

Energy Choice *Matters*

December 15, 2009

Pa. ALJ Would Deny PPL Cost Recovery for Lost Revenues from TOU Demand Shift, Reduction

PPL should not be permitted to recover any shortfall in default service revenue caused by reduced or shifted demand resulting from its optional time-of-use product, a Pennsylvania ALJ concluded in a recommended decision (R-2009-2122718).

As part of offering the time-of-use option, required by Act 129, PPL proposed to recover any resulting shortfall in generation supply revenues via the generation supply charge (GSC) reconciliation process. A mismatch of revenue and supply costs is likely as PPL procured its default service supply on a flat rate, without any carve-out to serve time-of-use customers.

Although the ALJ agreed that 66 Pa. C. S. §2807(e)(3.9) allows a "default service provider" to recover all reasonable costs it incurs, the ALJ cited 66 Pa. C.S. §2807(f)(4)(ii) as limiting the costs which an electric distribution company serving as a default service provider may recover (non-franchised entities may also act as default service providers in Pennsylvania).

Specifically, the ALJ said that 66 Pa. C.S. §2807(f)(4)(ii) prohibits electric distribution companies from recovering lost revenues due to reduced consumption. "The statute at 66 Pa. C.S. §2807(f)(4)(ii) mandates that in no event shall PPL or other EDCs that are default service providers treat lost or decreased revenues due to reduced consumption or shifting demand as a cost that they can recover," the ALJ said, dismissing PPL's argument that the statute only applies to lost distribution revenue associated with offering time-of-use generation rates.

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UI, CL&P, OCC Warn of Precedent from DPUC Cooperative Draft

A draft Connecticut DPUC decision which would allow Elm Electric Cooperative, and similar entities, to take tariffed retail service from United Illuminating will have far reaching impacts on customers' rights and protections beyond the instant petition regarding cogeneration at a mixed-use development in New Haven, United Illuminating, Connecticut Light & Power, and the Office of Consumer Counsel all said in separate exceptions to the draft (09-07-10). As only reported in *Matters*, the draft order would, among other things, remove customers' statutory right to retail choice.

The proposed decision involves a petition for a declaratory order from Elm Electric Cooperative, which was recently formed to provide electric service to its members -- the tenants of a large, mixed use residential and commercial building now under construction and located at 360 State Street in New Haven (Only in *Matters*, 12/3/09).

Elm Electric Cooperative plans to install and serve customers using cogeneration from a 400 kW fuel cell installed at the building, and is seeking status as a retail customer of UI in order to facilitate a series of transactions involving grants, net metering, and submetering to support installation of the fuel cell. The cooperative is also designed so that the development may consume the entire output from the fuel cell. Absent the cooperative (or submetering which was previously denied), the project's developer could only net the fuel cell's output against a single customer, and excess generation would flow to the grid, rather than being used internally (as required for grants).

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Choptank Seeks to Limit PJM Demand Response Participation to Customers 20 kW and Above

Choptank Electric Cooperative asked the Maryland PSC to limit the participation of its customers in PJM demand response programs to only those customers with peak loads of 20 kW or greater, which Choptank said would cover all of its customers currently participating in PJM's demand response programs.

As only reported in *Matters*, EnerNOC asked the PSC to allow all customers at utilities serving less than 4 million MWh annually to participate in PJM load response programs (Only in *Matters*, 12/7/09). Absent a PSC order approving their participation, customers at small utilities are not permitted to participate in the PJM programs, per FERC Order 719.

Choptank said that it currently has six customers participating in PJM demand response programs, all of whom have loads greater than 20 kW.

Choptank asked the Commission not to allow customers under 20 kW to participate in the PJM programs because, among other reasons, Choptank currently offers such small volume customers a direct load control tariff using air conditioning or water heater switches, which provides demand response. Allowing these customers to directly participate in PJM could result in double counting or cross-subsidization, or additional administrative expenses to prevent double counting and cross-subsidization, Choptank said. Choptank further said that these small volume customers self-read their meters, and allowing them to participate in PJM would require Choptank to expend resources to collect or report meter data to PJM.

The Southern Maryland Electric Cooperative did not oppose allowing all of its customers to participate in PJM's demand response program, but suggested that the Commission should ensure that curtailment service providers are licensed in a manner similar to electric generation suppliers, in order to protect the cooperative's customers. Additionally, SMECO noted that curtailment service providers will need certain customer information from SMECO, but no process has been developed to facilitate this transaction of information as has been done

for electric generation suppliers. SMECO said that it requires customer authorization to release any such information, and that it requires a method of cost recovery for any expenses incurred in sharing such information.

The Office of People's Counsel supported EnerNOC's request for the Commission to issue an order allowing retail customers of small utilities to participate in PJM demand response programs.

Md. Senators Urge PSC to Review Petition for Investigation of BGE Affiliate Relations

Maryland Senator Thomas "Mac" Middleton, Chairman of the Senate Finance Committee, urged the Maryland PSC to expeditiously review a petition from several energy contracting service providers to investigate various affiliate relationship issues between Baltimore Gas & Electric and BGE Home Products, a competitive energy service contractor and commodity supplier (Only in *Matters*, 10/23/09). The letter was co-signed by Sen. Kathy Klausmeier, Chair of the Rules Committee.

As only reported in *Matters*, the Maryland Alliance for Fair Competition, an association of energy contractors and service providers, filed the petition to initiate a review of BGE Home's use of the BGE name and logo, and to investigate cost allocation and any potential cross-subsidization. The alliance questioned whether a residential gas supply authorization form used by BGE Home violated COMAR 20.40.02.03A(2), because the alliance alleged that the form shows BGE promoting an affiliate.

The senators noted that, "BGE Home is aggressively marketing energy services and products and it is essential that the Commission review these issues to ensure that there is no ratepayer cross-subsidization, and that proper accounting procedures are being followed."

Given the rapidly approaching 2010 session, the lawmakers asked the Commission to expedite its review of the petition, and asked the Commission for advice on any further legislation that the Commission might recommend to ensure a proper regulatory framework for comprehensive review of affiliate issues.

In 2009, SB 955 was enacted which requires electric utilities, under certain circumstances, to include competitive solicitations for energy services provided under their EmPower Maryland programs, the senators noted.

MXenergy Formally Announces PPL Residential Market Entry

MXenergy formally confirmed its entry into the PPL residential market yesterday, though it still did not announce specific prices or plans, nor are any available on its website, though MXenergy did say it would offer six and 12 month fixed price plans as well as a variable rate in "early 2010." MXenergy's entry was first reported by *Matters* last week (Only in Matters, 12/7/09).

MXenergy called on suppliers to adopt its previously reported Customer Bill of Rights, which holds:

- You have the right to know what you are paying for your energy, before you get your bill and without hidden fees.
- You have the right to talk to a real person when you call a customer service center.
- You have the right to receive a copy of your contract in large, readable type.
- You have the right to know the phone number of your energy supplier so you can ask questions about your bill.
- You have the right to cancel your contract if you change your mind.
- You have the right not to be pressured into signing a contract.
- You have the right to take your time in making a decision to switch to a competitive supplier.
- You have the right to expect that your personal information will remain private and will not be given to third parties without your consent.

The right to a cancel a contract does not mean without penalty, after the expiration any rescission period, as several MXenergy fixed price plans include termination fees, typically \$150.

Generators Protest Potential Imposition of FCA Price Proration for Boston Capacity

The Boston Gen Companies, Mirant, and Exelon protested ISO New England's FERC filing reporting the results of the third Forward Capacity Auction because ISO-NE has suggested that Boston area resources may not be allowed to prorate their megawatts, and will instead be subject to a prorated price for their entire capacity offered.

When the Forward Capacity Auction procures capacity in excess of the Installed Capacity Requirement, the tariff provides for proration of supply offers in order to ensure that no more than the Installed Capacity Requirement is procured. In such situations, Boston Gen and Mirant said that the tariff clearly gives suppliers the option to elect to receive the Capacity Clearing Price for a reduced quantity of capacity (i.e., the same price for fewer MW) by partially de-listing one or more resources (so-called megawatt proration); or to elect instead price proration, in which suppliers receive a reduced price for the same quantity of megawatts.

"Buried" on page 165 of the 189-page ISO-NE filing describing results of the third Forward Capacity Auction, ISO-NE states that, "[i]t may not be possible to allow megawatt proration in the Boston subarea," due to reliability concerns.

Boston Gen and Mirant said that it was unclear whether and to what extent ISO-NE will attempt to impose price proration on some or all of the suppliers in the Boston subarea, as ISO-NE did with respect to Connecticut suppliers in connection with the first Forward Capacity Auction.

However, Boston Gen and Mirant said imposing price proration on suppliers would be contrary to the tariff, which gives suppliers the option of electing a proration methodology. If a supplier's megawatt proration cannot be accomplished due to reliability concerns, Boston Gen and Mirant said that nothing in the tariff allows ISO-NE to pay that supplier less than the Capacity Clearing Price for the full amount of megawatts offered into the Forward Capacity Auction. Exelon filed similar comments.

The PSEG Companies took the opportunity to again criticize the design and implementation

of the Forward Capacity Auction, arguing that the introduction of "excessive" out-of-market capacity, "has critically undermined the original objectives of the FCM - to create a sustainable locational based capacity market."

PSEG said that the introduction of resources supported by ratepayer-backed Contracts for Differences into the auction as price takers has created "artificially low" clearing prices that, "no longer have any resemblance to the true cost of new entry, and fail to provide any locational signal whatsoever." Furthermore, as the Cost of New Entry is based upon the prior year's clearing price, which PSEG says is flawed due to out-of-market supplies, "the real cost of new entry has already been lost and the mechanism for establishing CONE must be repaired," PSEG said.

In the currently flawed environment, "no investor should ever risk building additional capacity and would only risk investment with a long term contractual arrangement, which clearly defeats the Commission's intent in creating the FCM," PSEG argued.

PSEG also said that market rules have failed to produce zonal price separation.

CSPs Urge FERC to Monitor Retail Regulators' Conditions Placed on Demand Response

FERC should clarify that any restrictions placed upon end user participation in PJM's demand response markets by a retail regulator are subject to FERC review for their justness and reasonableness, a coalition of curtailment service providers said in a protest of a PJM compliance filing. The comments were filed jointly by CPower, Comverge, EnergyConnect, Energy Curtailment Specialists, EnerNOC, Viridity Energy and Wal-Mart, as the Demand Response Alliance (ER09-701).

PJM's compliance filing contains language incorporating FERC's finding in Order 719-A that retail regulators retain authority to dictate whether and how customers may participate in wholesale markets. Additionally, for utilities delivering less than 4 million MWh annually, Order 719-A holds that retail customers may not participate in wholesale markets absent an order from a retail regulator.

The Demand Response Alliance claimed it was not challenging FERC's findings in Order 719-A that retail regulators retain discretion regarding customer participation in wholesale markets. However, the alliance said that the Commission should clarify that in individual cases it will review, and if necessary correct, restrictions upon demand response eligibility imposed by retail regulators that are, "unduly discriminatory, anti-competitive or that manipulate market outcomes and prices to benefit incumbent generation or particular LSE revenues at the expense of other wholesale or retail customers."

Order 719-A, "should not be interpreted as an invitation to market manipulation, strategic bidding and withholding and anti-competitive interference with interstate commerce that serves no legitimate state purpose," the alliance said, arguing that FERC's deference to retail regulators does not empower such regulators to favor an incumbent, in-state LSE in violation of the Commerce Clause.

"Generation providers are not enamored with new technologies that permit aggregation and direct competition of [Demand Response] services with traditional generation," the alliance asserted. "Restrictions upon trade in [Demand Response] enacted to boost the profitability of incumbent LSE owned and controlled generation at the expense of wholesale (and ultimately retail) ratepayers is unlawful under the Federal Power Act," the alliance contended.

The alliance posited a scenario in which a retail regulator grants the host utility the exclusive ability to sponsor retail customer participation in wholesale market demand response and energy efficiency programs.

"Consider further that common situation in which the host utility owns generation resources either directly or through an affiliate. [Under the PJM Reliability Pricing Model] the host utility would not be subject to ... 'must offer' requirements for the demand response and energy efficiency over which it has exclusive control. However, the utility or its affiliate would have 'must offer' obligations under the PJM tariff for its existing generating capacity resources. The host utility has the incentive to strategically withhold demand response and energy efficiency resources from the base residual

auction market that would have the potential to dampen the resulting capacity clearing price. The utility can then offer the demand response and energy efficiency resources in a subsequent incremental auction where the demand response and energy efficiency resources will not be competing against its own generation capacity or that of its affiliate," the alliance claimed.

Briefly:

Anthracite Power & Light Selects PPL Solutions for Web Enrollment

Anthracite Power and Light has selected backoffice vendor PPL Solutions to provide a web-based customer acquisition system and enrollment tool for its Pennsylvania electric marketing. PPL Solutions' Customer Acquisition System is a secure web-based application that, among other things, allows for the input of prospect or customer lists; supports multiple marketing channels (direct sales, telemarketing, direct mail, e-mail campaigns and broker sales); and can be used by third-party call centers or brokers.

Sprague Energy Selects SolArc for Retail Gas Management

Sprague Energy has selected SolArc's Solution for Natural Gas commodity management software for its retail natural gas business, including for deal capture, nominations, scheduling/logistics, billing, and risk management. Sprague has used SolArc for its oil trading and marketing operations for five years.

Perry Appoints Sanders Givens as Public Utility Counsel

Texas Gov. Rick Perry appointed Sheri Sanders Givens to the Office of Public Utility Counsel, effective Dec. 21, 2009, for a term expiring Feb. 1, 2011. Givens is an assistant public counsel to the Office of Public Utility Counsel and former assistant general counsel for the Texas Workforce Commission. Don Ballard had resigned from OPUC in November to take a regional vice president position with Arbor Education and Training.

Dynegy Reduces Debt

Dynegy will repurchase from an unnamed fixed-income investor 83% of its senior unsecured notes due in 2011 and 2012 for \$830 million, with total consideration to complete the transaction, inclusive of consent fees, reaching approximately \$875 million.

PPL ... from 1

Under the recommended decision, PPL would only be allowed to recover costs of the time-of-use program that are not the result of lost or decreased revenue, such as implementation costs. The ALJ agreed that for such approved costs, recovery through the GSC reconciliation process is appropriate.

The recommended decision would approve all other aspects of PPL's proposed time-of-use design, including the proposed rates and peak periods (see chart next page).

PPL had said that it anticipates that it will have approximately 16,000 participants in the time-of-use program by the end of December 2010. PPL had said that it intends to spend approximately \$4.0 million dollars to market the time-of-use program through conservation service providers under its energy efficiency and conservation plan.

Conn. ... from 1

The DPUC draft concludes that pursuant to Conn. Gen. Stat. §33-219(b), Elm Electric Cooperative may take retail service from UI, and may also serve its own end-user members, because it meets the statutory requirement to form a cooperative entitled to buy supply from an electric supplier (i.e. using renewable power or cogeneration to supply its own customers).

As they have argued throughout the case, UI, CL&P and OCC contended that Elm Electric Cooperative's business is the resale of power, squarely making its transactions wholesale in nature, and ineligible for tariffed retail service from a utility. CL&P, for example, noted that the draft did not address Conn. Gen. Stat. §33-221(d) which "unequivocally" states that the cooperative's powers to "generate... purchase, acquire, accumulate and transmit electric energy, and to distribute, sell, supply and

PPL Proposed TOU Rates for 2010

Rate Schedule RS	Summer	Non-Summer
	6/01/10 - 9/30/10	All Other Months
	Peak: 1:00 p.m. to 6:00 p.m.	Peak: 5:00 p.m. to 7:00 p.m.
	Capacity and Energy Charge (ϕ /kWh)	Capacity and Energy Charge (ϕ /kWh)
On-Peak Hours	15.629	14.16
Off-Peak Hours	9.187	10.002
Rate Schedule RTS (R)	Summer	Non-Summer
	6/01/10 - 9/30/10	All Other Months
	Peak: 1:00 p.m. to 6:00 p.m.	Peak: 5:00 p.m. to 9:00 p.m.
	Capacity and Energy Charge (ϕ /kWh)	Capacity and Energy Charge (ϕ /kWh)
On-Peak Hours	13.504	11.954
Off-Peak Hours	8.017	8.186
Rate Schedules GS-1, GS-3, GH-1(R), GH-2(R), and IS-1(R)	Summer	Non-Summer
	6/01/10 - 9/30/10	All Other Months
	Peak: 7:00 a.m. to 7:00 p.m.	Peak: 7:00 a.m. to 7:00 p.m.
	Capacity and Energy Charge (ϕ /kWh)	Capacity and Energy Charge (ϕ /kWh)
On-Peak Hours	12.737	11.813
Off-Peak Hours	8.304	9.204

dispose of electric energy to its members, shall be pursuant to applicable federal law and regulations." Since the sale of power for resale is deemed a wholesale transaction under federal law, CL&P argued that Elm Electric Cooperative cannot take tariffed retail service.

UI, CL&P and OCC noted that the DPUC's decision would serve as precedent defining the relationship between the DPUC, utilities, and new cooperatives which could be formed with relative ease (by using cogeneration or renewable energy to supply 51% of the co-op's requirements), and could have much broader impacts than simply allowing the State Street project to move forward.

"This proceeding should not be viewed as a 'one-off' situation where statutes are interpreted liberally to help a project that is good for economic development, utilizes alternative technology and is 'green.' In fact, this proceeding is a matter of first impression, and will be cited as precedent in future cases involving jurisdiction and resales of electric energy," UI said.

"The Draft also does not mention that EECO customers would lose their statutory right to

retail choice," UI added. CL&P likewise noted, "under the Draft Decision the tenants of EECO at this complex would lose their statutory right to retail choice and loss of other consumer protections pertaining to termination of service, medical hardship/serious illness and other circumstances that are applicable to EDC customers in various state statutes."

CL&P further said that, "[t]he consequences of the Draft Decision impacts many corollary issues that will significantly affect the Company and its customers including net metering, submetering, consumer protection, existing customer installations that will seek similar treatment, and other future development and infrastructure design projects, which should not be addressed by the unique circumstances of the Petitioner's project."

"[T]he Draft inherently raises a number of issues with implications reaching far beyond the single building which the Becker business group is building in New Haven," the OCC added. "Across the state, the UI and CL&P service territories include dozens, if not hundreds, of multi-use buildings similar to the 360 State Street complex. Also, CEF [Connecticut Clean

Energy Fund] has made clear its eagerness to hand out [ratepayer-supported] subsidies for fuel cells," OCC said.

While the DPUC placed several conditions on granting cooperatives status as retail customers (such as producing 51% of their requirements via green power or cogeneration and buying RECs to green the remaining purchased supply), CL&P noted that, as cooperatives, the DPUC will be wholly unable to enforce any of these conditions, as it lacks jurisdiction over cooperatives.

CL&P and UI encouraged the DPUC to revise its precedential ruling and instead direct parties to develop a solution that allows Becker Development, the building's developer, to realize the desired benefits of net metering and submetering without having to resort to a cooperative structure.