

Energy Choice

Matters

August 16, 2010

Arizona Staff Says More Study Needed on Retail Electric Competition

The Arizona Corporation Commission Staff has punted on the issue of retail electric competition, essentially reporting to the Commission that more study is needed (E-00000A-02-0051).

In a September 2008 decision, the Commission tasked Staff with, "address[ing] the underlying policy issue of whether retail competition is in the public interest and to examine the potential risks and benefits of retail competition." The ACC directed Staff to convene workshops on this subject and ultimately file a, "recommendation as to whether or not retail competition should be implemented in Arizona and if so, how such implementation should proceed."

Nearly two years later, Staff's report essentially calls for a repeat of the process, recommending that, "if the Commission wishes to revisit retail electric competition in Arizona, the best path forward is to initiate a notice of inquiry on this topic and to hold workshops to explore the many details involved in properly analyzing the issue of retail electric competition and whether it is in the public interest."

"At this point in time, Staff believes that although some form of retail electric competition may be in the public interest, in order to be sure, more analysis, discussion and study of all the aspects of the issue is required in order to perform a proper evaluation. The Commission should, however, approach this task with caution. The Commission should recognize that retail electric competition could bring benefits to some and could also present risks to others, especially in the transition period and especially to smaller customers and low income customers. If the Commission chooses to move

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Suppliers Oppose Proposed Pa. Requirement for Physical Separation During Verification

Several competitive suppliers have opposed the Pennsylvania PUC's proposed rule which would require door-to-door agents soliciting residential customers on behalf of competitive electric and gas suppliers to physically leave the customer's residence during verification of the sale (M-2010-2185981).

The National Energy Marketers Association said that, "requiring the agent to leave the residence may result in costly follow up measures to respond to customer questions that may arise during the verification."

MXenergy likewise said that the proposed rule, "does not recognize the practicalities of the exchange nor how 'real life' door to door sales are conducted."

"The TPV process begins and ends with the [sales] representative on the line with the independent verifier. The TPV company cannot give the agent a 'confirmation' number until the call is successfully completed. Based on the draft ... the representative would have to go back to the customer's location to confirm that the call had been successfully completed," MXenergy said.

NEM and the Pennsylvania Energy Marketers Coalition both suggested allowing agents to remain in the customer's premises during verification, but that a statement be added at the end of

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Briefly:

Electricity Maine Seeks Electric Supply License

Electricity Maine LLC, trading as Electricity for ME, applied for a Maine competitive electric provider license to serve all customer classes in all service areas, though Electricity Maine said that it would focus on residential and small non-residential customers. Electricity Maine requested that the financial security requirement be lowered from \$100,000 to \$15,000 for its first year of operations given its start-up nature. Electricity Maine anticipates first year gross revenue of less than \$250,000. Managers of Electricity Maine are Emile L. Clavet, Kevin B. Dean, and Kirk A. Nadeau, who have owned and operated several enterprises in Maine over the past two decades, including hotels, software companies, specialty finance companies, medical billing companies, and real estate development companies.

Aero Energy to Enter Delaware Gas Market

Aero Energy announced that it will enter the Delaware gas market in addition to its previously reported entry into the Maryland and Pennsylvania gas markets (Only in Matters, 7/30/10). As only noted in *Matters*, Aero's expansion from fuel oil marketing and HVAC service is being led by Director of Natural Gas Richard W. Gechter, Jr., former President of Cypress Natural Gas and a veteran of several suppliers including Hess Corporation and Compass Energy Services. Aero is jointly owned by Adams Electric Cooperative and Choptank Electric Cooperative.

Dominion Retail Serving 475,000 Pa. Customers

Dominion Retail said that it is serving over 475,000 gas and electric customers across seven utilities in Pennsylvania, in filing its marketing standards comments with the PUC (see above).

CMP, BHE Report Winning Standard Offer Bidders

Dominion Retail was awarded 100% of Bangor Hydro-Electric's large non-residential Standard Offer load, 100% of BHE's medium non-

residential Standard Offer load, 80% of Central Maine Power's large non-residential Standard Offer load, and 100% of CMP's medium non-residential Standard Offer load for the six-month period beginning September 1, 2010, the utilities reported last week. Constellation Energy Commodities Group was awarded the remaining 20% of CMP's large non-residential Standard Offer load.

AEP Texas Says Full Automation of Service Orders for Advanced Meters Now Expected in October

AEP Texas now anticipates that it will be October of this year before the service orders that are initiated by various market EDI transactions will be fully automated for provisioned smart meters. Previously AEP Texas had expected such automation to be in place by late summer. As a result, AEP Texas said that it will be October before it can support prepaid service for provisioned advanced meters through the automated activation of remote disconnect and connect features triggered by market EDI transactions. AEP Texas said that a work around has been developed to process service orders, including those related to prepaid service, on meters provisioned prior to October. AEP Texas still anticipates providing the first settlement quality usage data to ERCOT for provisioned smart meters in August. As of July 31, 2010, AEP Texas has installed 48,929 advanced meters. Oncor has installed 1,165,035 advanced meters, and CenterPoint has installed 527,771 advanced meters through July 31, 2010.

ConEd Won't Seek Recovery of Costs to Modify Remote Account Access Plan

Consolidated Edison has informed the New York PSC that it will not seek recovery of costs from ESCOs to conform its proposed Interactive Voice Response (IVR) system for providing customers with remote access to their account number to modifications ordered by the New York PSC (98-M-1343). The Commission has ordered that the IVR system be modified to not require the customer to provide their full Social Security number to access their account number. ConEd said that the costs of modifying the IVR application to conform to the order is estimated

to be \$750, with \$1,800 per annum in on-going maintenance. "The Company considers the cost to be negligible, and therefore will not seek funding by ESCOs," ConEd reported. ConEd said that the time required for the implementation of the modified IVR application is about 60 to 90 days

RG&E to Construct New Hydro Unit

Rochester Gas & Electric informed the New York PSC that it intends to begin construction of a new hydroelectric generating unit with a rated capacity of 6.3 MW at the existing Station 2 site (07-M-0906). Construction is expected to commence in October 2010, and the new unit is planned to be in-service in 2012. The existing Station No. 2 site currently contains a single hydroelectric generating unit with a rated capacity of 6.5 MW, which RG&E is in the process of upgrading to 8.4 MW of rated capacity.

Texas ALJ Dismisses Texas Utility Solutions Transmission Service Petition

A Texas ALJ has dismissed Texas Utility Solutions LLC's petition for a declaratory order finding that it is an eligible transmission service customer, due to Texas Utility Solutions' failure to respond to a motion to compel directing Texas Utility Solutions to file an unredacted version of testimony for which confidential status was not granted, and failure to show cause why the proceeding should not be dismissed for lack of prosecution (36701). Texas Utility Solutions was seeking to purchase from Oncor and CenterPoint Wholesale Transmission Service, under an arrangement which CenterPoint said would allow Texas Utility Solutions to impermissibly bypass nonbypassable retail delivery rates (Only in Matters, 2/8/10).

Nordic Energy Services to Manage Chicago Gas Needs

Nordic Energy Services, LLC has finalized an agreement to provide natural gas delivery and consulting services to the City of Chicago's Department of General Services. Under the five-year agreement, Nordic will manage the natural gas deliveries and storage inventories for approximately 400 city facilities. Nordic will also advise the city on strategic long-term purchasing opportunities.

Keytex Energy Brokers 1 Billion kWh in Pennsylvania

Keytex Energy said that it has placed over 1 billion kilowatt-hours of client electricity usage with competitive suppliers in Pennsylvania.

E Source Companies LLC Seeks to Transfer EnergyWindow Pa. License

E Source Companies LLC applied at the Pennsylvania PUC to transfer its existing EnergyWindow, Inc. broker license to the E Source Companies LLC entity, to serve commercial customers over 25 kW, industrial customers, and governmental customers in all service areas.

FirstEnergy Ohio Utilities File to Raise Nonbypassable Deferred Transmission Rider

Ohio Edison, Cleveland Electric Illuminating, and Toledo Edison have filed at the Public Utilities Commission of Ohio to increase the amounts charged under the nonbypassable Deferred Transmission Costs Recovery (DTC) Rider (10-1134-EL-ATA). The rider collects deferred incremental transmission and ancillary service-related charges dating to 2005. The FirstEnergy companies said the higher amounts are, "designed to fulfill the intent of allowing full recovery," of the deferred charges. Under the rider, recovery of such deferred amounts must be completed by December 31, 2010. The proposed rates, which vary by company and rate class, may be found in Case 10-1134-EL-ATA.

PECO to Increase Transportation Retainage Level

PECO is to increase the retainage volume adjustment for natural gas transportation service customers from 2.5% to 2.8% for a period of one year commencing December 1, 2010, under a settlement in its 1307(f) Purchased Gas Cost rate investigation (R-2010-2174034).

Additionally, by the time of PECO's next annual Section 1307(f) proceeding, PECO will enhance its website to include a list of natural gas suppliers providing service to PECO's residential customers. The list was requested by the Office of Trial Staff, in order to provide

another avenue for shopping customers to explore their options regarding natural gas suppliers.

The settlement calls for PECO to retain its current hedging practices. PECO will continue to monitor the results of its hedging program and will report the results in its next annual Section 1307(f) proceeding. PECO will also develop analyses concerning potential further modifications to its hedging methodology. The analyses will consider: (i) tailoring the level of hedging to the level of purchases forecasted for the prospective year; (ii) the relative impact of taking PECO's hedges, exclusive of its dollar-cost-averaged hedges, on a pro rated basis (rather than on estimates concerning potential future gas price levels); and (iii) the appropriateness of hedging more than the current 29% of total purchased gas.

Positive Energy Says No Consumer Protection Law Violated in Ventura Mortgage Issue

Responding to a motion from the Connecticut Attorney General at the DPUC, Positive Energy Electricity Supply, LLC said that the "problems" its President Joseph Ventura has had with the Connecticut Banking Department do not amount to a violation of any, "consumer protection law or regulation," which is the threshold for disclosure in the application process (10-08-09).

The Attorney General has called for an investigation of Positive Energy for, among other reasons, the omission on its aggregator application of a civil penalty levied again Ventura for what the Department of Banking found to be fraud on an mortgage application from Ventura (Matters, 8/12/10).

Positive Energy further said that the, "Attorney General's allegations concerning delaying of placing customers with suppliers are based on information provided by a terminated employee and a disgruntled investor. They are grossly overstated, and neglected to state that customers who were delayed more than 60 days and complained were given refunds to reflect the loss of opportunity for savings."

Positive Energy also rebutted the Attorney General's allegation that Ventura was not listed

on Positive Energy's original aggregator application, stating Ventura was listed on a confidential version of Exhibit A-9.

"While the Company is confident that it can refute all of the Attorney General's allegations, it also believes that an investigation based on the allegations to date would be an unwarranted waste of the Department's time and the Company's time and money. The only beneficiaries of such an investigation will be the Company's competitors who will besmirch the Company's name while the proceeding is ongoing," Positive Energy said in a letter to the DPUC.

On Friday, Connecticut Light & Power sent Ventura a letter, also filed with the DPUC, alleging that a CL&P employee received an allegedly "false and misleading" phone solicitation from an employee or agent of Positive Energy on the evening of August 11, 2010.

As alleged by CL&P, "[o]ur employee received a phone call at his residence from an individual, who identified himself as 'Dave', and who also indicated that he was 'with CL&P'. Dave then asked the employee if he had seen the notice in his bill about how he could save money with CL&P. Our employee, who happens to be a director, did not identify himself as an employee of Northeast Utilities, but did respond that he had not seen a notice and asked Dave to explain further. Dave then proceeded to state that he could save the customer two cents over the standard CL&P rate. Our employee asked Dave a second time, if he was with CL&P and Dave responded, 'Yes'. After being asked a third time if he was with CL&P, Dave responded that he was, and then added that he was also with Positive Energy. When pressed further to explain, Dave indicated that he was affiliated with CL&P and the State of Connecticut."

Md. PSC Approves BGE Smart Meter Plan Without Tracker

The Maryland PSC has conditionally approved a territory-wide deployment of advanced meters at Baltimore Gas & Electric, but without the use of a tracker for cost recovery, which BGE has testified is a deal-breaker if not authorized (Case

9208).

In its revised AMI application, BGE had sought to accommodate the PSC's prior concerns by limiting the tracker to 25% of the project costs, and by changing the tracker from a flat to volumetric rate.

However, the PSC concluded that customers will be better off with a regulatory asset than a tracker, and thus denied the tracker.

"BGE's perception of risk [under a regulatory asset] appears to flow in some part from a fundamental mistrust of the regulatory process in this State, from a sense that BGE is not treated fairly by this Commission or in the Maryland regulatory environment. We will not say more on this latter point other than to disagree, respectfully," the Commission said.

"We find that a regulatory asset, recovered through base rate cases, provides the Company with an opportunity for recovery of prudently incurred costs, while synchronizing the cost to customers most closely with the onset of benefits," the Commission added.

BGE's revised program approved by the PSC removed BGE's earlier proposal for time-based SOS rates as part of AMI deployment.

The PSC also stressed that, "the success of this Initiative, and the likelihood that customers will actually see the benefits this project promises, depend centrally on the success of the Company's customer education and communication effort."

NYISO Seeks to Impose New Mitigation Thresholds on Rest of State Suppliers

The New York ISO has sought approval from FERC for tariff changes that would apply a market power mitigation measure that is similar to the mitigation measure accepted by the Commission for three specific generators to all generators in the Rest-of-State region that can exercise market power when they are committed or dispatched to maintain system reliability.

The mitigation measures would apply to a Generator committed as a Day-Ahead Reliability Unit (DARU) or via a Supplemental Resource Evaluation (SRE), or committed as a DARU or via SRE and subsequently dispatched Out-of-

Merit above its minimum generation level to protect or maintain New York Control Area or local reliability. Mitigation would only be applied if one of the following three conditions were met:

i. The Market Party (including its Affiliates) that owns or offers the Generator is the only Market Party that could effectively solve the reliability need for which the Generator was committed or dispatched, or

ii. When evaluating an SRE that was issued to address a reliability need that multiple Market Parties' Generators are capable of solving, the NYISO only received bids from one Market Party (including its Affiliates), or

iii. When evaluating a DARU, if the Market Party was notified of the need for the reliability of the of its Generator prior to the close of the Day-Ahead Market.

If a Generator meets one or more of the above three conditions, the following thresholds would apply mitigation if a Bid or Bid component:

i. Exceeds the Generator's Minimum Generation Bid reference level by the greater of 10% or \$10/MWh, or

ii. Exceeds the Generator's Incremental Energy Bid reference level by the greater of 10% or \$10/MWh, or

iii. Exceeds the Generator's Start-Up Bid reference level by 10%, or

iv. Exceeds the Generator's minimum run time, start-up time, and minimum down time reference levels by more than one hour in aggregate, or

v. Exceeds the Generator's minimum generation MW reference level by more than 10%, or

vi. Decreases the Generator's maximum number of stops per day below the Generator's reference level by more than one stop per day, or to one stop per day.

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forward with retail electric competition, it should do so only after a careful evaluation of the potential benefits and potential risks, as well as ways to mitigate those risks," Staff's report finds.

The only substantive conclusion reached by Staff is that the current Retail Electric Competition Rules are incomplete and are in

need of modification. In particular, Staff said that the rules must be updated to reflect new policy goals since their adoption in 2000; specifically, renewable mandates, energy efficiency rules, and resource planning.

"While some objectives of electric service are constant, such as reliability and affordability, other objectives, such as adoption and integration of new technology, consumer education and protection, diversifying resources, and increased energy efficiency should be embraced by the electric industry and incorporated into the competitive framework," Staff said.

Staff also noted that several of the current rules were invalidated by the *Phelps Dodge* decision because the Commission lacked legislative or constitutional authority to promulgate such provisions, while a number of other rules were invalidated because the Commission failed to seek review and certification from the Attorney General.

"Despite the suggestion from certain stakeholders that these latter provisions may simply be submitted to the Attorney General, Staff believes that a better path forward would be to revisit the issue of retail electric competition as a whole, rather than revise the Retail Electric Competition Rules in a piecemeal fashion," Staff said.

Staff provided a review of stakeholder comments regarding the benefits and risks of competition, and concluded, "Staff's review of the relevant literature and the parties' comments reveals that one's conclusions about the relative success (or failure) of retail competition often depends upon one's point of view."

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the TPV in which the customer would affirm that they were not coached or unduly influenced during the process. The Pennsylvania Energy Marketers Coalition further recommended that the sales agent shall not to have any interaction with the verification agent once the verification process begins.

NEM and the Pennsylvania Energy Marketers Coalition both suggested that the PUC institute a "safe harbor" provision for those suppliers who voluntarily elect to require that

their agents physically leave the premise during verification, or those suppliers that provide the customer with the option to request that the agent leave during verification. Under the safe harbor, a rebuttable presumption that the customer enrollment is voluntary and consensual would be established if the agent leaves the premises.

MXenergy recommended that the PUC require that suppliers conduct quality assurance calls on at least 10% of customers enrolled through door-to-door marketing, which MXenergy said would ensure that no intimidation occurs during verification and preclude the need for physical separation.

"Market penetration in the PPL service territory has been accomplished in no small part through the door to door sales process. Requiring marketing or sales channel representatives to leave the premises before the TPV will interrupt the process, lead to more confusion, and less enrollments for competitive retail offers," MXenergy said.

Dominion Retail, however, said that the proposed physical separation rule does not go far enough in protecting customers.

Dominion Retail said that as currently drafted, the PUC's language does not appear to prohibit the agent from remaining in the "immediate vicinity" during verification, such as waiting in an apartment hallway or on the customer's front porch.

"In Dominion's view, requiring the door-to-door agent to wait, say, on the sidewalk off the customer's property, or in some similar location away from the immediate vicinity of the customer's residence, does not impose an unreasonable additional burden on the agent or the agent's sponsoring [supplier]," Dominion Retail said.

"Most importantly, however, the additional 'breathing room' will allow the customer a better opportunity to freely think through his decision," Dominion Retail added.

Responding to comments from Vice Chairman Tyrone Christy who would prefer that all door-to-door marketing be banned, NEM said that until the new marketing rules have had adequate time to be in effect, "it is premature to even consider the need to impose such a draconian restriction on the marketplace."

"Make no mistake, marketers are keenly interested in providing a superior level of customer service and satisfaction to consumers. This is one of the many ways in which marketers offer added value. Marketers must be acutely aware of and focused on identifying and serving their customer needs. Indeed, a sustainable, long-term marketer business plan can be founded upon nothing less," NEM said.

Other Issues

Several suppliers also opposed the PUC's proposed restriction on door-to-door marketing outside the hours of 9:00 a.m. to 7:00 p.m., in cases where local ordinances are not more strict, though Dominion Retail argued that the hours should be further restricted.

NEM and the Pennsylvania Energy Marketers Coalition suggested allowing door-to-door marketing from the hours of 9:00 a.m. to 9:00 p.m., while MXenergy recommended 9:00 a.m. to 9:00 p.m. in the summer, and 9:00 a.m. to 7:00 p.m. in the winter, in cases where local ordinances are silent. Both NEM and MXenergy argued that many working families are not home prior to 7:00 p.m.

Dominion Retail said that door-to-door marketing should end at 7:00 p.m. when Daylight Savings Time is in effect, and 5:00 p.m. when it is not in effect, so that agents are not soliciting customers in after sunset, for safety and privacy reasons.

NEM and the Pennsylvania Energy Marketers Coalition both raised concern about any mandate requiring suppliers to inform the distribution utility of their marketing plans. NEM argued that the extent of a sales or marketing effort, its duration, and a description of the geographical area involved (which the proposed rule suggests that suppliers provide to utilities) constitute proprietary information.

The Pennsylvania Energy Marketers Coalition said that, "[a]t this juncture in the development of a competitive marketplace, utilities often remain in the role of true competitor with alternative suppliers. Therefore, providing confidential, proprietary and potentially trade-secret information regarding a supplier's marketing plans (including specific geography) could put the supplier and the utility at risk for divulging private information which is

competitively sensitive."

NEM also sought assurance from the PUC that customer complaint information that is collected does not reveal proprietary data.