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IN THE MATTER OF COMPETITION IN THE PROVISION OF ELECTRIC SERVICES THROUGHOUT THE STATE OF ARIZONA

DOCKET NO. RE-00000C-94-0165

COMMONWEALTH'S EXCEPTIONS TO THE HEARING OFFICER'S RECOMMENDATIONS

Commonwealth Energy Corporation ("Commonwealth") files these exceptions to the recommendations of the Hearing Officer's Opinion and Order ("the proposed Order") dated August 26, 1999 regarding the revised Electric Competition Rules ("the Revised Rules") as set forth in the aforedescribed proposed Order.

1. DASR Charges Should Not be Assessed

The "Direct Access Service Request" ("DASR") is a form used by customers to switch electric service providers ("ESPs"). Competition benefits all customers either through switching or reduced Standard Offer rates. All customers should be entitled to the "option" of switching whether they decide to or not. Therefore, there should not be a separate charge on those customers that switch. Furthermore, the utility is already collecting all if its operating costs under regulated distribution tariffs.

In addition to the DASR charge proposed by the utilities, they may impose another charge on ESPs whenever there is the establishment, reestablishment or reconnection of utility service. This charge is appropriate for an initial hookup or reconnect, <u>but not</u> if the customer changes ESPs. This double charge should be deleted.

<u>Recommendation</u>

R14-2-203.D.1

Each utility may make a charge as approved by the Commission for the establishment, reestablishment or reconnection of utility services, ~~including transfers~~

~~between Electric Service Providers~~.

2. Pre-Screening List for Residential Customers

Marketing to residential customers is cumbersome under the proposed Order. Residential customers would have to notify the utility that it wants competitive power. Then it would be placed on a list which in turn would be provided to electric service providers. This is not a framework in which new entrants would be willing to market to residential customers. The marketing and operating costs are significant, and this additional pre-screening "hoop" drives up transaction costs. Residential and small business customers are not like the large industrial customers who are marketed to on a face-to-face basis. If a residential customer is not on the list, the ESP has wasted a portion of its marketing investment.

Commonwealth proposes the following framework. Any residential customer should be able to request competitive services from any ESP. The ESP would then file the customer's DASR with the utility. Those customers would then be allowed to purchase competitive electricity on a first-come, first-serve basis, the same as any other customer. There is no need to have a listing of "qualified" residential customers to be filed with the utility.

The Revised Rules further implies that the waiting list concept will continue after full competition begins in 2001, under R14-2-1604B.B.5.

<u>Recommendation</u>

The first full paragraph on page 3 of the Opinion should be modified as follows:

> The modifications to R14-2-1604 clarify that small users are eligible to aggregate their loads and are eligible to participate in the competitive market subject to the limitations of the phase-in period. The proposed modification also provides that ~~a waiting list of~~ residential customers interested in participating in the competitive market ~~be made available~~ <u>shall have access</u> to certificated Electric Service Providers ~~upon request~~.

R14-2-1604.A (page 12 of the Revised Rules) should be changed as follows:

At the date established pursuant to R14-2-1602(A), each Affected Utility shall make available at least 20% of its 1995 system retail peak demand for competitive generation supply on a first-come, first-served basis as further described in this rule. First-come, first-served for the purpose of this rule, shall be determined for all ~~non residential~~ customers by the date and time of an Electric Service Provider's filing of a Direct Access Service Request with the Affected Utility or Utility Distribution Company. The effective date of the Direct Access Service Request must be within 60 days of the filing date of the Direct Access Service Request. ~~Residential customer selection will be determined under approved residential phase-in programs as specified in R14-2-1604.B.4~~.

R14-2-1604.B (page 14 of the Revised Rules) should be revised as follows:

2. Access to the residential phase-in program will be on a first-come, first-served basis. ~~The Affected Utility shall create and maintain a waiting list to manage the residential phase-in program, which list shall promptly be made available to any certificated Load-Serving Electric Service Provider upon request.~~

5. After the commencement of competition pursuant to R15-2-1602, each Affected Utility shall file quarterly residential phase-in program reports within 45 days of the end of each quarter. The 1st such report shall be due within 45 days of the 1st quarter ending after the start of the phase-in of competition for that Affected Utility. The final report due under this rule shall be due within 45 days of the quarter ending December 31, ~~2002~~ 2000. As a minimum, these quarterly reports shall include:

   1. The number of customers and the load currently enrolled in residential phase-in program by Energy Service Provider;

   ~~b. The number of customers currently on the waiting list;~~

~~c.~~ b. A description and examples of all customer education programs and other information services including the goals of the education program and a discussion of the effectiveness of the programs; and

~~d.~~ c. An overview of comments and survey results from participating residential customers.

3. Competitive Bid for Standard Offer Generation

The Revised Rules still do not require a competitive bid process for generation to serve standard offer customers. Instead, the Revised Rules stepped back from requiring "open market" purchases to merely requiring an arms-length transaction which of course would be all transactions between APS and its generation competitive affiliate. This would discourage the construction of generation and disrupt the open competitive market process. Commonwealth urges that Staff's proposal be inserted in R14-2-1606.B.

Recommendation

R14-2-1606.B on page 16 should be revised as follows:

After January 1, 2001, power purchased by an investor owned Utility Distribution Company to provide Standard Offer Service shall be acquired through ~~an open, fair and arms-length transaction~~ a competitive procurement process with prudent management of market risks, including management of price fluctuations.

4. Unbundled Rates

The Rules provide that the utility's rates must be unbundled. So as to assure consumers that they are not paying twice for the same service, the embedded costs of those services need to be unbundled using the average annual cost for each customer class.

Recommendation

R14-2-1606.H.2 should be modified as follows:

Such Noncompetitive Service rates shall ~~reflect the cost of providing the services~~ be based upon the full embedded cost in providing such Noncompetitive Services for each customer class, using the average annual cost for each customer class.

5. CTC in the Standard Offer Service Tariffs

The Competitive Transition Charge ("CTC") should be clearly identified in both the standard

offer service tariffs and the direct access tariffs. All customers should be told in their monthly bill that they are paying the CTC regardless of whether or not they are purchasing competitive power and that amount should be set forth in the utility's tariff.

Recommendation

R14-2-1606.C.2 on page 17 should retain the following language:

> The Competitive Transition Charge shall be included in the Standard Offer Service tariffs for the purpose of clearly showing that portion of Standard Offer Service charges being collected to pay Stranded Cost.

6. Transmission and Distribution Access

The Revised Rules contemplate that transmission will initially be handled through the Arizona Independent Scheduling Administrator (AISA), followed by the FERC-approved Independent System Operator (ISO). More recently, FERC is proposing the formation of a Regional Transmission Organization (RTO) instead of an ISO. The AISA is proposing protocols which address transmission access for retail customers and must-run units. To conform with this RTO alternative and to allow the Commission to review the protocols, the following recommendation is made.

Recommendation

R14-2-1609.B on page 18 should be amended as follows:

> Until such time that the transmission planning process mandated by R14-2-1609(D)(5) is fully implemented, or until such time that a FERC-approved and operational Independent System Operator or Regional Transmission Organization (RTO) assumes the obligations of the AISA as is contemplated by R14-2-1609(F). Utility Distribution Companies shall retain the obligation to assure that adequate transmission import capability is available to meet the load requirements of all distribution customers within their service areas. Utility Distribution Companies shall retain the obligation to assure that adequate distribution system capacity is available to meet the load requirements of all distribution customers within their service areas.

R14-2-1609.E on pages 18 & 19 should be modified as follows:

> The Affected Utilities that own or operate Arizona transmission facilities shall file a proposed Arizona Independent Scheduling Administrator implementation plan with

the Commission within 30 days of the Commission's adoption of final rules herein. The implementation plan shall address Arizona Independent Scheduling Administrator governance, incorporation, financing and staffing; the protocols, including for must-run generation units; the application filed with the Federal Energy Regulatory Commission and its proposed time table; the acquisition of physical facilities and staff by the Arizona Independent Scheduling Administrator; the schedule for the phased development of Arizona Independent Scheduling Administrator functionality and proposed transition to a regional ISO or RTO; contingency plans to ensure that critical functionality is in place no later than 3 months following adoption of final rules herein by the Commission; and any other significant issues related to the timely and successful implementation of the Arizona Independent Scheduling Administrator.

7. Unauthorized Switching

Customers are protected from slamming under the Revised Rules. Oral recorded verification is as reliable as any written authorization, based upon the California experience.

Customers might be induced to avoid paying for electricity by claiming they have not authorized the new provider. The Revised Rules still provides for protection against slamming through the use of penalties, suspension or revocation of the provider's certificate. The Commission could set the penalty equal to the unauthorized period of those charges, without encouraging customers to seek ways to avoid paying for the electricity they used.

Recommendation

R14-2-1612.C on page 20 should be changed, as follows:

No consumer shall be deemed to have changed providers of any service authorized in this Article (including changes from the Affected Utility to another provider) without written or oral third-party verified authorization by the consumer for service from the new provider. If a consumer is switched to a different ("new") provider without such ~~written~~ authorization, the new provider shall cause service by the previous provider to be resumed and the new provider shall bear all costs associated with switching the consumer back to the previous provider. ~~A new provider who switches a customer without written authorization shall also refund to the retail~~

~~electricity customer the entire amount of the customer's electricity charges attributable to the electric generation service from the new provider for 3 months, or the period of the unauthorized service, whichever is less.~~ A Utility Distribution Company may request the Commission's Consumer Services Section to review or audit ~~written~~ authorizations to assure a customer switch was properly authorized. An ~~written~~ authorization that is obtained by deceit or deceptive practices shall not be deemed a valid ~~written~~ authorization. Electric Services Providers shall submit reports within 30 days of the end of each calendar quarter to the Commission itemizing the direct complaints filed by customers who have had their Electric Service Providers changed without their authorization. Violations of the Commission's rules concerning unauthorized changes of providers may result in penalties, or suspension or revocation of the provider's certificate.

8. ESP Inducements

The Revised Rules provide that no sweepstakes or contests might be used to encourage customers to switch. The Revised Rules, however, include another provision which says that there shall be no authorization that contains any "inducements." This term is undefined and unclear. Is the proposed savings on a customer bill an inducement? Does it preclude the sale of load controllers or power planners in conjunction with electricity?

Recommendation

R14-2-1612.C (pages 20 &21 of the Revised Rules) should include these modifications:

The following requirements and restrictions shall apply to the ~~written~~ authorization ~~form~~ requesting electric service from the new provider:

1. The authorization shall not contain any ~~inducements~~ sweepstakes or promotional contests;
2. The authorization shall be in ~~legible print~~ clear and plain language confirming the rates, terms, conditions and nature of the service to be provided;
3. The authorization shall not state or suggest that the customer must take action to retain the customer's current electricity supplier;

4. The authorization shall be in the same language as any ~~promotional or inducement~~ marketing materials provided to the retail electric customer; and

5. No box or container may be used to collect entrees for sweepstakes or a contest that, at the same time, is used to collect authorization by a retail electric customer to change their electricity supplier or to subscribe to other services.

9. Responsibility for Charges Upon Returning to Standard Offer Service

Customers are ultimately responsible for paying for the electricity they use. ESPs have the responsibility to bill and collect those charges if the customer decides to return to the Standard Offer. The language in the Revised Rules needs modification.

Recommendation

R14-2-1612.I on page 21 should include these changes:

> Electric Service Providers shall provide 15 calendar days notice prior to the next scheduled meter read date to the appropriate Utility Distribution Company regarding the intent to terminate a service agreement. Return of that customer to Standard Offer Service will be at the next regular billing cycle if appropriate metering equipment is in place and the request is provided 15 calendar days prior to the next regular meter read date. Responsibility for charges incurred between the notice and the next scheduled read date shall rest with the customer and the responsibility to bill and collect such charges shall rest with the Electric Service Provider.

10. Reliance on Load Profiles

Load profiles may be used if hourly meters or not available in certain circumstances. If an ESP relies on load profiles, the ESP should be able to decide what data and profile it requires before selling electricity to a particular customer. Confusion remains as to who will "develop" the load profile and under what circumstances the load profile might be used in marketing electricity.

Recommendation

R14-2-1612.K.6 on page 22 contains the following modification:

> Minimum metering requirements for competitive customers over 20 kW, or 100,000 kWh annually, should consist of hourly consumption measurement meters or meter systems. Predictable loads will be permitted to use load profiles to satisfy the

requirements for hourly consumption data. The Load-Serving Entity ~~developing the load profile~~ shall determine if a load is predictable.

11. Separate Line Item for Billing and Collection for Generation-Related Services

Generation-related billing and collection services should be a separate line item for competitive services, apart from the electric commodity under generation.

Recommendation

R14-2-1612.N on pages 23 & 24 addresses this change:

Billing Elements. After the commencement of competition within a service territory pursuant to R14-2-1602, all customer bills, including bills for Standard Offer Service customers within that service territory, will list, at a minimum, the following billing cost elements:

6. Competitive Services Electricity Costs:
   - a. Generation, ~~which shall include generation-related billing and collection~~;
   - 2. Competition Transition Charge, and
   - 3. Transmission and Ancillary Services Fuel or purchased power adjustor, if applicable;
   - 4. Metering Services; ~~and~~
   - 5. Meter Reading Services; and
   - f. Billing and collection services that are related to Competitive Services.
7. Non-Competitive Services Delivery costs:
   - a. Distribution services, including distribution-related billing and collection, required Ancillary Services and Must-Run Generation Units; and
   - b. System Benefit Charges.
8. Regulatory assessments; and
9. Applicable taxes.

12. Transfer of Competitive Assets at Market Value

Competitive generation assets and other competitive services may be transferred from the utility to its competitive affiliate at "fair and reasonable" value. This concept conflicts with the notion of using "market value" to determine the price of electricity and the underlying generation and related competitive assets.

Recommendation

R14-2-1615.A of the Rules should be amended as follows:

> All competitive generation assets and Competitive Services shall be separated from an Affected Utility prior to January 1, 2001. Such separation shall either be to an unaffected party or to a separate corporate affiliate or affiliates. If an Affected Utility chooses to transfer its competitive generation assets or Competitive Services to a competitive electric affiliate, such transfer shall be at a value determined by the Commission to be ~~fair and reasonable~~ at market value.

13. Affiliate Transaction Rules/Code of Conduct

Affiliate transaction rules were proposed in the prior Rules. Later the modified Rules provided for each utility to draft its own code of conduct. The proposed Order adopts a modified version that requires further clarification. Some utilities have already drafted their proposed Codes of Conduct so a shorter deadline would be appropriate. Employment of the same people by both the utility and its competitive affiliate should be prohibited. Likewise, they should not use the same name or logo. No preferential treatment should be granted the utility's competitive affiliate under any circumstance or standard. The utility's procedures should restrict "anticompetitive" transactions and any "preferential" treatment between the utility and its competitive affiliate. Also, the Code of Conduct should address the complaint and audit procedures.

Recommendation

R14-2-1616. on pages 26 & 27 should be modified as follows:

> 1. No later than ~~90~~ 30 days after adoption of these Rules, each Affected Utility which plans to offer Noncompetitive Services and which plans to offer Competitive Services through its competitive electric affiliate shall propose a Code of Conduct to prevent anti-competitive activities. Each Affected Utility that is an electric cooperative, that

plans to offer Noncompetitive Services, and that is a member of any electric cooperative that plans to offer Competitive Services shall also submit a Code of Conduct to prevent anti-competitive activities. All Codes of Conduct shall be subject to Commission approval after a hearing.

B. The Code of Conduct shall address the following subjects:

1. Appropriate procedures to prevent cross subsidization between the Utility Distribution Company and any competitive affiliates;

2. Appropriate procedures to ensure that the Utility Distribution Company's competitive affiliate does not have access to confidential utility information that is not also available to other market participants;

3. Appropriate guidelines ~~to limit the~~ restricting joint employment of personnel by both a Utility Distribution Company and its competitive affiliate;

4. Appropriate guidelines to ~~govern~~ preclude the use of the Utility Distribution Company's name or logo by the Utility Distribution Company's competitive affiliate;

5. Appropriate procedures to ensure that the Utility Distribution Company does not give its competitive affiliate any ~~unreasonable~~ preferential treatment such that other market participants are unfairly disadvantaged;

6. Appropriate policies to eliminate joint advertising, joint marketing, or joint sales by a Utility Distribution Company and its competitive affiliates;

7. Appropriate procedures to govern anti-competitive transactions between a Utility Distribution Company and its competitive affiliate; and

8. Appropriate policies to prevent the Utility Distribution Company and its competitive affiliate from representing that customers will receive

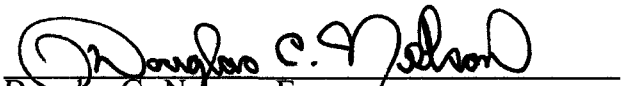
better or preferential service as a result of the affiliation.

9. Appropriate complaint process and compliance plans prepared by an independent auditor approved by the Director, Utilities Division, to examine compliance with the Code of Conduct which will be filed with the Commission annually.

Commonwealth urges the Commission to adopt these changes to the Revised Rules so as to foster open retail access for all customers.

RESPECTFULLY submitted this 7th day of September, 1999.

DOUGLAS C. NELSON, P.C.



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