

Energy Choice

Matters

July 7, 2010

Pa. OSBA Seeks Clarification of PECO POR Regarding Previously Dual-Billed Amounts

The Pennsylvania Office of Small Business Advocate has petitioned the PUC to clarify whether PECO will be permitted to terminate electric customers for non-payment of receivables that were dual billed prior to January 1, 2011, as part of PECO's revised electric POR program which will allow for the termination of customers for non-payment of receivables incurred prior to the January 1, 2011 start date of the revised POR program (P-2009-2143607).

OSBA said that there are three types of receivables which will be in play starting January 1, 2011.

a. "Post-2010 Receivables": These are the receivables related to generation service provided by an electric generation supplier (EGS) on or after January 1, 2011, and billed to the customer by PECO through consolidated billing. PECO is proposing to purchase these receivables under the revised POR program.

b. "90-day Receivables": These are the receivables related to generation service provided by an EGS prior to January 1, 2011, and billed to the customer by PECO through consolidated billing. Under its existing POR program, PECO already owns these receivables.

c. "Dual Billing Receivables": These are the receivables related to generation service provided by an EGS prior to January 1, 2011, and billed to the customer by the EGS through dual billing. These receivables either arise out of generation service provided prior to the EGS's participation in consolidated billing under the existing POR program or arise out of generation service provided after the customer's reversion to dual billing under the current POR program, but before the customer's reversion to default service. Although these receivables currently belong to the EGS, PECO is proposing to purchase them under the Revised POR program, OSBA said.

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NiMo to Change Treatment of Sales Tax Information Provided by ESCOs

Niagara Mohawk will change how it processes sale tax rate information for ESCO customers, it reported to the PSC in response to several working group reports, including one on tax data (98-M-1343 et. al, Only in Matters, 7/6/10).

Previously, NiMo's billing services agreement between itself and ESCOs provided that the sales tax rate applied to the ESCO portion of the billed amounts would be based solely on sales tax rates that would have been charged to the same customer if the supply service had been provided by NiMo. Going forward, NiMo said that it will either: (1) apply its own sales tax rate information to the ESCO portion of a customer bill if an ESCO has not provided sales tax rate information for that customer, or (2) if the ESCO provides sales tax rate information for the customer, NiMo will use the ESCO's sales tax rate information for the ESCO portion of the bill.

NiMo stressed that it continues to remain the case that, pursuant to the New York tax laws, each vendor is responsible for collection and payment of the sales tax from that vendor's own customers.

NiMo said that if an ESCO sends enrollment information for a customer showing that a customer is exempt from sales tax, but NiMo's records show that the customer is taxable, NiMo will reject the

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Texas Sunset Commission Leaves Restitution Issue to Separate Legislation

The Texas Sunset Advisory Commission has elected not to recommend that the PUCT be granted authority to order restitution in the cases of market power abuse, in making final recommendations regarding its sunset review.

The Sunset Commission put the issue of restitution aside with the understanding that the legislature will likely take up the issue in separate bills during next year's session, rather than as part of the sunset recommendations.

Consistent with its Staff report, the Sunset Commission recommended an increase in the PUCT's penalty authority from \$25,000 to \$100,000 per day for violations of ERCOT's reliability protocols or the PUCT's wholesale reliability rules.

The Sunset Commission further recommended that the PUCT be granted the authority to issue emergency cease-and-desist orders for actions that would harm the reliability of the electric grid; are fraudulent, hazardous, or create an immediate danger to public safety; or could reasonably be expected to cause immediate harm to consumers in situations in which monetary compensation would be inadequate.

Increased oversight of ERCOT by the PUCT was also recommended by the Sunset Commission, including providing the PUCT with authority to annually approve ERCOT's budget and approve any debt financing.

The Sunset Commission recommended that the ERCOT Technical Advisory Committee and its existing responsibilities be sunsetted. Sunset Advisory Commission Chair Glenn Hegar said that ERCOT has too many stakeholder subcommittees which do not add value, and said that ERCOT's structure needs to be reset.

Under the recommendations from the Sunset Commission, the ERCOT Board would initiate protocol changes. The Board would create a new representative advisory committee structure to support Board or ERCOT Staff initiatives, and the Board would act as a gatekeeper regarding what potential protocol changes would receive resources to permit the study and pursuit of the changes.

The Sunset Commission recommended maintaining ERCOT's hybrid Board structure, along with adding one new unaffiliated director with financial expertise. The Sunset Commission recommended removing the PUCT Chair and Public Utility Counsel from the Board, and replacing them with appointees from each agency, with such appointees receiving a vote on the Board.

The Sunset Commission recommended that the PUCT provide the public with greater and more accessible complaint data regarding retail electric providers.

The Sunset Commission deferred on making a recommendation on the continuing existence of the PUCT until completing its review of the Texas Commission on Environmental Quality and Texas Railroad Commission.

Energy Michigan Asks PSC to Order Re-calculation of Consumers' Self-Implemented Rates

Energy Michigan has asked the Michigan PSC to direct Consumers Energy to re-calculate proposed surcharges applicable to competitive supply customers as part of Consumers' self-implementation of rates while its electric rate case is pending (U-16191).

On June 28, Consumers Energy filed an application to self-implement an interim rate increase of \$178 million which, unless rejected by the Michigan PSC, will take effect July 22.

The proposed equal percent increase surcharges and alternative method surcharges for residential Retail Open Access customers (Rate ROA-R) on both schedules of the self-implemented rates are exactly the same as the surcharges that are applicable to full service rate RS customers, Energy Michigan said. "This appears to be a mistake in calculation because the services and cost of services rendered to full service residential customers and ROA residential customers are quite different and thus should result in significantly different surcharges," Energy Michigan contended.

"Full service residential customers utilize both generation and distribution services provided by Consumers Energy. ROA

customers use only distribution services. Using the equal percentage rates as an example, the surcharges provided for secondary ROA customers ('ROA-S') are a small fraction of the equal percentage surcharges applicable to secondary rate full service customers (Rates GS and GSD for example). These differentials reflect the unquestioned difference in total cost of service that would be applicable for a full service customer taking generation plus distribution as opposed to an ROA customer taking only distribution service," Energy Michigan said.

"[G]iven the impossibility of discovery in such an accelerated proceeding, the fact that full service and ROA charges are identical should cause the Commission to either reject the specific, proposed ROA-R surcharges or at the very least require that Consumers Energy justify this clearly illogical result in a filing that is made available to all parties," Energy Michigan added.

Briefly:

Paetec Energy Receives Ohio Broker License

The Public Utilities Commission of Ohio granted Paetec Energy (Technology Resource Solutions, Inc.) an electric broker/aggregator license to serve commercial and mercantile customers in all service areas (Only in Matters, 6/2/10).

N.Y. Cancer Center Buys RECs from Green Mountain

The Memorial Sloan-Kettering Cancer Center in New York City has purchased 31,500 wind RECs from Green Mountain Energy Company under a one-year contract to offset the entirety of its Zuckerman Research Center's estimated electricity consumption.

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PECO has proposed to purchase an EGS's receivables which exist on December 31, 2010. "Those receivables presumably are the amounts the EGS has been unable to collect through dual billing," OSBA said, stating that, "[t]he only EGS receivables that will already exist on January 1, 2011, will be the 'Dual Billing Receivables.'"

However, OSBA argued that the

Commission's apparent understanding in its June POR order is that, "consolidated billing is a condition precedent to the creation of EGS receivables [for pre-2011 EGS service] that are eligible for purchase." This implies that the Commission did not intend to approve the use of termination if a customer fails to pay PECO for service giving rise to "Dual Billing Receivables," i.e., for EGS service originally billed to the customer by the EGS through dual billing (rather than by PECO through consolidated billing), OSBA said. The order is not clear on this point, OSBA noted, since it did not address OSBA's exceptions regarding treatment of such Dual Billing Receivables.

OSBA petitioned the PUC to clarify the following:

a. Whether PECO has the right to terminate for unpaid charges for EGS service billed to a ratepayer by an EGS prior to January 1, 2011, through dual billing;

b. The extent, if any, to which the consumer protections of 52 Pa. Code Ch. 56 will be applicable to a non-residential ratepayer; and

c. If PECO does have the right to terminate for unpaid charges for EGS service billed to a ratepayer by an EGS prior to January 1, 2011, through dual billing, whether those charges will be considered to have been billed when PECO bills the ratepayer on or after January 1, 2011, or whether those charges will be considered to have been billed when the EGS originally billed the ratepayer.

OSBA noted that, for residential customers, there is a four-year statute of limitations on collection receivables, and noted that, in past instances, the Commission has applied such a standard to non-residential customers as well, though the basis for such treatment with respect to non-residential customers is not explicit in the Chapter 56 regulations.

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tax-exempt status submitted by the ESCO.

Tax data changes similar to what NiMo is implementing are not required at National Grid's KeySpan LDCs since both KeySpan LDCs use bill ready billing which permits the ESCO to apply its own tax data to its charges, as opposed

to the rate ready billing used by NiMo.

Sharing of Credit Info by Single Retailers

The Small Customer Marketer Coalition argued that, "[i]n view of the unique conditions applicable to the single retailer model ('SRM'), the single retail provider should 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."

SCMC noted that since the single retailer is the only party billing the customer, the single retailer is the only party that has the customer's recent credit history. "[A]bsent provision of this data, the LDC may feel compelled to impose a security requirement in the event the customer chooses to migrate to another ESCO or even back to the utility. This would unnecessarily restrict the ability of customers to migrate to their supplier of choice," SCMC said.

Regarding credit information in the single retailer model, the National Energy Marketers Association suggested that the PSC study whether utility tariffs should be amended to establish appropriate customer deposits based on commercially available credit information. "In any case, utilities should consider deferring the assessment of a deposit until the utility has obtained its own credit information about a customer either (1) based on past payment history and/or experience with that customer going forward or (2) via commercially available credit reporting," NEM said.

The Joint Utilities stressed that the sharing of credit information between the customer's current single retailer and a new pending ESCO becomes problematic if the utility is expected to be a "middleman", and is obligated to collect and store ESCO single retailer credit information within utility billing systems and then provide it to other requesting ESCOs. "Utilities cannot affirm the truth of ESCO information as they can for information derived from their own books and records. The sharing by utilities with ESCOs of unverified credit information about a customer adds unnecessary risk to the information chain," the Joint Utilities said.

Renewals, TPVs

SCMC and the Retail Energy Supply

Association both raised concerns with a Commission Staff straw proposal regarding the renewal of contracts, and proposals concerning required notices and affirmative consent. Generally, the straw proposal would only require affirmative consent for a renewal in the case of changes to non-price terms, and would only require notice of renewal if the price is new or higher than the current price.

RESA and SCMC both questioned how the straw notice provisions would apply to variable contracts or contracts where the price is derived from an index or formula and thus would always be "new."

Furthermore, RESA and SCMC both objected to the sending of two notices as proposed by Staff. RESA noted that requiring the issuance of two notices would increase costs without an appreciable benefit to customers. The two notices may even confuse customers, RESA said, since Staff's first notice would only generally inform the customer of contract expiration, with a second required notice detailing pricing for the renewal contract. Customers would be better served by having all renewal-related information in one notice, RESA said.

SCMC was among several retail provider parties opposing a third-party requirement for voice verifications, noting that the cost of a third-party verification can range from \$3 to \$5 per customer. "This is a considerable cost especially for residential customers with lower total bills and consumption levels," SCMC said.

Contest Period for Drops to Bundled Service

The Joint Utilities said that they are amendable to revising UBP Section 5.H.1 to permit a customer, or the incumbent ESCO on behalf of the customer, to rescind a customer request to return to full utility service should the customer choose to remain with the incumbent ESCO. Incumbent ESCOs are already permitted, with customer approval, to rescind a switch to a new ESCO if the customer changes its mind, but cannot do so for switches to utility supply.

However, the Joint Utilities stressed that their support is limited to instances where the drop to full service involves the same legal customer, and not a new, distinct legal customer initiating

new bundled service prompted by several factors which may create a new account number (divorce, death, business reorganization, etc.). The issue of addressing account number changes which currently prompt the initiation of new bundled service (and end of ESCO service) is subject to a separate petition by retail suppliers (see Matters, 1/28/10).

In situations in which a customer leaving retail access is not the same customer as the customer opening the new account, the former customer and the incumbent ESCO should not be able to rescind the new customer's status as a full service customer, the Joint Utilities reiterated.

Utility Communications to Customers

NEM requested that the PSC revise Section 6 of the Uniform Business Practices (Customer Inquiries) to include specific language about the manner and nature of information given by utility customer service representatives (CSR) to consumers. NEM proposed that Section 6.B be revised to include a subparagraph as follows: "Because of distribution utilities' position as a source of information for all customers, distribution utility customer service representatives should not offer explicit or implicit opinions about the nature or effect of any ESCO's offers or marketing or sales efforts and materials and should not discourage customers from choosing service by any ESCO."

NEM raised concern about the provision of utility and ESCO pricing data by utility customer service representatives. "The problem is that the CSR does not know, and has no reason to know, the terms of the marketer offering, whether it be fixed, variable, etc. The CSR simply is not in a position to evaluate the marketer offering or offer an opinion thereon. Moreover, even if the CSR were to limit its statement to noting that the utility price is \$X and the marketer price is \$Y, without an express statement that the utility price is variable and subject to monthly fluctuation, it leads to an inaccurate basis for comparison for the consumer. The best course of action that provides the most accurate information and minimizes consumer confusion, in NEM's opinion, is for the CSR to refer that consumer to the marketer to discuss price and other terms,"

NEM said.