Energy Choice Matters

August 23, 2010

Md. Staff Recommends Oct. 1 Start for Pepco POR; PSC Orders Supplier Tariff Working Group

Maryland PSC Staff have recommended that the Commission accept Pepco's Purchase of Receivables tariff for filing with an effective date of October 1, 2010 (Only in Matters, 7/1/10).

Staff suggested the October 1 effective date after discussions with Pepco based on the company's information technology work schedule and the need to test the POR applications. It is Staff's understanding that Pepco is agreeable to October 1, 2010 as the POR implementation date.

Previously, Pepco had suggested that POR start on the later of September 1, 2010, or six weeks following a Commission order approving the program. The Commission is scheduled to address Pepco's POR compliance plan at its August 25 meeting.

Staff endorsed Pepco's proposed discount rates of:

Residential:	1.1438%
Type I:	0.4330%
Type II:	0.3093%
Hourly Service:	0.0016%

Furthermore, in mirroring how the Commission addressed several Staff concerns at the other utilities (see below), Staff said that the Pepco POR tariff should be accepted for filing provided that:

- Pepco participates in a Staff working group on revisions to the electricity supplier coordination tariffs for all SOS utilities

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BGE Clarifies POR Billing Services Agreements in Response to NEM Concerns

In response to requests from the National Energy Marketers Association and its members, Baltimore Gas & Electric has made several revisions to its Billing Services Agreements governing Purchase of Receivables, for both electric and natural gas, to further ensure that there are no ambiguities that could be unclear to third parties to the agreements.

"BGE was extremely responsive and worked collegially with marketers to clarify the documents," said NEM President Craig Goodman. Goodman further credited BGE for a prompt resolution to suppliers' concerns.

Goodman characterized the revisions as changes intended to ensure that there was no misunderstanding as to the rights of each of the parties and rights to the receivables. Goodman said that the changes reflect the construct that was intended to be in the original agreements, and that the revised language makes clarifications to the original language which could have been unclear to a third party, notably financial institutions working with suppliers.

Importantly, BGE has allowed suppliers who had executed the previous version of the Billing Services Agreement to re-execute the revised agreement.

Additionally, the revised agreements include what Goodman called standard boilerplate language regarding liability, in language added to the indemnification section.

Connecticut Light & Power Reports July Migration Data

Supplier Accounts as of 7/31/10	July '10 Residential	July '10 Business	July '10 Total	% of Migrated Customers	Change vs. June '10 Total
Clearview Electric	11,519	228	11,747	3.2%	(1,056)
ConEdison Solutions, Inc.	6,434	2,420	8,854	2.4%	277
Constellation NewEnergy	1,245	8,499	9,744	2.7%	59
Direct Energy Business	129	3,310	3,439	0.9%	5
Direct Energy Services	44,997	6,955	51,952	14.3%	(984)
Discount Power Inc	8,108	1,404	9,512	2.6%	849
Dominion Retail	52,370	9,130	61,500	16.9%	(941)
Energy Plus Holdings	25,047	2,717	27,764	7.7%	1,474
Gexa Energy	404	1,887	2,291	0.6%	121
Glacial Energy	751	1,740	2,491	0.7%	(119)
Hess Corporation	241	1,679	1,920	0.5%	5
Integrys Energy Services	42	3,105	3,147	0.9%	(90)
Liberty Power	557	682	1,239	0.3%	223
MXenergy	23,292	1,488	24,780	6.8%	4,533
North American Power and Gas	8,707	904	9,611	2.6%	3,851
Pepco Energy Services	0	7	7	0.0%	0
Public Power LLC	40,987	3,814	44,801	12.3%	3,173
Rescom Energy	26,030	2,590	28,620	7.9%	4,170
Sempra Energy Solutions	5	1,085	1,090	0.3%	(8)
South Jersey Energy Co.	0	6	6	0.0%	1
Starion Energy	6,252	1,475	7,727	2.1%	1,456
Suez Energy Resources NA	21	884	905	0.2%	(7)
TransCanada Power Marketing	28	2532	2,560	0.7%	(12)
Verde Energy Savings	26,039	791	26,830	7.4%	2,755
Viridian Energy	18,239	2116	20,355	5.6%	1,630
Whole Foods Market Group	0	2	2	0.0%	1
Total All Suppliers	**301,444**	**61,450**	**362,894**	100.0%	21,366

Aggregate Data

Customer Load - Suppliers and CL&P (MWh)

	Residential - SS		Business - SS		Business - LRS		Total CL&P Territory	
	MWh	% of Class	MWh	% of Class	MWh	% of Class	MWh	% of Total
Suppliers	311,356	30.2%	487,573	74.5%	396,180	90.0%	1,195,109	56.2%
CL&P	719,662	69.8%	166,959	25.5%	44,214	10.0%	930,835	43.8%
Total	1,031,018		654,532		440,394		2,125,944	

Customer Count - Suppliers and CL&P

	Residential - SS		Business - SS		Business - LRS		Total CL&P Territory	
	Customers	% of Class	Customers	% of Class	Customers	% of Class	Customers	% of Total
Suppliers	301,444	27.4%	60,601	51%	849	84.2%	362,894	29.7%
CL&P	800,582	72.6%	58,545	49%	159	15.8%	859,286	70.3%
Total	1,102,026		119,146		1,008		1,222,180	

SS: Standard Service   *LRS: Last Resort Service*   *Data as reported by CL&P*

Pike County Proposes Extension of Spot Market Default Service

Pike County Light & Power has submitted to the Pennsylvania PUC a petition for a default service plan for the period from June 1, 2011 through May 31, 2013, which would continue the current spot market based procurement approach (P-2010-2194652).

As only reported in *Matters*, the PUC last month ruled that at the end of the current term of Direct Energy's aggregation program in Pike County, Direct may retain those aggregation customers without the need to obtain the customer's affirmative consent. The order is subject to a request for reconsideration by the Office of Small Business Advocate.

Pike County provides distribution service to 4,600 residential and commercial customers. For calendar year 2009, the electric requirements of these customers were 77,000 MWh, with a peak demand of approximately 16 MW.

Pike County reported that, currently, only 22% of its distribution customers, and 40% of its peak load, are served under Pike County's default service. The remainder take competitive supply, with the majority served under the Direct Energy aggregation program, which accounts for 56% of peak load in the service area.

The continuation of the spot market default service is appropriate, Pike County said, since an alternative procurement would require the utility to provide an estimate of its default service load to interested counterparties. "Unfortunately, PCL&P cannot provide a definitive estimate of its default service load as of June 1, 2011. While it seems likely that the majority of customers currently receiving generation service from Direct Energy will remain with Direct Energy at the end of the Second Renewal term, the Company cannot be sure," Pike County said.

"If PCL&P is required to estimate its default service load prior to June 1, 2011, it runs the distinct risk of overestimating such load. Overestimating the default service load involves a real risk of generating stranded costs which would have to be absorbed by PCL&P's customers," Pike County added.

Additionally, the small size of the load served by Pike County, combined with the large percentage of customers served by alternative suppliers through aggregation or competitive service, "makes it exceedingly difficult to negotiate favorable long term generation supply contracts," Pike County added.

"PCL&P's default service load simply is not a large enough load to obtain a prudent mixture of long-term, short-term and spot market purchases as envisioned by Section 2807(e) of the Public Utility Code," Pike County argued.

"Temporary spot purchases, in this instance, are the optimal and prudent solution from a least cost over time perspective," Pike County said.

Pike County would continue to serve default service customers on a flat rate adjusted quarterly, comprised of (1) the Market Price of Electric Supply, and (2) the Electric Supply Adjustment Charge.

The Market Price of Electric Supply is determined quarterly based on Pike County's forecast of the wholesale supply costs for the quarter and reflects the company's expected procurement costs from the New York ISO. Annually, service classification-specific factors are developed to reflect each service classification's load characteristics, capacity obligation, forecast sales and applicable losses. These factors are applied to the quarterly forecast of the company's default service cost per kWh to determine class-specific Market Prices of Electric Supply. Each Market Price of Electric Supply is then increased to permit the recovery of the Pennsylvania Gross Receipts Tax.

The Electric Supply Adjustment Charge is calculated quarterly to reconcile the monthly over- or under-collections of the preceding three months. After each month, Pike County compares its actual default service costs for the month with default service revenues. Default service costs include all actual costs related to the procurement of: energy, capacity, and ancillary services, including any prior period reconciliation costs. Default service revenues include: recoveries of the Market Price of Electric Supply and the prior period Electric Supply Adjustment Charge. For each month, actual default service costs are divided by the total actual default service sales for the month being reconciled to determine the overall average rate that would have made the company whole for the month, on an aggregate basis. The resulting average rate is then utilized to estimate the over- or under-collection applicable to each service classification.

The resulting service classification-specific over- or under-collections will be added together for the three months being reconciled and are divided by estimated service classification-specific default service sales for the quarter in which the Electric Supply Adjustment Charges will be billed. The resulting service classification-specific Electric Supply Adjustment Charges are then increased to permit recovery of Pennsylvania Gross Receipts Tax.

For any given quarter, the Electric Supply Adjustment Charges, including Gross Receipts Tax, shall not exceed a charge or a credit of 2.0 cents per kWh. In the event the 2.0 cents per kWh limit is imposed, any remaining over- or under-collection balance is included in the subsequent quarter's Electric Supply Adjustment Charges to the extent possible within the 2.0 cents per kWh limitation.

Pike County stressed that due to its small size and location in the NYISO, it, "should not be viewed as a bellwether for the other Pennsylvania utilities on issues regarding default service protocols, procedures and requirements."

"Consequently, in reviewing this Petition, the Commission, as well as any other potential interested parties, should consider PCL&P a special case, readily distinguishable from the other Pennsylvania utilities," Pike County said.

Paterson Signs N.Y. Bill Limiting ESCO Termination Fees

New York Gov. David Paterson has signed the ESCO Consumers Bill of Rights legislation (A1558, S2361) which sets a cap on ESCO termination fees for certain customers.

The legislation applies to all residential sales, and all door-to-door sales, excluding those non-residential door-to-door sales which are conducted pursuant to an appointment.

The legislation limits early termination fees to (1) $100, for any contract with a remaining term of less than 12 months; (2) $200, for any contract with a remaining term of 12 months or more, or (3) twice the estimated bill for energy services for an average month. To charge a fee based on the estimated bill for energy services for an average month, an ESCO must have provided the customer, at the time that the contract is offered, with an estimate of the average monthly bill that customer would be charged for energy services and the fee that would be charged based on such estimate.

The law provides that the PSC shall develop a, "short, plain language statement of an 'ESCO consumers bill of rights' which shall summarize the protections afforded to consumers of energy services pursuant to section 349-d of the general business law and other applicable laws." This bill of rights must be provided to customers during solicitations.

No material change shall be made in the terms or duration of any contract for the provision of energy services by an ESCO without the express consent of the customer. ESCOs may continue to use automatic renewals, however, customers shall be free to terminate an automatically renewed contract without an early cancellation fee for a period extending up to three business days after receipt of the first bill under the renewal. The law explicitly provides that the PSC may provide for additional rules regarding renewals, a topic currently under consideration (see Mattes, 7/6/10).

The law provides that no ESCO contract may require prepayment as a condition of service. However, a prepayment option may be offered. The law does not define prepayment, and thus is subject to interpretation as to whether the term prepayment includes deposits.

ESCOs must "clearly and conspicuously" disclose in all contracts, and marketing materials, all variable charges.

The legislation authorizes a right of private action for violations.

The law takes effect January 10, 2011.

RESA Urges Continuation of N.J. Retail Margin

The retail margin of 5 mills/kWh applicable to New Jersey Basic Generation Service (BGS) sales to customers with demands at or above

750 kW should only be modified in a full unbundling proceeding to address inequity issues that provide the rational basis for the retail margin's existence, said Retail Energy Supply Association President Jay Kooper before the New Jersey BPU's Friday hearing on BGS.

"The retail margin ensures that BGS service accurately reflects the true cost of providing generation service to customers," Kooper said.

"The retail margin is not a subsidy or a tax or a mechanism that harms consumers. In fact, any reduction or elimination of the retail margin will harm consumers by exacerbating the structural advantages that EDCs enjoy due to the nature of BGS service, thus denying customers the benefits of a well functioning competitive market," Kooper added.

Kooper also encouraged the BPU to lower the BGS-CIEP hourly pricing threshold to 500 kW effective June 1, 2011. Kooper said that New Jersey is in danger of having the least market-reflective generation pricing structure in the Northeast for customers in the 500 kW to 1 MW range absent a change from the current 1 MW hourly pricing cutoff. Kooper noted that the threshold for hourly pricing is much lower in surrounding states -- 300 to 500 kW in New York and Pennsylvania (depending on utility), and 600 kW in Maryland.

"[T]here is a real danger to New Jersey in the creation of an uneven economic playing field," if the hourly pricing threshold remains static, Kooper warned, as commercial and industrial customers evaluating where to expand or place new facilities may opt for New York or Pennsylvania, with a greater abundance of customized competitive energy options, instead of New Jersey.

FERC Accepts Separate Method for Determining RA Capacity from Historical Output Resources

FERC accepted the California ISO's modifications to the Standard Capacity Product tariff to provide a separate method for calculating hourly available Resource Adequacy (RA) capacity for RA resources whose qualifying capacity is based on historical output. The Commission also accepted CAISO's proposal to end the exemption from Standard Capacity Product rules for RA resources with qualifying capacity determined by historical data (ER10-1524).

The approved methodology for such resources considers three variables for determining hourly available RA capacity in each availability assessment hour: (1) the actual amount of energy the resource delivered to the CAISO grid during that hour (actual energy); (2) the resource's RA capacity as designated in its supply plan for the month (RA capacity in supply plan); and (3) the resource's net qualifying capacity as reduced for that hour by the percentage for which any forced outages or temperature-related ambient de-rates reduced the resource's capacity from its maximum or nameplate capacity (proportional de-rated capacity).

FERC found that CAISO's proposed methodology for determining the SCP availability for such resources, "appropriately considers the unique nature by which their qualifying capacity is determined and does not compromise the comparable treatment of these types of resources vis-à-vis thermal resources." The Commission dismissed protests that the methodology provides undue preferential treatment to certain resources due to its "better of energy or capacity" approach.

WPTF Protests SDG&E Proposed Tax Equity Investment in Renewable Project

The Western Power Trading Forum protested San Diego Gas & Electric's application to make a tax equity investment of $600 million in NaturEner Rim Rock Wind Energy, LLC, which was awarded a PPA with SDG&E under an RPS solicitation, as WPTF argued that the investment would inappropriately transfer risks to customers (A.10-07-017).

SDG&E has sought to make the investment due to the challenging financing conditions faced by renewable developers in the current environment.

WPTF said that, "[i]n the more than a year since the PPA was executed, the project has been unable to move forward, suggesting that the originally negotiated PPA was simply insufficient to move the project forward."

"SDG&E proposes now to become the project's 'white knight' with a $600 million tax equity investment. While SDG&E may be correct that the tax equity investment is a novel approach, the end-state is the same - SDG&E's proposal is nothing more than the all-too-familiar transformation of a competitive project failure into a utility-owned project. Commission approval of this transformation is not warranted; instead, the Commission should turn its attention to resolving issues associated with RPS policies and utility procurement practices that allow PPAs to be executed that are incapable of supporting the development of the underlying project," WPTF said.

Briefly:

ConEd Secures ESCO Commitments for Referral Plan Expansion

Consolidated Edison has secured during August firm commitments from ESCOs for the funding of any system implementation tasks associated with expansion of its ESCO Referral Program, the joint utilities reported in reply comments concerning Phase II of the Uniform Business Practices working groups.

Just Energy Opening Massachusetts Office

Just Energy is opening a regional office and training center in Chelsea, Massachusetts. Just Energy's investments to prepare for a Massachusetts entry were first reported in *Matters* (Only in Matters, 8/13/10).

Platinum Advertising Reports $7.8 Million Profit

Marketing agent Platinum Advertising reported it recorded profits of $7.8 million in 2009, and is projected to top $16 million in 2010.

Peoples Choice Power Receives Texas Aggregation License

The PUCT granted Peoples Choice Power, LLC an electric aggregator certificate (Only in Matters, 8/4/10).

PUCT Staff to Meet with Stakeholders on Prompt Payment Act

PUCT Staff invited stakeholders to an August 24 discussion concerning the proposal for adoption relating to the Prompt Payment Act, and REPs' obligations thereunder (Project 37981, see Matters, 8/13/10). Staff said that the discussion will focus on the possibility of inserting an effective date into the rule and other issues raised thereby.

Md. POR ... from 1

- Pepco agrees to not accrue or incur interest charges or credits for POR related balances until the matter is resolved by the Commission
- The proposed tariffs are accepted for filing without setting any calculation, component or method for future discount rates

Similar to its objections at the other utilities, recounted more fully below, Staff raised concerns with Pepco's inclusion in the tariff of language providing how the discount rate is to be calculated (instead of just listing the discount rates themselves), and with Pepco's language that provides for reconciliations to accrue interest at Pepco's distribution rate of return.

Furthermore, Pepco's tariff contains language that permits Pepco to impose a charge on suppliers to recover costs not recovered by the discount rate mechanism. As written, Staff noted that it could be inferred that Pepco could impose such a charge without filing a tariff and receiving approval of the rate by the Commission. "If the Commission were to accept a tariff provision, it should be worded to notify suppliers that the Company may file for recovery of costs associated with POR not recovered through the discount rate revenue," Staff said.

Coordination Tariff Working Group

The Maryland PSC, in letter orders issued Friday, directed Baltimore Gas & Electric (for both commodities), Allegheny Power, and Delmarva Power & Light to, "meet or confer in a workgroup to discuss *all* elements of the supplier coordination tariffs" [emphasis supplied].

The Commission's directive, articulated at its July 14 administrative meeting, was first reported by *Matters* (Only in Matters, 7/15/10).

The working group is to address a host of issues raised by Staff regarding the utilities' compliance filings that the Commission deferred for the purpose of allowing the tariff sheets to take effect in July so POR could begin.

Among other issues raised by Staff is the effective date for new POR discount rates (with Staff observing that a June 1 start may be appropriate to coincide with new SOS pricing), and how far prior to the effective date should the utilities file their proposed POR discount rate updates, to allow for adequate review.

Staff also suggested during the July 14 administrative meeting that, if the POR reconciliation balance becomes significantly large, it may be appropriate to adjust the POR rate prior to the annual adjustment to avoid a large reconciliation.

Staff has sought to strike all language relating to the calculation of the discount rate from the tariff, such that the tariff would only list the discount rate itself, and would not prescribe how the rate is set.

Additionally, Staff has objected to BGE's current language describing the POR reconciliation component since the filed tariff sets an interest rate for such reconciliation amounts equal to the company's rate of return from its most recent authorized base rate case. Staff does not believe that the appropriate level of interest has yet been addressed by the Commission.

The letter orders issued Friday formally accepted the most recent compliance filings made by each utility for their electric (and for BGE, electric and gas) POR programs, which conformed to the Commission's directives at its July 14 administrative meeting (described in our July 15 story).