Energy Choice Matters
August 5, 2010

ICC Staff: ComEd POR Must be Designed to Support Residential Competitive Offerings

The Illinois Commerce Commission should not adopt the "wait and see" approach advocated by Commonwealth Edison when it comes to residential choice and should ensure that ComEd's Purchase of Receivables tariff allows residential customers to be effectively served by competitive suppliers, ICC Staff said in rebuttal testimony in ComEd's POR case (10-0138).

As only reported in *Matters*, ComEd is seeking to recover POR and utility consolidated billing administrative and implementation costs through a flat 50¢ per bill discount, with uncollectibles recovered through a class-specific percentage discount rate. Staff and Dominion Retail have opposed the flat per-bill discount rate as requiring small volume customers to pay a disproportionate share of POR costs (Only in Matters, 7/9/10).

In rebuttal testimony, ComEd claimed that a purely percentage-based charge could potentially discourage the use of POR for larger, non-residential customers with demands of up to 400 kW, where competition has already taken root.

However, in Staff's rebuttal testimony, Director of the Office of Retail Market Development Torsten Clausen recommended that the Commission, "keep in mind what I view as the overarching goal of UCB/POR: further enabling RESs [retail electric suppliers] to serve customers that currently do not have alternative supply options."

"In my mind, the importance of a well-designed UCB/POR program for residential customers cannot be overstated. I understand that one of the most cited reasons for implementing POR programs is to enable RESs to better manage the risk of customers not paying their bills. Generally speaking, this 'uncollectible' risk is much higher on the residential side than it is on the non-

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OEB to Issue Draft Codes to Conform to New Consumer Protection Rules By Mid-August

The Ontario Energy Board expects to issue for comment proposed amendments to its gas rules (including the Code of Conduct for Gas Marketers) and electricity codes in the first half of August in anticipation of final regulations to be adopted by the Ontario government under the Energy Consumer Protection Act of 2010 (EB-2010-0245, Matters, 4/27/10).

The provincial government currently has draft regulations outstanding to implement the Energy Consumer Protection Act, and the Board understands that the supplier-related consumer protection provisions of the Act may come into force as early as January 1, 2011.

Among other things, the government's draft regulations contemplate that the Board will develop new rules relating to the following: (i) the form and content of the disclosure statement that must accompany new contracts and contract renewal offers; (ii) the steps to be taken to verify new contracts; and (iii) the form and content of telephone renewals.

"The Board believes that it is in the best interests of consumers and of the retail sector that amendments to its regulatory instruments in furtherance of the new legislative regime be in place, if

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Briefly:

Draft Conn. DPUC Decision Would Find Northgate Technologies Ineligible for Aggregator License

A draft Connecticut DPUC decision would deny Northgate Technologies, Inc.'s application for an electric aggregator certificate to serve commercial and industrial customers after reaching the draft conclusion that Northgate is operating as an agent or marketer for electric suppliers, and therefore does not qualify as an "electric aggregator" under Connecticut law (10-01-04, Only in Matters, 1/5/10). As only reported in *Matters*, the DPUC has found that aggregators must represent the customer and may not represent a supplier or suppliers (Only in Matters, 3/12/09). There is currently no Connecticut licensing requirement for brokers or marketing agents who represent a supplier. Though Northgate had said that it will not represent an exclusive supplier as an agent, the draft finds that exclusivity is not the threshold in determining whether a supplier is representing the customer's interest. The draft concludes that nothing shows that Northgate will be representing the customer's interest in its activities, while Northgate has entered into an agent agreement with Glacial Energy, and is in negotiations with Hess and other suppliers for similar agreements.

Integrys Energy Services Adjusted Earnings Higher on Reduced Costs

Adjusted earnings at Integrys Energy Services were $3.2 million for the quarter ending June 30, 2010, reversing a year-ago adjusted loss of $3.0 million, on an $18.5 million decrease in operating and maintenance expense that reflected a decrease in employee payroll, benefit, and contractor related expenses due to the unit's reduced scale, and a decrease in bad debt expense. These gains were partially offset by a $13.5 million decrease in realized wholesale natural gas and wholesale electric margins due to the sale of those businesses. Integrys Energy Group reported earnings after the market close and will hold a conference call this morning; a full report will follow in tomorrow's issue.

Options Energy Consulting Seeks Pa. Broker License

Options Energy Consulting applied for a Pennsylvania electric broker license to serve all customer classes in all service areas except West Penn Power.

Allegheny Merchant Earnings Rise on Outage Timing

Allegheny's Merchant Generation segment reported higher second quarter earnings on a GAAP basis of $53.0 million versus $41.9 million a year ago. On an adjusted basis, earnings rose to $56.9 million from $39.1 million a year ago. The adjusted results exclude unrealized hedging impacts. Merchant results were higher from increased generation due to the timing of planned outages versus the year-ago period, higher power prices and capacity revenues, and significantly lower operations and maintenance expense. During an earnings call Allegheny CEO Paul Evanson said that Allegheny's competitive retail supplier, while still in its infancy, is "moving along" and was active in contracting during the second quarter. Allegheny has not yet filed a 10-Q.

PUCT Staff Says SmartPay Power, Smart Prepaid Electric Trade Names Easily Distinguishable

The trade names "SmartPay Power" used by StarTex Power and "Smart Prepaid Electric" recently approved for Tara Energy are not duplicative, PUCT Staff said in opposing StarTex's motion for the Commission to reconsider its decision granting Tara Energy's use of the Smart Prepaid Electric name (Only in Matters, 8/2/10). "Staff recognizes that both names begin with 'Smart', but the latter parts of the names are easily distinguishable and are not deceptive or misleading," Staff said, which further objected to StarTex's motion on procedural grounds as it came after a final order (38398).

ERCOT Hits Record Peak, DNP Moratoriums in Place

ERCOT reported that it hit a new record peak of 63,594 MW yesterday. Weather-based disconnect moratoriums are in effect in several service areas including CenterPoint and Texas

New Mexico Power (part or all of the Gulf Coast, North, and Central Texas divisions)

FERC Approves CAISO Market Usage-Forward Energy Charge Settlement

FERC accepted an uncontested settlement establishing the calculation of the California ISO Market Usage-Forward Energy Charge (ER10-188). The settlement provides that Inter-Scheduling Coordinator Trades will be excluded from the calculation of the Market Usage-Forward Energy Charge of the ISO's Grid Management Charge. The Market Usage Forward Energy Charge will be calculated as the greater of a Scheduling Coordinator's Supply Schedules and Demand Schedules (including Self-Schedules) in the Day-Ahead Market. The stipulation also provides that prior to filing its 2012 Grid Management Charge or proposing any further changes to the 2010 and 2011 Grid Management Charge other than the prospective Convergence Bidding Charge Type, the ISO will conduct a cost-of-service study and engage in a stakeholder process to determine the appropriate allocation of the costs of operating the ISO.

DPUC Approves CL&P Last Resort Service Procurement

The Connecticut DPUC approved Connecticut Light & Power's recent procurement of Last Resort Service supplies for the three month period beginning October 1. Retail rates must be filed by August 17.

WGES Adjusted Earnings Lower on Reduced Gas Margins

WGL Holdings reported non-GAAP operating earnings for its retail energy-marketing segment of $6.0 million for the quarter ending June 30, 2010, compared to non-GAAP operating earnings of $9.6 million a year ago. Adjusted earnings exclude unrealized hedging impacts. WGL Holdings reported results after the market close and is holding an earnings call today; a full report will follow in tomorrow's issue.

The decrease in non-GAAP operating earnings reflects lower realized margins from the sale of natural gas partially offset by higher electric margins. Declines in gas sales margins were attributed to warmer weather in the spring of 2010 versus the spring of 2009, and gains in the 2009 quarter from favorable gas price movements.

Electric sales margin improvements primarily reflect higher electric sales associated with customer growth.

GAAP earnings at the marketer were higher at $20.7 million versus $3.9 million a year ago.

Washington Gas Energy Services' natural gas customer count as of June 30, 2010 was 160,900 versus 159,700 as of March 31, 2010 and 148,800 a year ago.

WGES' electric customer count as of June 30, 2010 was 141,700 versus 130,100 as of March 31, 2010 and 98,900 a year ago.

Ontario Energy Board Approves Final Dates for Mandatory TOU Generation Rates

The Ontario Energy Board has adopted a final schedule to move all non-demand Regulated Price Plan electric customers to mandatory Time of Use (TOU) default generation service (EB-2010-0218).

The provincial government had set an expectation for 3.6 million Regulated Price Plan customers to be served on TOU rates by June 2011. However, as of March 2010, only 601,000 consumers were on TOU pricing, while 3.7 million smart meters had been installed.

As under the Board's earlier draft (Only in Matters, 6/23/10), the transition date to Time of Use pricing is determined by each distribution company's prior baseline Time of Use implementation plan, and status of data management and meter data repository (MDM/R) enrollment testing.

For many of the larger distribution companies, including Hydro One Networks, Toronto Hydro, Hydro Ottawa, Horizon Utilities, and Powerstream, the transition to mandatory Time of Use generation rates for default service customers will be the June 2011 billing cycle. A complete list of dates for all distribution companies can be found in the Board's August 4 order in EB-2010-0218. The latest implementation date is March 2012.

The Board did not address in its final order several concerns raised by Direct Energy, which had noted that standardized transactions and interface formats for smart meter and Time of Use data have not yet been defined for all market participants.

Direct Energy is also concerned that third party access points for verified Time of Use billing data have yet to be determined. Direct had said that it is not clear whether the MDM/R or the individual distribution company will be the source of this data. Direct Energy noted that the Standard Supply Service Code does not explicitly prescribe that customers own their data and have the ability to assign access to such data to third parties.

As defined in the Regulated Price Plan Manual, the time periods under Time of Use pricing are as follows:

On-Peak
Winter weekdays: 7 a.m. to 11 a.m. and 5 p.m. to 9 p.m.
Summer weekdays: 11 a.m. to 5 p.m.

Mid-Peak
Winter weekdays: 11 a.m. to 5 p.m.
Summer weekdays: 7 a.m. to 11 a.m. and 5 p.m. to 9 p.m.

Off-peak:
Winter and summer weekdays: 9 p.m. to midnight and midnight to 7 a.m.
All weekends and holidays: all hours

Winter is defined as November 1 to April 30. Summer is defined as May 1 to October 31.

CenterPoint Competitive Marketer Earnings Lower

CenterPoint Energy's competitive natural gas sales and services segment reported an operating loss of $6 million for the second quarter of 2010 compared to operating income of $6 million for the same period of 2009.

Operating income for the second quarter of 2010 included charges of $8 million resulting from mark-to-market accounting for derivatives associated with certain forward natural gas purchases and sales used to lock in economic margins, compared to gains of $3 million from such activity for the same period of 2009.

Adjusting for the mark-to-market impacts, operating income for the second quarter of 2010 was $2 million, compared to $3 million a year ago. CenterPoint attributed the adjusted decline for the second quarter, in what is typically a weaker quarter for the business, to reduced market volatility and the attendant fewer opportunities to optimize transportation and storage assets. Without such opportunities, operating income is primarily tied to margins from natural gas sales to commercial, industrial and wholesale customers.

CenterPoint's competitive marketer reported 11,694 customers at of June 30, 2010, versus 11,369 as of March 31, 2010 and 10,878 a year ago.

Throughput was 128 Bcf versus 114 Bcf a year ago. Revenues for the quarter were $560 million versus $432 million a year ago.

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residential side," Clausen testified.

Clausen noted that POR is not needed to encourage suppliers to offer service to commercial customers. There are currently 20 suppliers providing service to customers in the 100 - 400 kW class and 21 suppliers providing service to customers in the 0 - 100 kW class. More than 60% of the customers with demands between 100 and 400 kW and almost 15% of the customers with demand up to 100 kW are currently taking service from an alternative supplier.

"While PORCB certainly has the potential to enable RESs to serve those customers better, there are nevertheless numerous suppliers currently serving those customers. The same cannot be said for the residential market," Clausen said.

Clausen noted that no retail supplier has yet to officially announce that it will use PORCB with a 50¢ per bill charge once it is available (for either residential or non-residential customers).

In fact, the only retail supplier providing testimony in the docket, Dominion Retail, has expressed concerns that the 50¢ per bill charge will inhibit residential competition.

James Crist, President of the Lumen Group, said in rebuttal testimony on behalf of Dominion

Retail that ComEd's program creates, "an economic barrier which a RES must overcome to present an attractive choice to the customer."

"ComEd continues on to observe that the C&I market is already taking off even with lack of POR and somehow construes that they must launch an attractively priced POR program to support that market. Meanwhile, the residential and small commercial market has not taken off and this fact alone illustrates the convoluted logic the Company presents," Crist testified.

Crist further said that ComEd's emphasis on making the discount rate attractive to non-residential suppliers, by including a flat fee rather than a purely volumetric rate, is misplaced. ComEd has testified that such an emphasis is needed to accelerate cost recovery by encouraging suppliers to move these customers, currently billed on dual or supplier consolidated billing, to POR billing.

"I can say from experience that the existing C&I accounts on Choice have already been credit-screened by the RESs and are unlikely to be moved onto the POR program, regardless of the charge," Crist said.

Clausen noted this same point, citing ComEd's own statement that, "it is unclear whether RESs, having already sunk costs into credit checks and billing processes for the customers they currently serve, would switch all of their existing non-residential customers to PORCB service […]."

Rescission Period

As only noted in *Matters*, ComEd has proposed in its POR tariff an 18-day Direct Access Service Request process, which essentially creates an extended rescission period. Staff and suppliers have opposed creating this extended window in the context of the POR proceeding, but ComEd, on rebuttal, said that programming changes to shorten the proposed 18-day window would delay the start of POR by another four months until April 1, 2011.

Currently, a supplier must submit an enrollment request at least seven days prior to the customer's next scheduled meter read. ComEd's tariff would extend this period to 18 days prior to the meter read for customers under 100 kW. These customers under 100 kW would also be able to rescind a pending enrollment by contacting ComEd at least five days prior to the enrollment effective date.

Among other things, ComEd has said that addressing the rescission period in the tariff is necessary, despite the ongoing Part 412 rulemaking which is examining the same issue, because an order in the rulemaking may occur, "long after," an order on POR.

In rebuttal testimony on behalf of the Retail Energy Supply Association, Timothy LoCascio, Manager of Regulatory Affairs for Liberty Power, noted that the ALJ in the Part 412 rulemaking has established a procedural schedule to allow the ICC to enter an order authorizing the submission of proposed electric consumer protection rules to the Joint Committee on Administrative Rules for the Committee's November 2010 session, in order to adopt a rule by December 17, 2010, which is one year from the initial publication of proposed rules in the Illinois Register.

The "drop dead" date in the POR proceeding is only one day later, December 18, 2010, LoCascio noted, meaning the Part 412 regulations will be in place, "before or soon after an order is entered in this [POR] proceeding."

Accordingly, LoCascio said that the ComEd POR proceeding should not prejudge issues being addressed in the Part 412 rulemaking.

LoCascio further noted that ComEd's 18-day enrollment process would apply to a larger universe of customers (those with peak demands under 100 kW) than the 10-day rescission period being considered under Part 412, where the rescission period would be limited to customers with annual consumption below 15,000 kWh.

ComEd's tariff would also eliminate the ability for suppliers to elect to switch customers under 100 kW on off-cycle meter reads, which LoCascio said subjects customers to additional delay.

Clausen reiterated Staff's opposition to addressing rescission issues in the POR tariff. Staff can only recommend approval of the tariff including the rescission language if the Commission declares in accepting the tariff that: (1) the ICC is not deciding upon a new rescission period for residential and small commercial customers by approving the tariff, and (2) the ICC is not making any determination as to whether any new rescission period (or other potential additional obligations) will apply to non-residential customers using more than 15,000 kWh annually.

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not all in force, as long as possible in advance of the coming into effect of that regime," the Board said in a letter to stakeholders.

In that vein, the Board will not await finalization of the provincial government's regulations to begin the process of adjusting the Board's regulations impacted by the legislation.

Aside from issuing draft changes to its gas and electric retailer codes in the next week or two, the Board will direct the existing electricity and gas Electronic Business Transaction (EBT) Standards working groups to consider what changes, if any, are required to the EBT standards for gas and electricity in order to implement the new regulations.

The Board further scheduled a stakeholder meeting for August 20 to address its draft amendments to the retail codes.

The Board expects to undertake a significant consumer outreach initiative designed to inform low-volume energy consumers of the new rights and obligations set out in the Act and in associated regulations and Board regulatory instruments.

The Board is also developing a comprehensive plan for monitoring compliance by suppliers with their obligations under the new legal and regulatory requirements.

As previously reported, the Act and attendant draft provincial regulations would, among other things:

- Allow consumers to cancel their electricity contracts without penalty up to 30 days after receiving their first bill;
- Limit cancellation fees to maximum flat annual fees for both electricity and natural gas contracts for residential consumers, and implement volumetric caps for the cancellation of contracts for non-residential/commercial consumers (see below)
- Require under certain contracting methods that retailers make verification calls, 10 to 30 days after a text-based copy of the signed contract has been received by the consumer, to ensure that the consumer understands the terms of the contract and still wants to enter into the contract;
- Restrict contract renewals, including limiting automatic renewals for natural gas contracts to month-to-month renewals, cancellable at any time without penalty;
- Address various required disclosures and content for contracts

The provincial government's draft regulations provide that residential early termination fees would be capped at:

(a) a fee of not more than $50 for each year, or any part thereof, remaining on the contract for the supply of electricity.

(b) a fee of not more than $100 for each year, or any part thereof, remaining on the contract for the supply of gas.

Non-residential early termination fees would be capped at:

(a) For a contract for the supply of electricity, a fee determined by multiplying an amount determined by dividing the consumer's consumption of electricity consumed in kilowatt-hours during the 12 month period immediately prior to the cancellation by 12 multiplied by the number of months, or parts thereof, remaining in the contract term of the consumer by $0.015, or,

(b) For a contract for the supply of gas, a fee determined by multiplying an amount determined by dividing the consumer's consumption of gas consumed in cubic meters during the 12 month period immediately prior to the cancellation by 12 multiplied by the number of months, or parts thereof, remaining in the contract term of the consumer by $0.05.