Energy Choice Matters

November 18, 2009

Md. Staff Asks for Clarification on POR Discount Related to Supplier-Customer Relationship

Negotiations among Maryland stakeholders regarding electric Purchase of Receivables discount rates may be simplified if the PSC provides guidance on what is included in one of the three discount rate components approved by the Commission -- namely, the continuation of the supplier-customer relationship, PSC Staff said in comments on Delmarva's POR compliance filing (Only in Matters, 11/10/09). Due to the need for clarity, as well as further workpapers Staff requested from Delmarva, Staff suggested delaying action on Delmarva's compliance plan by 30 days.

As only reported in *Matters*, Delmarva proposed a discount rate for the combined residential and streetlighting class of 1.71%, reflecting uncollectibles of 1.06%, incremental costs of 0.43%, and a risk factor of 0.22% to account for the risk associated with the continuation of the supplier-customer relationship. For Schedules SGS, TN and ORL, the discount would be 0.98%, and for Schedules LGS-S, GS-P and GST, the discount would be 0.75%. The only difference among the three rates is the uncollectibles percentage; the two other discount components are constant among classes.

Staff said that, "[t]here may be more than one way to determine the 'continuation of the supplier-customer relationship' risk." Delmarva reached its 0.22% risk factor by simply taking 50% of the administrative discount rate, with Delmarva explaining that the risk included in the 0.22% is the risk that suppliers may elect dual billing to avoid POR implementation costs.

"This approach is not discussed in the [PSC's compliance] Order, and it may simplify negotiation

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PUCT Staff: Mere Reference to REP Website in TOS Does Not Incorporate Website into Contract

References in a customer contract to a REP's website for the purposes of providing the customer with contact information and information on billing/complaint assistance does not make the entirety of the website part of the contract, PUCT Staff said in a statement of position regarding a complaint filed against Gexa Energy.

Three customers on variable rate plans filed a formal complaint against Gexa essentially arguing that under their contracts, their rates should have fallen with wholesale market prices. Aside from the contractual dispute between the parties, the complaint does raise issues of broader applicability, because among the allegations made by the complainants is that the Gexa contract, "expressly directed the parties to Gexa's entire website as a source of information relevant to the terms of the Contract, and thereby expressly incorporated the relevant representations made on that website."

The complainants alleged that, "Gexa expressly and publicly represented on its website, the contents of which are incorporated by reference into the Contract, that under a variable rate plan, 'rates can go up or down, depending on changes in the wholesale electricity market, [for while] consumers will benefit when market prices fall...they also will pay more if prices spike." By arguing that the statements on Gexa's website became a contractual commitment to lower each customer's variable rate in response to market prices, the customers filed the complaint because they alleged their variable rates did not drop contemporaneously with market prices.

However, in a statement of position, Staff disagreed with the complainants' assertion that

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NationsGas Purchases TCS Energy, Names Steven Boss Manager of Operations

Through a purchase and sale agreement, NationsGas Partners has acquired 100% of the membership interests in Telecom Consulting and Services, LLC (TCS Energy), a Texas REP which was certified earlier this year (Only Matters, 1/23/09).

Robert Miller is the sole managing member NationsGas Partners, LLC, which is an oil and gas company that holds significant mineral interests across the United States.

Former Commerce Energy CEO Steven Boss has been named Manager of Development & Operations at TCS Energy. Boss has 30 years of experience in competitive natural gas markets and 11 years in deregulated electric markets, as a former principal at Energy Buyers Network, Natural Gas Transmission Services, and Sunrise Energy Services.

Steve Malkiewicz, founder of consultant St. Clair Energy Associates, will continue to serve as a risk management consultant for TCS Energy.

TCS Energy will use EC Infosystems for EDI services, and Competitive Assets for regulatory services.

TCS Energy is not currently serving customers.

RESA Raises Concerns on Rushed Review of BGS Retail Margin

The Retail Energy Supply Association raised "serious concerns" with the New Jersey BPU's decision to expeditiously consider reducing or eliminating the retail margin included in the Basic Generation Service price for customers over 750 kW, regardless of whether the customers are on fixed or hourly pricing.

As only reported in *Matters*, the BPU on November 12 requested comments on potential elimination of the retail margin, with comments due November 20 (Only in Matters, 11/13/09).

"Any decision to alter or remove the Retail Margin would immediately and negatively impact the business of every TPS [third party supplier] within the state, and therefore deserves more time for focused and specific comments than the eight (8) day window afforded by the Secretary's Letter," RESA said.

Though RESA reserved its substantive arguments for a response to be filed November 20, RESA did state that, "[t]he Board's actions to potentially eliminate or reduce the Retail Margin would have a deleterious impact on customer choice and TPSs' ability to compete on a level playing field with the state's electric utilities."

The retail margin is designed to reflect administrative and similar non-supply costs of serving customers at retail (e.g. marketing, call center, backoffice/EDI, risk and portfolio management, working capital, etc.).

Procedurally, RESA noted that no party offered testimony on reducing or eliminating the retail margin in this year's BGS proceeding. The issue was raised briefly by the distribution companies in their annual BGS filings, and cited again in final comments by the distribution companies and by the New Jersey Business & Industry Association (NJBIA).

Furthermore, RESA noted that in testimony NJBIA argued that the retail margin should remain the same. NJBIA later stated in final comments that the retail margin should only be looked at if the Board lowers the hourly pricing threshold, which the Board elected not to do (see below).

RESA also noted that the retail margin revenues are used to fund various combined heat and power and energy efficiency measures for businesses, thereby providing economic development. "[T]his powerful economic development tool could be eliminated without any assessment of the impact on New Jersey business and industry or energy consumers," RESA said.

RESA asked for additional time for initial and final comments, discovery, and hearings to be held on the retail margin.

Other BGS Issues

While setting the question of the retail margin for further comments, the BPU recently addressed other proposed changes to the BGS process.

Among the proposals denied by the BPU was RESA's recommendation to lower the threshold for hourly pricing (the Commercial and Industrial Energy Pricing/CIEP class) to 750 kW from the current 1,000 kW.

Commissioner Joseph Fiordaliso favored lowering the threshold, but other commissioners agreed with Staff's rationale that since the mid-merit market is seeing a large increase in migration currently (due to the spread between market prices and the blended BGS fixed rates), the lower threshold is not needed to incent migration. The BPU did, however, order utilities to expand to 500 kW (from 750 kW) the customers to which the utilities send a letter regarding choice.

The BPU will also convene a working group on the use of peak pricing and/or tariff design options for customers above 500 kW that would incent customers to reduce peak usage.

BPU President Jeanne Fox directed Staff to prepare for the Board's December 1 meeting a proposal for the Board to hold either hearings or a technical conference on how to increase capacity in New Jersey. Fox called for the hearings in response to a proposal from LS Power made in the BGS proceeding, as LS Power asked the BPU to establish a third BGS competitive process which would utilize long-term contracts of 15 years to solicit new in-state generation of 100 MW or larger. LS Power asked for a process to be in place next year for delivery commencing June 1, 2013.

Commissioner Nicholas Asselta said that, "promoting in-state generation is something that this Board should be very active in, in light of PJM not ... holding their end of the bargain.

Fox agreed that, "PJM has not been doing what we think they should under the Reliability Pricing Model and we're not getting new generation here. They're not taking action so this is a step that New Jersey can possibly take to get more capacity built in the state," which Fox said would reduce capacity prices.

Staff informed the Board that it is continuing to work on developing the previously reported web portal where customers could be linked up with third-party suppliers and receive energy offers.

Ameren Says Module E Load Forecasting Assessment Must Consider Retail Choice

The Midwest ISO should perform the after-the-fact assessment of each load serving entity's forecasted Demand under the Module E resource adequacy mechanism based on the LSE's load at the time of the Local Balancing Authority Area coincident peak, as opposed to the current practice of performing the assessment based on the peak load at individual CP Nodes, the Ameren Companies said in comments at FERC (ER10-86).

Ameren said that its proposed change, "is especially important in retail choice states where the load that historically was served by the incumbent utility now is broken into many smaller loads served by that utility along with multiple alternative retail electric suppliers, with each of these suppliers having their own CP Nodes."

"In the retail choice situation it is likely in any given month that the sum of the individual peaks of the multiple CP Nodes will be larger than the coincident peak of the combined CP Nodes. As a result, the combined load of the incumbent utility will be required to purchase a larger quantity of PRCs [Planning Resource Credits] simply because load is being served by multiple LSEs rather than a single LSE," Ameren said.

Ameren also raised concerns regarding MISO's clarification that, for forecasted Demand, each LSE is responsible for calculating and reporting all losses, distribution as well as transmission, in their forecasts that are used in the Loss of Load Expectation calculations. Although LSEs have historically provided net Demand information to the Midwest ISO, Ameren noted vertically integrated LSEs may more easily and readily provide distribution loss data. "[T]his may not be the case for disaggregated LSEs serving load in retail choice states," Ameren said.

"Ameren Services understands the Midwest ISO's need for distribution loss data, but believes that the Midwest ISO needs to provide clarification and guidance as to how a marketer acting as an LSE in a retail choice state, or any non-integrated LSE, should obtain such data. Further, the guidance and clarification the

Midwest ISO provides as to the calculation and reporting of distribution losses must be consistent across all LSEs," Ameren said.

Ameren's comments came in response to a MISO proposal for various refinements to Module E (Only in Matters, 10/22/09).

Draft Calif. PUC Resolution Finds No Substantial Impact from Exit of SSJID Load from PG&E

The South San Joaquin Irrigation District's (SSJID) proposal to provide retail electric service to existing Pacific Gas & Electric customers could raise rates for PG&E's remaining customers, but would not substantially impair PG&E's ability to provide adequate service at reasonable rates within the remainder of its service territory, a draft California PUC resolution would find.

SSJID submitted an application to the San Joaquin Local Agency Formation Commission (LAFCo) proposing to provide retail electric service to approximately 38,000 existing PG&E customers. The PUC is required to report on the impacts of the proposal.

Although some customers in SSJID's proposed service area would be exempt from payment of certain non-bypassable charges which would require remaining PG&E customers to cover those costs, the magnitude of the estimated increase to remaining ratepayers is small relative to PG&E's current system average rates, the draft finds.

SSJID intends to purchase PG&E's existing distribution assets and build related infrastructure to physically separate the assets from PG&E's system. SSJID's severance proposal could potentially idle existing PG&E distribution and transmission facilities requiring PG&E customers to cover the costs, but the amount of any such impact depends on SSJID's precise plans which are unknown at this time.

While PG&E's remaining ratepayers could be affected by lost transmission and distribution revenue that PG&E would have collected from customers in the proposed SSJID service area, PG&E would also avoid some transmission and distribution costs under SSJID's municipalization of the load.

Relying on PG&E's estimates, the total overall rate impact of SSJID's proposed service on PG&E's remaining ratepayers is an increase of $0.00040 per kilowatt-hour, which is approximately ¼ of a percent of PG&E's current system average rate, the draft finds. As such, the draft concludes that SSJID's proposal does not substantially impair PG&E's ability to provide adequate service at reasonable rates.

Briefly:

STEP Resources Consulting Seeks Ohio Electric License

STEP Resources Consulting applied for an Ohio electric broker-aggregator license to serve commercial, mercantile and industrial customers in all service territories. STEP Resources Consulting was formed in 2006 to offer demand-side management products, but has decided to expand into the supply procurement market. STEP founder Gregory Elam was co-founder and CEO of broker/consultant American Energy.

Reflective Energy Solutions Receives Ohio Electric License

The Public Utilities Commission of Ohio granted start-up Reflective Energy Solutions an electric broker-aggregator license to serve commercial, mercantile and industrial customers in all service areas (Only in Matters, 10/15/09). Reflective Energy Solutions was granted a gas broker license earlier this week.

GreenPlus Points Seeks Ontario Electric License

GreenPlus Points Inc. has applied to the Ontario Energy Board for an electricity retailer licence.

Reliant Energy to Install 10 Electric Vehicle Charging Stations in Houston

Part of its ongoing electric vehicle strategy, Reliant Energy and the City of Houston announced an agreement under which Reliant will install 10 vehicle charging stations in the city, seven of which will be public. Reliant will also convert 10 city fleet gasoline-electric hybrids to plug-in electric vehicles. Aside from electricity sales, Reliant President Jason Few said that the pilot will allow Reliant to learn more about the performance of electric vehicles and the needs of drivers. "The more we know about consumer habits, the better we can provide the infrastructure and the products and services to meet the needs of electric vehicle owners and drivers in Texas," said Few.

Champion Energy Services Signs Michaels Craft Stores

Champion Energy Services said it has signed Michaels Stores, Inc. to a 36-month contract beginning July 2010 to supply 53 Michaels Stores in Texas. The supply in includes 10% renewable energy.

Additional Brokers File for Illinois Licenses

The following brokers have applied for an Illinois electric ABC license:

- Energy Cost Certainty LLC (a service of LPB Energy Management)
- MRDB Holdings LP (d/b/a LPB Energy Management)
- South Shore Trading and Distributors, Inc
- Vander Ark & Associates

Constellation NewEnergy Seeks Pa. Conservation Service Provider License

Constellation NewEnergy applied for a Pennsylvania conservation service provider license.

PUCT Grants Withdrawal of Unused NRG REP Certificate

The PUCT granted the request of NRG Texas Retail, LLC to withdraw it unused Option 2 REP certificate (Only in Matters, 10/26/09).

Utility Rate Reduction Center Seeks to Withdraw Texas Aggregation License

Utility Rate Reduction Center LLC filed to withdraw its aggregation certificate at the PUCT, stating it has never aggregated Texas customers.

SPP, E.ON Submit Formal Notice of Termination of ITO Agreement

The Southwest Power Pool and E.ON formally submitted a notice to FERC of the termination of their Independent Transmission Operator agreement effective at the end of the initial term on September 1, 2010. SPP informed E.ON several months ago that it would not seek to extend the agreement beyond the current term. SPP has operated as E.ON's Independent Transmission Operator for Louisville Gas & Electric and Kentucky Utilities since E.ON left the Midwest ISO. E.ON told FERC that it is currently considering successor arrangements.

Md. POR ... *from 1*

among parties if the Commission would provide guidance on the reasons and composition of the risk as described in the Order," Staff said.

Staff further noted that the Commission ordered utilities to "negotiate" a discount rate for POR. However, Delmarva's compliance filing makes no mention of whether negotiations were used to arrive at its proposed discount rates. While Delmarva held a teleconference with suppliers, Staff described the call as informational, and said no negotiation of the discount rate occurred on the call. Staff asked the Commission to direct Delmarva to file a synopsis of any negotiations which occurred; or, if no negotiations have occurred, Delmarva should be ordered to, "conduct good faith negotiations with affected retail suppliers."

Delmarva's proposed risk factor of 0.22% is unsupported, Staff said, and Delmarva does not explain why 50% of the administrative cost discount is an appropriate level for this risk factor, or why the risk factor is uniform across all classes. "The Company should state what the expected rate (by class) at which customers would migrate to dual billing would be under its proposal," Staff said.

Staff also recommended that Delmarva be directed to file additional workpapers supporting its proposed uncollectible and administrative portions of the discount rate. Staff noted that Delmarva may collect late payment charges up to a maximum of 5% as permitted in COMAR, and said such revenue should be accounted for in developing the uncollectible discount rate.

Furthermore, the Commission ordered utilities to provide discount rates on a rate class basis, but Delmarva has placed classes into three groupings. "Grouping classes may create inaccuracies in the discount rate that incorrectly allocate uncollected revenue between classes," Staff said, in recommending that individual discount rates should be developed for each class.

Staff also requested that Delmarva, which would use an EDI 820 payment transaction to inform suppliers of paid receivables, be required to explain why it should unilaterally establish such an EDI standard outside of the EDI working group.

Because Delmarva proposed to implement POR on December 7, Staff does not believe there is adequate time for Delmarva to file the recommended supplemental information and for Staff to make a recommendation to the Commission. Accordingly, Staff suggested deferring a decision on the compliance filing for 30 days, with Delmarva required to supplement its filing within five business days.

Gexa ... from 1

statements made by Gexa on its website were incorporated into Gexa's contracts with the complainants.

"The references to Gexa's website in the TOS [terms of service] were solely for the purposes of providing the customer with contact, billing assistance, and complaint resolution procedure information. Simply because the contract happens to mention Gexa's website does not make the entirety of the website part of the contract," Staff said.

Staff said that it needs more time to develop an opinion regarding whether Gexa's actions adhered to reasonable industry standards, as required by the Uniform Commercial Code incorporated into the customer contracts. Staff recommended a host of other complaints raised by the customers be dismissed as unsupported or for failure to state a claim for which relief may be granted.

Gexa has said that the contracts never linked the variable rate to market prices, and said no such one-to-one relationship exists between supply procurement and retail rates, for several reasons. Gexa said that it purchases a portion of its supply for variable customers forward to dampen price increases which customers may experience, but such purchases likewise dampen any wholesale price declines. Costs for ancillaries and balancing energy in certain hours may also not reflect general market price movements, Gexa added.