Energy Choice Matters

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NYSEMC, NFR Oppose Mandate for Sharing of Credit Information by Single Retailers

Single retailer ESCOs should not be required to share customer credit or payment history with any other entity, the New York State Energy Marketers Coalition (NYSEMC) and National Fuel Resources Inc. said in separate comments in response to the New York PSC's request for comments on several working group reports and related Uniform Business Practice issues (98-M-1343 et. al).

The PSC has asked whether, in the single retailer model, the single retail provider should be required to provide to the distribution utility and/or pending ESCO the same customer credit information that the distribution utility is currently required to provide to the pending ESCO per the Uniform Business Practices (Only in Matters, 5/6/10). In the single retailer model, the ESCO bills the customer for both supply and delivery.

A concern has been raised in cases where a customer elects to migrate away from a single retailer ESCO to bundled service or an ESCO not using the single retailer model. In either case, the utility or new ESCO might not have credit information about the customer, and therefore might require a deposit. Compelling the single retailer ESCO to provide credit information to the new supplier could alleviate any deposit requirement if good payment history were shown.

"NYSEMC believes that all single retailers should conduct their own credit analysis on potential customers, and that no ESCO should be required to share customer credit or payment history with any other entity. Experience in other states such as Georgia indicates that ESCOs are fully capable of determining customer creditworthiness, and keeping this process proprietary helps ensure compliance with the Fair Credit Reporting Act," NYSEMC said.

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Pa. Trial Staff Argues PUC Has Set Standards Governing POR in Approving Four LDC Plans

"Offering a POR [program] under the auspices of removing a barrier to competition is nice rhetoric, but if it requires that jurisdictional ratepayers absorb the costs appropriately assigned to non-jurisdictional natural gas suppliers, it clearly is not in the public interest as the cost shift ignores the fundamental tenets of proper utility regulation," the Pennsylvania PUC Office of Trial Staff (OTS) said in a reply brief concerning PECO's proposed gas purchase of receivables program (P-2009-2143588).

As only reported in *Matters*, a non-unanimous stipulation would implement gas POR at PECO with a discount rate of 1% for implementation costs, with uncollectibles recovered in base rates (Only in Matters, 6/16/10). Should implementation costs exceed the costs recovered through the discount, remaining cost recovery would be addressed in PECO's next base rate case, and could take the form of recovery through base rates, or a continued or higher discount rate.

Trial Staff favors a discount rate of 5%; although, on a purely cost causation basis, Staff said that the discount rate would appropriately be set at 40%.

"The costs to implement a POR [program] remain prohibitive and the Joint Petition offers few details as to how jurisdictional ratepayers are protected from bearing an inordinate amount of costs

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UGI Utilities Seeks to Waive Load Cap for All Future Default Service RFPs

UGI Utilities - Electric Division has petitioned the Pennsylvania PUC to revise all future RFPs for default service supply under its current default service plans, which run through May 31, 2014, to implement several changes.

UGI is seeking to:

(a) increase the collateral threshold from $1.5 million to $10 million for counterparties at or above certain credit rating levels;

(b) establish a $100,000 rounding amount for purposes of determining collateral requirements to reduce administrative burdens, and

(c) permanently waive the restriction that any one wholesale supplier cannot supply more than one-third of the default service load for a default service supply group.

UGI has petitioned for, and received, the requested relief related to the collateral threshold and load cap in two prior instances applicable only to specific RFPs. UGI said that such waivers were successful in attracting additional participation in such default service RFPs. For this reason, UGI is seeking to make such relief permanent and applicable to all future procurements under the default service plan.

Pepco Intends to Offer D.C. Customers In-Home Device If Cost-Effective

Pepco intends to offer its District of Columbia customers an in-home display device to interact with its smart meters, should any in-home devices be found to be cost-effective, Pepco stated in reply comments concerning its dynamic pricing proposal for SOS (FC 1056).

As only reported in *Matters*, the Office of People's Counsel had faulted Pepco's dynamic pricing application for not including the provision of in-home devices (Only in Matters, 6/10/10). Pepco's proposal would default all customers to a flat SOS rate with a Critical Peak Rebate, while making critical peak pricing an optional tariff for SOS customers.

Pepco said that it does not plan to distribute in-home display devices to all customers in the near term, citing, among other reasons, the still nascent technology.

However, Pepco is "actively monitoring" the development of in-home displays and said that when it identifies an in-home display device that would be compatible with its advanced metering infrastructure, it will conduct a cost-effectiveness analysis of offering a rebate to customers to cover a portion of the installed cost of that device. Pepco does not state how the rebate would be funded, such as through nonbypassable base rates.

If a device is found to be cost-effective, Pepco said that it would seek PSC approval for such a rebate and method of cost recovery.

Addressing Washington Gas Energy Services' criticisms of Pepco's optional critical peak rate for being derived from a formula rather than actual hourly prices, Pepco said that a "pure" approach to dynamic pricing, whereby hourly energy prices are passed through to customers, "will not be adopted by customers at this time due to the absence of widespread demand reduction enabling technology."

Pepco also reiterated that it cannot provide third parties with direct access to its advanced metering system for demand response control and other functions due to operational security issues and customer privacy requirements.

OEB: Reconnected Customers Shall Be Served Under Most Recent Retail Contract

In final amendments to the electric Distribution System Code, the Retail Settlement Code, and the Standard Supply Service Code, the Ontario Energy Board confirmed that customers who were enrolled with competitive retailers before they were disconnected for non-payment shall continue to be billed under the terms of the retail contract when service is reconnected (EB-2007-0722).

Direct Energy had asked for such confirmation, stating that the current process of defaulting retail customers to system supply following reinstatement significantly increases the complexity and costs of transactions and effort by retailers and LDCs, and creates customer confusion.

The amendments largely relate to distributor security deposits, disconnection, and other distributor-related billing regulations.

The final amendments do not address the mandatory provision of equal payment plans by distribution companies to customers on competitive supply receiving distributor-consolidated bills. The Board had previously removed consideration of such budget billing issues from the proceeding to permit further examination of implementation options and costs.

P3 Urges Greater "Flexibility" in N.J. BGS Procurements

While opposing what it called "active portfolio management" by the New Jersey electric distribution companies, the PJM Power Providers Group (P3) urged the New Jersey BPU to grant, "EDC's flexibility to propose what they believe to be a prudent portfolio of competitive procurements, invite comments and then exercise informed discretion to determine the most appropriate procurement mix based on the established record."

The comments were in response to the Board's investigation of a potential BGS carve-out for new in-state generation backed by long-term contracts.

"[T]he Board should not dictate a specific percentage of default load that should be procured from spot purchases, long term contracts, etc," P3 said, instead recommending the flexibility outlined above.

While P3 did not provide more granular details regarding the nature of this flexibility, one aspect apparently pertains to the timing of procurements, as P3 said that the Board, "should retain the ability to quickly respond to any unforeseen circumstance," citing hurricanes, recessions, terrorist attacks, and other global conditions as potential shocks to the power market that could affect procurements.

Elsewhere in comments, P3 states that it favors continuation of load following, full requirements contracts as the products procured by the utilities, while adding that descending clock auctions should remain the "preferred" method of procurement.

"Simply stated, utilities creeping back in the generation business through active portfolio management of default supply myopically shifts ... risks back to both the utilities and the consumers," P3 said.

Briefly:

Ontario Energy Board Provides Side-by-Side Calculator of Regulated, Competitive Rates

The Ontario Energy Board has launched an enhanced online bill calculator for residential electricity and natural gas customers that now allows customers to input a competitive supply price quote and directly compare estimated monthly charges, side by side, under competitive supply and the default service rate (http://www.oeb.gov.on.ca/OEB/Consumers).

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National Fuel Resources also raised concerns, arguing that requiring ESCOs using the single retailer model to share credit histories would be discriminatory, since other ESCOs would not be compelled to provide such information.

"NFR finds this proposal to be very troubling in that it seeks to impose selective regulatory controls on what is intended to be free market competition between ESCOs. In no situation should one subset of ESCOs ... be forced to provide their customer credit information to another set of ESCOs," National Fuel Resources said.

National Fuel Resources argued that credit information is proprietary, and that such information may provide, "critical insight to competitors concerning internal business operations and decisions of single retailers."

National Fuel Resources further noted that no compensation for the provision of credit information has been proposed. Aside from the proprietary value of the information, single retailers will incur administrative costs to provide such credit data to other ESCOs.

Additionally, National Fuel Resources cited antitrust concerns, since the single retailer ESCO would be placed in the "uncomfortable" position of being forced to communicate directly with its competitors about a customer during the very time that all parties are competing for that customer's business.

NYSEMC raised an additional point by stating that the transfer of a customer from one single retailer to another single retailer should not require the customer to be first returned to the utility.

Contract Renewal

The PSC asked whether ESCOs should be required to solicit affirmative consent from customers for contract renewals where changes in the terms of the original contract occur.

NYSEMC said that for renewals in which the only change in the contract terms is price, affirmative consent is not required, but customers should receive notice of the renewal and renewal price. In cases where the renewal price is higher than the current price, NYSEMC suggested that ESCOs be required to send two renewal notices: one alerting customers of the expiring contract, and another specifying the renewal price, the latter of which should be mailed no less than 30 days prior to the expiration of the current term of the agreement.

For instances where any other material item in the contract is being modified aside from price (i.e., length of term, application of termination fees, etc.), NYSEMC recommended requiring affirmative consent to renew to the contract.

Energetix similarly said that as long as the customer has ample time to make a decision without worry of some type of early termination fee, a new price on an existing agreement should not require a new agreement with new affirmative consent. "This seems no different than for other industries such as cable, phone, bank CD's, or other agreements where a price or rate change is often anticipated once the existing term expires, but does not require that the original agreement end and new consent be obtained. As long as the consented contract terms are maintained, the agreement should sustain," Energetix said.

Verification Procedures

The PSC asked whether the verification of telephonic sales should be conducted by an independent third party not affiliated with the ESCO, and whether the call with the marketing agent should be terminated when the customer is transferred to the verification agent.

Energetix argued that modifying the term "verification agent" in the Uniform Business Practices to require the use of a third party or require that the telemarketing call be terminated when transferred to the verification agent, "would also terminate the opportunity for the customer to ask clarifying questions during the verification process regarding the product being offered."

Energetix believes that the current Uniform Business Practices already protect the customer against an unlawfully obtained authorization: if the voice verification does not clearly illustrate that the customer willingly enrolled with the ESCO for the product, the enrollment should be cancelled and the PSC has the authority to take disciplinary action. "Requiring the disconnection between agents trained with specific program knowledge, and customers who want answers to potentially unanswered program questions, would result in lower enrollment rates translating to higher acquisition costs for marketers," Energetix said.

Utility Websites

NYSEMC took the opportunity to request that choice information on utility websites should be easy to locate.

"NYSEMC has a concern that the National Fuel Gas website may be sending the wrong message to consumers. When 'national fuel gas' or 'national fuel gas distribution company' is entered into a Google search, all significant search results come up with www.natfuel.com. This website is the corporate website for all National Fuel Gas companies, including its exploration and production, pipeline and storage, utility, and energy marketing entities," NYSEMC said.

"An unknowledgeable consumer may then navigate to the 'energy marketing' hot link thinking that this will bring them to the list of ESCOs available for alternatives to the utility. Unfortunately, this brings them directly to National Fuel Resources, the unregulated ESCO subsidiary of National Fuel Gas. Only through a rather complicated string of navigation moves can consumers ultimately find their way through the utility website and to a page that describes energy choice. Then, after nearly a dozen paragraphs of warnings and precautionary statements about the risks involved in choosing an alternative supplier, the website visitor may find a soft link that simply states 'To view this list of authorized Marketers, please see below,' after which the visitor sees additional information on consumer protection and finally a link to authorized ESCOs on the National Fuel Gas system. Ironically, the link to access the list of ESCOs is even smaller than the rest of the print on the page," NYSEMC said.

NYSEMC requested that the Uniform Business Practices be modified to require that utilities provide direct links from their homepage to a list of approved ESCOs serving customers in their service area.

On the www.natfuel.com homepage, if the customer "hovers" their mouse over the menu titles "For Home" or "For Business," a drop down menu appears with a link to the "Choosing a Natural Gas Supplier" page, which then contains a link to the supplier list at the bottom of the page after the precautionary statements cited by NYSEMC.

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associated with implementing the program," Staff said.

Dominion Retail countered, however, that, "[t]here is no evidence in the record other than the OTS witness' bald assertions to support the contention that there will be any cross subsidy."

In its initial brief, Staff had maintained that recovering uncollectibles and administrative costs through a discount rate is required to conform PECO's plan with the standard the Commission established in its 2009 *PPL* order regarding POR. However, since that time, the PUC has approved PECO's revised electric POR program which includes recovery of uncollectibles and administrative costs in base rates. PECO and Dominion Retail argued in reply briefs that the PECO electric order undercuts Staff's argument regarding uniformity in POR programs.

With the PECO electric order rejecting a uniform design for POR, Staff attempts to bolster its uniformity argument in its reply brief, but over-reaches. Staff states that, "at least four other jurisdictional natural gas distribution companies have submitted plans *that have been approved by the Commission*," (emphasis added) citing the POR programs of National Fuel Gas Distribution, Columbia Gas, T.W. Phillips Gas and Oil Co., and UGI. Staff noted that in each of these four "approved" programs, the discount rate includes uncollectibles, and is between 2.45% to 2.78%.

However, of the utilities cited by Staff, only National Fuel Gas Distribution and Columbia have received approval for POR, weakening any argument of a standard existing across LDCs (and Columbia's revised program is still pending).

Staff claims that the Commission, "has repeatedly scrutinized, and approved, natural gas Purchase of Receivable programs that have recognized a level of expenses associated with uncollectible accounts," though, of the new or revised gas POR programs proposed since the PUC's direction to LDCs to submit voluntary POR programs or unbundled rates, the Commission has only approved a single POR program (at National Fuel Gas Distribution, with Columbia operating a "legacy" POR program while its revised program awaits action). Thus, the Commission has not "repeatedly" approved any gas POR programs as argued by Staff.

Nevertheless, Staff maintains a standard has been established for POR programs, and contended that, "disparate treatment is not in the public interest and must be rejected."

"Competition throughout the Commonwealth will be negatively impacted by the implementation of different standards in different service territories ... OTS maintains that POR programs must have a level of consistency throughout the Commonwealth in order to properly enhance competition while providing the same level of protections and opportunities to all participants," Staff argued.

"What is potentially more egregious is that by failing to provide consistency in POR programs, an NGS [natural gas supplier] would have the opportunity to shop [its] supply to the most advantageous market. Clearly a market with an artificially low discount rate is more attractive than a service territory that properly assigns costs to the participating entities," Staff said.

While Staff cited Columbia's current discount rate of 5% as supporting Staff's proposed discount rate, Direct Energy Services noted in its brief that Columbia has proposed (and a recommended decision would approve) lowering the Columbia discount rate to 2.45%. "Columbia has recognized that POR reduces barriers to entry and brings a greater number of suppliers and offers to customers," Direct noted.