

Tuesday, June 25, 2013

NEM, OCA react to Pennsylvania 'fixed price' proposal

Retailers and the Pennsylvania Office of Consumer Advocate (OCA) were split on a recent Pennsylvania PUC proposal to limit which offers count as "fixed price" on the commission's shopping website.

The commission issued a tentative order last month saying fixed-price deals that let retailers pass through unexpected costs such as rule changes at the retail or wholesale level might be confusing for consumers (RT, [May-24](#)). The order proposed changes to what qualifies as a fixed-price deal to fix the situation.

The National Energy Marketers Assn (NEM) asked the PUC to tread lightly in changing definitions so as not to limit the options its retailer members can offer consumers.

Not letting retailers pass through unexpected changes from FERC or the state commission itself could boost risk and thus push up prices for the class of offers -- or limit their availability in the market, NEM noted.

The PUC should keep letting retailers use the "fixed price" label for products that include a fully and properly disclosed regulatory change clause for unforeseeable, "unhedgeable" costs, NEM added.

The term "fixed price" should be OK for products with pass-through clauses because coming up with a new term for the product is more likely to cause confusion.

The focus of the PUC should be on properly disclosing contract terms to customers in a clear and understandable manner if such a pass through clause is included in the contract, NEM noted.

The PUC also proposed making every "fixed-price" deal have a set cost for at least three billing cycles -- but NEM believes that could restrict the ability of retailers to market and offer stable, long-term pricing products.

The OCA wants to see the proposal put into place, agreeing with the order's concerns that such pass-through clauses

contribute to customer confusion and can be misleading, especially when they are buried deep within a contract.

Customer dissatisfaction and confusion can be compounded by the fact that in some cases, customers may not be able to exit the contract without paying a big early-cancellation penalty, the OCA said. Some of the contracts last multiple years and consumer education efforts have not gotten to his level of detail, the advocate added.

The term "fixed price" should only be used when the price offered in a contract cannot change for its entire term, said OCA.

Retailers could still offer products with pass-through clauses under the new rules, but they would have to be labeled as such, the office added. The order would require retailers to include the pass-through information in the same contract paragraph as the price, which would add another layer of consumer protection, OCA added.

[\[Comments\]](#)

Supreme Court to hear government appeal of CSAPR rule

The Supreme Court yesterday agreed to hear the government's appeal of the decision that vacated the Cross State Air Pollution Rule (CSAPR, pronounced "Casper"). The rule was designed to deal with power-plant pollutants such as SO₂ that contribute to ozone and/or fine particle pollution in other states.

The US Court of Appeals for the DC Circuit vacated the rule last summer (RT, [Aug-22](#)) after it was challenged by generators who argued that EPA was making upwind states cut emissions beyond their own contributions to downwind states' pollution.

EPA's rule saw lots of criticism in Texas where Luminant said it would have to retire two generators at its Monticello coal plant which produce about 1,200 MWs, as ERCOT was bumping up against its reserve margin. That plant is on the edge of being non-competitive and the

firm subsequently decided to mothball it during the winter months and bring it back for summer to capture the more likely scarcity pricing.

The Supreme Court's decision to review the case was met with praise by some in the environmental community and EPA's work continued to get disapproval from others.

"I commend the Supreme Court for accepting the interstate air pollution case," House Energy & Commerce Committee Ranking Member Henry Waxman, D-Calif, said in prepared remarks.

"The EPA regulation struck down in an aberrant DC Circuit decision can save tens of thousands of lives each year. It's good news for everyone with lungs that the Supreme Court will be taking a second look at the case."

Bracewell & Giuliani lobbyist Scott [Continued on page two](#)

California PUC ALJ's 'flexible capacity' proposal well received

A California PUC ALJ's proposed decision implementing requirements for load-serving entities to procure "flexible capacity" was generally approved by the industry in comments posted last week.

The proposal would change the resource adequacy program, mandating mandatory flexible procurement targets starting in 2015 and reporting on the generators' availability starting next year.

Cal-ISO told the PUC it supports the decision, calling it a needed step to ensure that flexible capacity is maintained on the system -- and operationally available to the ISO for the reliable operation of the grid and to meet the state's policy objectives.

Many relatively new natural gas generators in the ISO's territory are close to retiring with the amount of money they are making. But the grid operator