Gas of Kentucky, the only LDC in the state to offer a small volume choice pilot, also testified that the relationship between LDCs and third-party suppliers should not be mandated by blanket regulation. Direct testimony from Atmos Energy, if any was filed, was not posted on the PSC website.

Chief among the arguments of those LDCs opposing mandatory choice were the costs

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RESA Proposes Texas-Like EFL for Illinois to Preclude Need for Termination Fee Waiver Period

The Retail Energy Supply Association has proposed a Texas-like Electricity Facts Label for mass market Illinois electric products to answer Staff and consumer advocate concerns which have led Staff to propose a no-cancellation-fee period extending until 10 days after the customer's first bill, in surreply comments in the Part 412 rulemaking (09-0592, Only in Matters, 4/22/10).

The additional disclosure proposed by RESA is meant to provide customers with greater detail on the electricity price for a particular product offering, furthering customer understanding and lessening the potential for any unexpected shock upon seeing the first bill (which is what is driving Staff's proposal). RESA's proposal builds on the uniform disclosure statement already contained in the proposed Illinois rules by mirroring several provisions of the Texas Electricity Facts Label, including the provision of pricing data for three usage levels, and a series of questions and answers regarding the product's terms.

Unique, however, to the RESA proposal is that it would include charges for both supply and delivery (as rates), along with a line item for the total combined bill (in dollars) for supply and delivery charges. RESA said that delivery pricing data would be provided to suppliers by the utilities, such

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PECO Releases Results from May 2010 Default Service Procurement

PECO released results from its May 2010 default service solicitation and, for classes not previously reported last fall, aggregate results for the May 2010 and Fall 2009 solicitations. When combined with 2009 purchases, the May purchases result in a price of 8.91¢ per kWh for PECO's residential customers, 8.66¢ per kWh for small commercial customers, and 8.63¢ per kWh for medium sized commercial customers. PECO must still conduct a solicitation this fall to fill 2011 supplies.

Solicitation Results

Full Requirements Products:

Residential Class

Spring 2010 Solicitation Results
Average winning bid price ($/MWh): $69.38
Number of suppliers qualified to submit bids: 12
Number of suppliers that won: 1

Small Commercial Class

Fall 2009 and Spring 2010 Solicitation Results (aggregate results)
Average winning bid price ($/MWh): $77.65
Number of suppliers qualified to submit bids: 15
Number of suppliers that won: 4

Medium Commercial Class

Fall 2009 and Spring 2010 Solicitation Results (aggregate results)
Average winning bid price ($/MWh): $77.89
Number of suppliers qualified to submit bids: 15
Number of suppliers that won: 5

Large Commercial & Industrial Class

Spring 2010 Solicitation Results
Average winning bid price ($/MWh): $77.55
Number of suppliers qualified to submit bids: 12
Number of suppliers that won: 3

Block Energy Products:

Spring 2010 Solicitation Results
Baseload 12-month
Average winning bid price ($/MWh): $49.00
Number of suppliers qualified to submit bids: 8
Number of suppliers that won: 2
Number of 12-month baseload blocks procured: 4 blocks (40 MW total)

Baseload 24-month and Baseload 60-month (aggregate results)
Average winning bid price ($/MWh): $53.26
Number of suppliers qualified to submit bids: 8
Number of suppliers that won: 4
Number of 24-month baseload blocks procured: 5 blocks (50 MW total)
Number of 60-month baseload blocks procured: 5 blocks (50 MW total)

PECO also provided Rate Impact data as follows:

Full Requirements Products:

Residential Class

Spring 2010 Solicitation Results
Rate impact based on Spring 2010 results: 7.95 cents/kWh, indicating a 1.8 percent decrease for the average residential customer beginning 2011.

Small Commercial Class

Fall 2009 and Spring 2010 Solicitation Results (aggregate results)
Rate impact based on Fall 2009 and Spring 2010 results: 8.66 cents/kWh, indicating a 10.6 percent decrease for the average small commercial customer beginning 2011

Medium Commercial Class

Fall 2009 and Spring 2010 Solicitation Results (aggregate results)
Rate impact based on Fall 2009 and Spring 2010 results: 8.63 cents/kWh, indicating a 5.1 percent decrease for the average medium commercial customer beginning 2011

Large Commercial & Industrial Class

Spring 2010 Solicitation Results
Rate impact based on Spring 2010 results: 8.43 cents/kWh, indicating a 7.4 percent increase for the average large commercial and industrial customer beginning 2011

Briefly:

Peevey Denies Request for Utility Reports on Notice of Intent Implementation

An Assigned Commissioner's Ruling from California PUC President Michael Peevey denied the request from several retail suppliers and customers to require the utilities to submit reports on the utilities' implementation of the direct access Notice of Intent (NOI) process. However, Peevey directed the PUC Energy Division to produce a status report on its internal review of utility compliance with the direct access NOI process, though it's not clear if the report will comprehensively address all issues requested by suppliers. The report is to be filed by July 16 (R.07-05-025).

Green Mountain Energy Extends Contract with House of Blues Dallas

Green Mountain Energy has extended its supply agreement with House of Blues Dallas for an additional three years, with annual estimated usage of 185,000 kWh. Priority Power Management LLC brokered the agreement.

ERCOT Sets September End Date for Spencer 5 RMR Agreement

ERCOT said that its Board of Directors has approved the Reliability Must-Run exit strategy for City of Garland Spencer Unit 5. ERCOT has provided a 90-day notice of termination to the City of Garland that the RMR Agreement with Spencer Unit 5 will terminate effective 23:59 on September 13, 2010.

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associated with the supplier of last resort function, as LDCs contended that, if choice is enacted, such costs should be borne by competitive supply customers.

"[A]s part of any proposed choice program approved by the Commission, the utility must be able to recover those [POLR] costs through a non-bypassable variable rate adjustment mechanism such as the GCA [Gas Cost Adjustment]," Duke said.

Delta Natural Gas went further, arguing that all, not just a portion, of POLR-related costs should be borne by choice customers. "The costs of maintaining the Obligation to serve should not be the responsibility of those customers that continue to receive supplies from the LDC," Delta Natural Gas said.

Likewise, LG&E said that recovery of supplier of last resort costs should be from marketers, "because they will be the only clear beneficiary of expanded unbundling initiatives and are the origin of the risk that must be managed by the LDC in its new role as 'supplier of last resort.'"

The LDCs also testified that marketers alone should bear transition and stranded costs related to the expansion of choice to small volume customers, either through direct assignment of such costs to suppliers, or through charges applicable only to competitive supply customers.

To mitigate stranded costs, several LDCs said that suppliers should be required to accept released interstate pipeline capacity on a recallable basis from the utility that was acquired to serve their customers' load.

Columbia reported that to eliminate stranded costs, "Columbia has learned that a flexible approach to assignment of pipeline capacity to Marketers is not viable."

"An important lesson learned has been that it is imperative that the responsibility of contracting for upstream pipeline capacity required for the reliable firm delivery of gas supplies to firm customers continue to be determined by, and remain with, Columbia," Columbia added.

AARP sought mandatory capacity assignment "and other fair allocations of strandable costs to the customers for whom they were incurred," noting that such provisions, "would likely dampen customer interest in switching." AARP warned that, "[t]his in turn prompts marketers to seek concessions in the design of the marketplace, which place unfair burdens on the utility or its non-shopping customers."

Duke said that customers who migrate to competitive supply should continue to pay the true-up portion of the utility's GCA for some period of time after switching since the over- or under- recovery was accumulated while the LDC was purchasing gas on behalf of the customer.

While several LDCs questioned the need for choice given the at-cost pricing of LDC supply, both Duke and LG&E expressed a desire to offer alternative rate options to customers.

"[T]he utility should not be prohibited from proposing alternative options for customers, including fixed price or 'NYMEX Plus' pricing options," Duke said.

Somewhat axiomatically, LG&E noted that, "[a]pproving proposals by LDCs to offer more than a single rate for gas supplies could allow the LDC to offer more options to customers."

LG&E was also the only LDC to substantively address a model where the LDC would not serve as supplier of last resort, stating that the Commission should be "concerned" about transferring the merchant function to unregulated marketers. Removing the LDC from the merchant function, "could greatly diminish the Commission's ability to regulate prices offered to consumers, ensure that prices are fair, just and reasonable, and foster a marketplace that operates efficiently and reliably," LG&E said.

Small Customer Viability

The LDCs and consumer advocates also questioned the viability of choice for small volume customers, and willingness of competitive suppliers to serve less desirable customers.

"Customers who remain with the gas utility will ... tend to be customers with less attractive loads. All things equal, the cost of supply for non-shoppers will rise, as larger margin customers migrate," AARP said.

"Our view is that this is an effort driven by marketers who simply wish to access markets and profit from a segment of the business that Delta and other LDCs currently provide at cost. This could be to the potential detriment of other smaller customers that might not be so attractive to marketers. This is especially applicable for those very small, lower income customers who might be higher credit risk and thus might not be actively pursued by marketers," Delta Natural Gas added.

"Marketers have followed the well-trodden path of hard-sell door-to-door solicitations, teaser rates for short periods, hard to read contracts, hidden fees, lengthy required contracts, penalties for 'early cancellation,' and complicated roll-over provisions that permit the supplier in effect to lock in customers for additional time," AARP charged.

"Marketers can take advantage of the imbalance between their ability to complicate the transactions, and customers' difficulty in understanding the transactions. This factor is above and beyond the potential for market power to exist with a small number of oligopolistic suppliers," AARP added.

Delta Natural Gas and others noted that Columbia had calculated in its 2009 report on the pilot program that choice customers paid, to date, $3.8 million more than the otherwise applicable default service rate. By 2010, this number had increased to $17.3 million, Delta said.

LG&E claimed that gas choice is "floundering" across the U.S. except, "where the LDCs appear to be exiting the merchant function, thus eliminating the LDC as a choice for customers." LG&E cited Ohio and New York as driving the majority of growth in choice participation in the year 2009 Energy Information Administration report, though LG&E later admits that there has been no serious effort for the New York LDCs to be removed from the merchant function in 10 years.

LG&E further raised the specter of a negative impact on current transportation customers from small volume choice. "Expanded unbundling options could decrease the flexibility that the LDC uses to operate its system. Flexibility currently available to existing transportation customers [e.g. tolerance and scheduling rules] may be needed by other customers with higher service priorities, thus requiring tariff changes," LG&E said.

Supplier Concerns

The Retail Energy Supply Association called utility consolidated billing with Purchase Of Receivables "essential" to any new market. Similarly, Interstate Gas Supply, SouthStar Energy Services, and Vectren Retail jointly testified that, "[a]llowing for utility consolidated billing and purchase of receivables also allows a greater variety of suppliers to participate in the markets, which enhances competition and thus provides increased value to consumers through more robust competition."

"History shows that a well designed Purchase of Receivables (POR) program fosters a competitive environment not otherwise evidenced in markets without POR," Interstate Gas Supply, SouthStar Energy Services, and Vectren Retail said.

The LDCs testified that any POR would have to include a discount for uncollectibles and other costs. LDCs also opposed granting suppliers the right to order the disconnection of customers for non-payment.

Interstate Gas Supply, SouthStar Energy Services, and Vectren Retail argued that costs related to commodity procurement must be properly allocated at the LDC to ensure that competitive supply customers do not pay twice for any services through distribution rates.

RESA warned that while the utility must maintain system integrity, the role can become a profit center for the utility if not properly structured. "Great care needs to be taken to avoid excessive penalties that become a profit center for the utility," RESA said, suggesting that any penalties should be passed through as a credit to distribution customers to remove any profit motive in setting the level of penalties.

Stand Energy offered testimony urging the Commission to lower the volume thresholds for the current transportation programs at the LDCs regardless of any choice programs pursued. Stand favors this action to serve smaller commercial customers because, since the transportation service would not be firm, there would be no need for the assignment of capacity to marketers, allowing marketers to acquire their own capacity at better prices.

Stand further asked the Commission to note that, "some of the capacity is owned by affiliates to the distribution companies. Therefore, the affiliate benefits by mandatory assignment of capacity."

Stand also said that it is "imperative" for the PSC to include restrictions on the competitive activities of Atmos Energy Marketing and Delta Energy Marketing, which are affiliates of Kentucky LDCs.

Other items of note from testimony (sponsor in parenthesis):

- Competitive suppliers should be prohibited from switching customers without their written consent (Duke)
- The Commission should consider marketer reciprocity rules which would require that a marketer affiliated with an LDC would not be able to participate in expanded unbundling programs in Kentucky unless its affiliated LDC is also unbundled to the same degree as that of the Kentucky LDC whose customers it wishes to serve (LG&E)
- LDCs should be able to establish security requirements for suppliers (several LDCs). LG&E further stated that a pledge of the marketer's receivables under a POR program is not adequate surety
- Suppliers must be required to post their rates for the various customer classes with the Commission and make them available to the utility. Suppliers should be required to clearly list and advertise all price offerings (Duke)
- Competitive suppliers should be required to renew their certificates with the Commission every two years (Duke)
- Suppliers should pay a fair portion of the Commission's annual assessments (several LDCs)

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as through a posting on a website.

The enhanced disclosure label answers the concern of the Citizens Utility Board and Attorney General that, "the customer [must have] an understanding of what the new [supplier] rates will mean in terms of total dollars and cents and the total utility bill," RESA said.

As previously reported, suppliers have opposed the extended no-cancellation-fee period because it may easily be gamed by customers who could use it to switch to a lower rate, without penalty, if prices drop during the first month of their fixed price contract. While Staff attempted to answer these concerns by limiting a customer's ability to avail themselves of this right to once in a 12-month period, RESA and BlueStar Energy Services both said that Staff's protection falls short.

Both RESA and BlueStar interpret Staff's language as only preventing a customer from receiving multiple cancellation fee waivers from the same supplier in a 12-month period (and not from different suppliers), though BlueStar noted that the language is not explicit. "Staff's language would still allow for a customer to continually cancel a contract without penalty, albeit not with the same supplier," RESA said.

"Also notably absent from Staff's revised proposal was any elaboration as to 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 during this period," BlueStar added.

Although, in reply comments, CUB and the AG had argued that there was consensus regarding the 10-day rescission period (here meaning the standard pre-enrollment rescission period), BlueStar noted that, "[t]he amount of comments devoted to this single issue proves, beyond a shadow of a doubt, that parties are miles apart from reaching any semblance of consensus."

Indeed, parties continue to argue whether Staff's language regarding the rescission period is confusing, with Staff maintaining that it is not.

However, echoing RESA's earlier comments, BlueStar agreed that the Staff rescission language, "confuses and combines contractual rescission rights with enrollment cancellation rights."

"It is clear that several parties have ... confused and combined the concept of rescission with the DASR [Direct Access Service Request] enrollment and cancellation process. These are separate and distinct concepts," BlueStar said.

BlueStar reiterated that Staff has further "radically altered" the traditional definition of a rescission period (a.k.a. a "buyer's remorse" period) by starting the clock on the rescission period when the utility processes the enrollment, rather than the date the customer signs the contract. "Under the traditional definition of a rescission period, a customer is allowed to rescind a contract, for whatever reason, after a specified period from the date of signing the contract," BlueStar said.

Moreover, BlueStar said that starting the rescission period window when a utility processes an enrollment request will be confusing to customers, since it would require customers to understand the individual supplier's and utility's intricate internal enrollment processes. "A customer is aware of the time when he or she signed the contract but cannot and should not be expected to understand internal [supplier] and/or utility enrollment processes," BlueStar noted.

Also related to the rescission period is the utilities' ability to identify mass market customers for whom the rescission period (and notification of such period) applies, which they currently cannot do when processing enrollment requests. While Staff suggested that the requirement for customer notification of the rescission period should fall to suppliers, the Illinois Competitive Energy Association opposed this suggestion if it is meant as requiring the supplier to send out an additional letter to customers regarding the rescission period, since it would be duplicative of the disclosures already required of suppliers when enrolling customers.

RESA suggested that an EDI field could be used to flag small customer accounts for whom the utility needs to send a rescission period letter, which would provide, as part of the Direct Access Service Request, clear direction to the utility on whether or not to send the customer a letter confirming enrollment and making an explicit mention of the 10-day rescission period.

Ameren sought to add language to the proposed rule to confirm that it may continue offering a 10-day enrollment rescission period for all DS-2 customers, including those with annual usage in excess of 15,000 kWh, as provided in the current Ameren tariffs.

The AG and CUB reiterated their desire for all pricing to be disclosed on a per kilowatt-hour basis, a position which has been rejected by Staff. While CUB and the AG state that, "the simplest way for a [supplier] to comply with such a requirement would be to price all [supplier] products on a per kWh basis," CUB and the AG further state that the supplier, "could, however, use average usage data to estimate the per kWh price in order to provide some context for consumers to compare a fixed bill offer to the price they are paying their regulated utility for power and energy supply." The use of average or estimated data to shoehorn a non-volumetric product into the proposed per kilowatt-hour disclosure requirement seems contrary to the CUB/AG stated goal of providing transparency, since the disclosure, by use of an estimate, would not in any way reflect the customer's actual experience.

Dominion Retail reiterated arguments for several door-to-door marketing protections rejected by Staff, such as a requirement for criminal background checks.

"In certain other states there have been problems with door-to-door salesmen engaging in inappropriate and unethical sales practices. The marketing community cannot afford not to do background checks on its agents working in sensitive positions as door-to-door marketing to Residential consumers. The potential consequences of possible illegal/unethical activities and negative publicity would be staggering to all retail marketers," Dominion Retail said.

"While Dominion does not currently engage in door-to-door sales it has, unfortunately, still been subjected to the same public 'backlash' as all other [suppliers] in the states in which it operates when one or more [suppliers] act in a disreputable manner. By its very nature, any problems related to door-to-door sales will generate more public outcry and media attention than marketing by other means. Inevitably, that attention will be directed not only at the offending marketer, but the entire industry," Dominion Retail cautioned.

"Moreover, the acts of one marketer can result in laws that could adversely affect all marketers. One only has to recall that just a few short years ago when the Illinois General Assembly was considering Senate Bill 2783. Some versions of that bill, which never passed, would have effectively terminated natural gas retail choice, apparently due to the unfortunate actions of door-to-door salesmen and the negative consequences of those actions. Had that bill passed in its most draconian form, Dominion would have lost tens of thousands of its own customers due to no fault of its own, but rather due to the actions of other marketers acting improperly," Dominion Retail said.