Energy Choice Matters
September 27, 2010

Md. PSC Staff Puts Suppliers "On Notice" That Contractors May Need License in Future

Maryland electric and natural gas suppliers and brokers utilizing network or direct marketing, "should be put on notice," that a future ruling may require that each member of the supplier's or broker's sales force may need to obtain Maryland PSC approval to operate as a broker in Maryland, PSC Staff said in comments recommending approval of the gas and electric broker applications of Utility Choice International, LLC.

Utility Choice International, which is seeking to broker all customer classes in all service areas for both commodities, utilizes a network marketing approach to brokering, with a sales force of independent contractors (Only in Matters, 8/10/10).

Staff questioned whether Utility Choice International's independent representatives are required to obtain individual broker licenses pursuant to Public Utilities Companies Articles § 1-101(c), which defines a broker as, "an entity or individual that acts as an agent or intermediary in the sale and purchase of electricity or gas but does not take title to electricity or gas."

"Depending on the interpretation of this statute, the sales force (or 'Representative') of a network marketing company could qualify as a broker," Staff noted in its recommendation to the Commission. Staff invited Utility Choice International to provide its own legal analysis of the issue as well.

Staff has been investigating suppliers' use of all types of agents and whether such agents should be licensed (Only in Matters, 6/29/10). A series of interrogatories from Staff to suppliers was prompted by the Commission's concern that the use of affinity partnerships in energy marketing

Continued P. 5

PECO Says Rate Ready Billing Not Needed for Robust Retail Electric Market

"[T]he need for Rate Ready billing platforms is not an absolute requirement for EGSs [electric generation suppliers] for participating in, and developing, a robust retail choice market," PECO said in comments on a rate ready working group report and the Pennsylvania PUC Staff's recommendations on the report (M-2009-2104271, Only in Matters, 7/26/10).

PECO is the only electric distribution company (EDC) in Pennsylvania not offering rate ready billing. Staff did not recommend requiring PECO to implement rate ready billing.

PECO cited the results of a survey of competitive suppliers included in the working group report that indicated that almost half of those suppliers responding did not contemplate the use of rate ready billing in every utility territory, and that over 88% of the responding suppliers agreed that their business plan would not be "greatly" affected by the lack of a rate ready platform in their service territories.

FirstEnergy Solutions, however, said that PECO is, "speculating and should not make such unsubstantiated correlations," in interpreting the survey results.

Furthermore, PECO said that, "it does not appear that there would be a financial benefit to customers if it were to implement Rate Ready billing."

Continued P. 5

Briefly:

Reliant Energy Files to Offer Prepaid Product Using Customer Prepayment Device Or System

Reliant Energy submitted a notice of intent with the PUCT to offer retail electric service using a customer prepayment device or system. Reliant's Electricity Facts Label and terms of service for the prepaid product was filed under confidential seal.

PUCT Seeks to Revoke REP Certificate of Pulse Electric; Five Other REPs

PUCT Staff have filed a petition (38721) to revoke the REP certificate of Pulse Electric, Inc., as Staff alleged that Pulse Electric is not in compliance with the financial requirements of Subst. R. 25.107(f) and the technical and managerial requirements of Subst. R. 25.107(g)(1)(E). Though Pulse Electric, which shares principals with Clearview Electric, did submit a compliance filing regarding new Subst. R. 25.107, the filing did not specifically address the requirement to have at least one principal or permanent employee who has five years of experience in energy commodity risk management of a substantial energy portfolio per Subst. R. 25.107(g)(1)(E).

Separately, Staff also filed separate petitions to revoke the REP certificates of the following five providers which apparently never became active, for, among other reasons, allegedly not complying with Subst. R. 25.107(f) and failing to serve customers within 24 months of certification: Rio Grande Power, LLC (38718); Linde Energy Services, Inc. (38719); NV Power, LP (38720); M3, LP (38722); and PRElectric Energy Services, Inc. (38724).

Perimeter Energy Receives Ohio Gas Supplier License

The Public Utilities Commission of Ohio granted Perimeter Energy, LLC a natural gas supplier license to serve all customer classes at Dominion East Ohio and Columbia Gas of Ohio. As only reported in *Matters* (8/6/10), Perimeter Energy is a start-up resourced by the management of Delta Energy Resources and will mainly focus on winning load in each LDC's Standard Service Offer or Standard Choice Offer auctions. In its original application, Perimeter had said that should it fail to be successful in the auctions, it did not anticipate having business or financial activities; however, additional materials submitted to PUCO suggest that Perimeter will seek to enroll non-auction customers as well, particularly on the non-residential side.

NetGain Energy Advisors Receives D.C. Gas, Electric Broker Licenses

The District of Columbia PSC granted NetGain Energy Advisors (organized as NRGing, LLC) both electric and natural gas broker licenses to serve non-residential customers (Only in Matters, 8/31/10).

Ness Energy Services Receives Conn. Aggregator License

The Connecticut DPUC granted Ness Energy Services, LLC an electric aggregator certificate to serve residential, commercial, industrial, municipal, and governmental customers (Only in Matters, 7/13/10).

Utility Management Corporation Receives Ohio Gas Broker License

The Public Utilities Commission of Ohio granted Utility Management Corporation a natural gas broker license to serve all sizes of non-residential customers in all service areas (Only in Matters, 8/4/10).

GTC Energy Seeks to Relinquish REP Certificate

GTC Energy, Inc. filed at the PUCT to voluntarily relinquish its REP certificate, stating that it is not operational and has never served customers. Staff had previously moved to revoke GTC Energy's certificate (Only in Matters, 9/16/10).

MC Squared Energy Services Seeks Single Billing Authority in Illinois

MC Squared Energy Services, LLC has applied for single-bill option authority under 83 Ill. Adm. Code 451.500. A copy of MC Squared Energy Services' filing was not immediately available.

Hudson Energy Services Pennsylvania Electric Application is Only for Brokering

Hudson Energy Services, LLC does not intend to take title to electricity as a Pennsylvania electric generation supplier, and updated its application to strike aggregator from its list of proposed operations (Only in Matters, 8/6/10). Hudson Energy said that it intends to operate strictly as a broker. Affiliates Just Energy and Commerce Energy are each already licensed as electric load serving entities in Pennsylvania.

ERCOT Schedules REP Nodal Workshop

ERCOT has scheduled a one-day workshop on topics of special interest to Load Serving Entities and Retail Electric Providers regarding their preparation for the transition to the Texas Nodal Market. The workshop will be held in Austin at the ERCOT Met Center on Wednesday, October 6, 2010, and will consist of panel discussions on selected nodal market topics related to the changes that the implementation of the nodal market will introduce to the business environment of REPs in the ERCOT market. Registration is required and may be done via email with instructions here. The workshop will also be available via WebEx for those unable to attend in person.

PUCT Approves Reduced Discretionary Charges at Oncor

The PUCT approved Oncor's annual update to its discretionary service charges to reflect reduced costs associated with advanced meter deployment (38491). The approval reduces the rate for several charges including SD1 Standard Move-In; SD5 Disconnect For Non-Pay; SD6 Reconnect After DNP; SD8 Re-Reads; SD9 Out-of-cycle Meter Read for the Purpose of a Switch; and several others. The new charges can be found in Docket 38491. The new charges take effect 10 days after the entry of the Commission's order signed on September 24.

PUCT Staff Recommends Approval of Sharyland Rate, Tariff Filings

PUCT Staff recommended that the Commission approve Sharyland Utilities' application (38520) to increase unbundled rates for residential and secondary service in accordance with the Orders in Docket Nos. 32409 and 35542. Consistent with the prior orders, Sharyland is seeking to increase its unbundled rates to a level not to exceed AEP Texas Central Company's comparable average unbundled rates (Only in Matters, 8/4/10). Separately, in Docket No. 38442, PUCT Staff have recommended approval of Sharyland's application, and stipulation with several parties, to introduce a Primary Service delivery tariff and a Transmission Service delivery tariff. Sharyland has not offered tariffed service at either voltage previously as it has not had any customers seeking to take such service.

Energy Plus Holdings' Richard Vague named to DOE Electricity Advisory Committee

The U.S. Department of Energy has announced the 2010/2011 membership of the re-established Electricity Advisory Committee, which includes Energy Plus Holdings LLC's Chairman and Chief Executive Officer Richard Vague as the only member solely representing a competitive retail supplier. The Electricity Advisory Committee is to provide advice to DOE in carrying out its mission to modernize the nation's electricity infrastructure, including regarding smart grid deployments and renewables integration. Other notables among the 27 committee members are PUCT Chairman Barry Smitherman, New York Public Service Commissioner Robert Curry, and Pennsylvania Consumer Advocate Irwin Popowsky.

OCC Seeks Rehearing of FirstEnergy ESP Order

The Ohio Consumers' Counsel petitioned for rehearing of the Public Utilities Commission of Ohio's approval of the FirstEnergy utilities' electric security plan (10-388-EL-SSO, Matters, 8/26/10). Aside from alleging several procedural improprieties, none of which are new allegations, OCC argued that PUCO erred in finding that the electric security plan was more favorable in the aggregate than an alternative market rate offer. OCC reiterated its analysis which found an additional $183 million present value cost under the electric security plan as compared to the expected results from the market rate offer.

NYISO Asks for More Time on Locational ICAP Filing

The New York ISO asked FERC for an extension, until April 4, 2011, to make a compliance filing regarding the criteria governing potential new locational ICAP capacity zones and addressing the implications and effects of a new capacity zone or zones on the tariff provisions and market rules governing Capacity Resource Interconnection Service (ER04-449)

Calif. PUC Draft Would Deny CSU Petition to Modify Direct Access Phase-In Process

A proposed California PUC decision would deny the California State University's petition to modify the PUC's decision governing the limited re-opening of direct access (D.10-03-022), as CSU had sought a finding that pre-SB 695 grandfathered customers retained the right to take direct access (DA) at any time so long as room exists under the SB 695 cap (R.07-05-025, Only in Matters, 7/21/10).

Although California State University (CSU) recognized that D.10-03-022 did not create any set-aside under the new direct access load caps for existing, grandfathered direct access customers, CSU argued that D.10-03-022 also provided that, "[a]ll DA-eligible customers will be free to switch to DA at any time, subject to the applicable switching rules, as long as room exists under the overall cap." CSU claimed that the reference to DA-eligible customers meant the customers who were eligible for direct access prior to SB 695, and thus D.10-03-022 affirmed that they could still take service under the prior switching rules (e.g. a six month notice of intent submitted at any time, not during a specific enrollment period).

CSU had attempted to file a six-month notice to migrate to direct access, outside of the new notice of intent windows established in D.10-03-022, under this interpretation. Southern California Edison denied the request.

The proposed order would affirm SCE's action, finding that in D.10-03-022, the Commission expressly defined the term "DA eligible customers" to mean all customers eligible to switch to direct access service under SB 695. Accordingly, D.10-03-022 clarified that all non-residential customers in the utilities' service areas are eligible to switch to direct access service under SB 695.

"D.10-03-022 is clear that there is no preference under the switching rules for any customers eligible for DA service under SB 695, including customers previously eligible under AB 1X," the draft order affirms.

Thus, under the proposed order, the reference in D.10-03-022 that "[a]ll DA-eligible customers will be free to switch to DA at any time, subject to the applicable switching rules, as long as room exists under the overall cap," means all customers eligible for DA service under SB 695, and therefore the switching rules mean the new, capped open enrollment window and notice of intent periods established by the PUC, and not the former switching rules applicable to grandfathered DA-eligible customers.

"Providing CSU with a preference to switch to DA service in 2010 would be inappropriate, discriminatory and inconsistent with SB 695," the draft order finds.

PUCO Staff Files All-Electric Options, Some Continue SSO-Only Rate Credit

Staff of the Public Utilities Commission of Ohio filed a report with potential options for a long-term solution regarding the status of rate discounts to all-electric customers at the FirstEnergy Ohio utilities (Matters, 3/4/10).

Staff does not recommend or rank the various solutions, which address issues such as what form the discounts should take and the future design of distribution rates, as well as which all-electric customers should receive discounts (based on whether the customer uses electric heat, or whether it is a successor account, etc).

Several options would continue the current Residential Non Standard Credit Provision in the Economic Development Rider which provides a credit only to those residential customers taking supply from the FirstEnergy utilities. The Residential Non Standard Credit is not applied to residential customers taking competitive supply.

None of the options would continue in full the current Residential Generation Credit which is applied to any eligible all-electric customers regardless of whether the customer buys supply from the utility or a competitive provider. Some of the options would continue the Residential Generation Credit at a reduced rate.

Staff believes that further review and hearings are necessary regarding the recovery of any revenue shortfall as a result of the discounts to be provided to all-electric residential customers.

Staff's filing and various options may be found in Case No. 10-176-EL-ATA

Md. Agents ... *from 1*

constituted a gray area (Only in Matters, 6/3/10).

Utility Choice International said that because its independent representatives, "are acting on behalf of and in furtherance of the business of UCI, they are not 'brokers' according to the definition found in COMAR 20.51.01.02(B)(5) or 20.54.01.02(B)(5)."

Utility Choice International noted that the COMAR provisions define a broker as an "agent or intermediary," and argued that as its representatives act on behalf of and in furtherance of Utility Choice International's business, they are not individuals or agents that act as an intermediary. "That role [the intermediary] is exercised by UCI," Utility Choice International said.

Utility Choice International's independent representatives are no closer to being brokers than are the employees of licensed electric or gas suppliers, Utility Choice International said.

Utility Choice International noted that, although other suppliers licensed by the Commission use either networking marketing or direct marketing relying on independent contractors, the Commission has not raised the issue prior to the application of Utility Choice International. Utility Choice International noted that the Commission recently granted licenses to Ambit Energy, Viridian Energy, and North American Power and Gas, which use independent contractors for either network or direct marketing. Additionally, in 2001, the PSC licensed ACN Energy, which had used the independent representative model to market to customers.

Despite raising the question, Staff ultimately recommended approval of the Utility Choice International applications, noting that the Commission has not previously ruled on the issue of independent contractors.

"From a public policy standpoint, treating the Representatives as brokers may not be in the public interest. Requiring the Representatives to obtain a separate broker's license may create a prohibitive barrier, as many of these Representatives may be unable to meet the Commission's technical and financial requirements for operating as a broker," Staff said.

"To date, the Commission has not ruled on whether or not such a sales force meets the statutory definition of broker. UCI should be put on notice that a future ruling may require that each member of their sales force may need to obtain Commission approval to operate as a broker in Maryland," Staff recommended.

Pa. Rate Ready ... *from 1*

Although no consensus cost-benefit study has been performed, PECO conducted an internal cost-benefit analysis of implementing rate ready billing in its service area. PECO said that, based on the estimated $3.3 million information technology investment needed to implement rate ready billing, customers would incur an annual carrying charge of $957,000. PECO estimated the annual benefit from rate ready billing (mainly from backoffice savings shared with customers by retail suppliers) as only $410,000.

PECO also said that requiring it to implement a new rate ready platform would interfere with its simultaneous efforts to ramp up its existing systems to manage the expected greater demand on its billing system from suppliers as rate caps expire at the end of 2010.

Staff also did not recommend total uniformity across all the existing rate ready platforms, due to cost concerns, though Staff did recommend several areas where uniformity is desirable as implementation would not result in great costs.

However, one area where Staff did not recommend uniformity is in the offering of a percent-off-the-Price-to-Compare option under rate ready billing. Currently, Duquesne Light and West Penn Power do not offer this product type under rate ready billing. Staff noted that the product simply automates a discount calculation that the electric supplier could perform itself to develop a standard rate code, which could then be sent to the utility. "Staff feels that [the] significant cost to change the system may be an unnecessary subsidization by the EDC of a potentially simple internal EGS procedure," Staff said of the special percent-off rate code.

West Penn Power agreed with Staff's reasoning, stating that more complex products such as a percent-off-default-service-rate should be handled under bill ready billing.

FirstEnergy Solutions disagreed with Staff's recommendation, arguing that a percent-off-default-service rate option, "provides an incentive to Pennsylvania customers to participate in electric choice and promotes the spirit of Act 129." FirstEnergy Solutions' retail pricing, particularly for its Ohio government aggregations, is typically a percent off of default service, rather than a fixed rate.

"FES believes such an option is so integral to promoting electric choice in Pennsylvania that its exclusion from rate codes will stifle customer incentives to shop. The 'percent off' option appeals to customers because inherent saving is built into the concept: even as market rates fluctuate, customers will always enjoy some level of saving," FirstEnergy Solutions said.

FirstEnergy Solutions further said that the lack of uniformity across all existing rate ready platforms, "hinders FES operations by confusing customers and making it more difficult to comply with the spirit of electric choice in Pennsylvania."

"In fact, if systems differ to such an extent that EGSs would be required to invest in system upgrades to enter a particular territory, they may determine that it is not cost effective to do so," FirstEnergy Solutions said.

The Office of Consumer Advocate countered that expenditures should not be undertaken to make rate ready billing uniform in light of the fact that bill ready billing is seen as, "the most commonly desired end-state."

One change recommended by Staff is directing Met-Ed, Penelec, and Penn Power to institute a 14-day turnaround time for certain new rate codes, as opposed to the current timeline of 30 days for 15 or fewer new rate codes, and 90 days for 16 or more new rate codes.

Specifically, the three FirstEnergy distribution companies would institute "Standard Rates" to facilitate a 14-day turnaround process by January 1, 2011. The Standard Rates, including fixed cents per kWh rates, would be created starting from $0.0500 through $0.1199 per kWh in $.0001 increments, and up to four decimal place precision. Additionally, a standard "percent off" rate would be created from 1% through 50% off the Price To Compare in one-half percent increments. Any rate submitted by a supplier conforming to any of these Standard Rates would be implemented within 14 days. Other new rate codes would be implemented within 90 days.

The FirstEnergy utilities are willing to implement this Standard Rate workaround to accelerate the programming of new rate codes if directed to do so by the Commission, and if the Commission assures cost recovery.

OCA said that before the FirstEnergy utilities are directed to implement the 14-day turnaround solution, the costs should be developed to determine if the solution is beneficial to customers. Several industrial organizations also reiterated their concerns about costs for any changes recommended by Staff.