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The Public Utilities Commission of Ohio's "Fixed Means Fixed" Guidelines:

Adding greater clarity – or greater confusion – to supply agreements?

In November 2015, the Public Utilities Commission of Ohio (PUCO) established new guidelines mandating that offers marketed as fixed-rate plans cannot include any mechanisms in its terms and conditions that allow for unforeseen charges incurred by competitive retail electric service providers to be passed through to customers.

The move, which took effect on Jan. 1, is designed to bring greater clarity and transparency to how consumers pay for electricity. The goal is to avoid a recurrence of problems that arose following the 2014 polar vortex, when customers filed complaints with the PUCO citing that a retail provider included additional charges on the bills of customers who were enrolled in fixed-price electricity plans.

While the intent behind this order – better protecting customers from unscrupulous practices – is certainly admirable, it has the effect of erasing reasonable differences in the way residential customers and commercial and industrial customers contract for electricity, and it could add greater confusion to supply agreements.

Background

In January 2014, a wave of arctic air caused subzero temperatures in much of the Northeast and Midwest United States, creating weather conditions that occur once every few decades. This event – dubbed the "polar vortex" – caused a period of record peak demand in PJM, and when more than 40,000 MW of the grid operator's fleet of 180,000 MW could not be delivered, concerns were raised about blackouts and brownouts.

On two occasions during the polar vortex, PJM took action to order extra power reserve to ensure adequate resources for the region. *The Plain Dealer* reported that it cost about $500 million "to fire up and keep the extra power plants generating." To recover those costs, the grid operator applied a surcharge to competitive retail electricity suppliers.

As the largest supplier in the region, FirstEnergy Solutions was required to pay more of those charges than any other company buying power in the Ohio market. According to an article published in *The Columbus Dispatch*, "the January amount was greater than the company paid for similar charges in all of 2013."

FirstEnergy Solutions, a subsidiary of FirstEnergy, which also owns the electric utilities in Ohio, was the only company known to pass on those charges to consumers in fixed-rate supply contracts.

At the time, most fixed-rate contracts included a provision enabling competitive retail electricity providers to charge additional fees when one-time regulatory events occurred. This is a standard practice by most retail electricity providers and is usually covered under a change-in-law clause in the supply agreement.

Althoug the imposition change-in-law charges are not uncommon, they are not typically applied to weather-related events. And in most cases, these charges aren't as high as the fees that FirstEnergy Solutions charged to consumers in fixed-rate supply contracts after the 2014 polar vortex.

Immediately following the extreme weather event, the supplier announced it would charge 2.7 million of its residential ratepayers with a one-time fee, ranging between $5 and $15, which would appear on their bills at some point between May and July 2014. Large commercial and industrial customers were also confronted with a one-time fee, in their case ranging from 1 to 3 percent of their total annual electricity charges.

However, after FirstEnergy Solutions received several complaints from residential consumers, saying they were unaware that their supply contracts included such provisions, the company decided to waive the fee for residential ratepayers.

The original outcry stemmed from a segment of residential customers who had bought plans through the Northeast Ohio Public Energy Council, which had negotiated fixed-rate contracts without change-in-law provisions for about 500,000 residential buyers. According to FirstEnergy Solutions' initial plans, the one-time fee was going to be applied to all residential ratepayers excluding the segment contracted through the Northeast Ohio Public Energy Council (plus another 200,000 residential contracts).

Representatives who spoke on behalf of residential ratepayers in the rest of the state were not satisfied with FirstEnergy's preliminary decision and ultimately applauded the company's move to waive the fee for all its ratepayers with residential agreements.

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Despite this action in favor of residential consumers, FirstEnergy Solutions still billed the one-time fee to its 46,000 commercial and industrial customers in Ohio.

The Investigation and Decision

In April 2014, PUCO opened a 19-month investigation into the issue "to determine whether it is unfair, misleading, deceptive or unconscionable to market contracts as fixed-rate contracts or as variable[-rate] contracts with a guaranteed percent off the standard service offer rate when the contracts include pass-through clauses."

In November 2015, PUCO issued its ruling in a 28-page order. Key elements of its decision include:

- In all supply contracts – whether residential, commercial, or industrial – "fixed means fixed," and contracts labeled as fixed-price agreements that can vary in price are misleading. Suppliers cannot include a pass-through clause in a contract labeled as a "fixed-rate" agreement.

- PUCO recognized "that circumstances may occasionally arise over which a competitive retail electric service provider has no control and no ability to hedge, such as a regulatory change in law." It found that it would be inappropriate to remove the ability for a supplier to include pass-through provisions in this regard, as that would cause them to remain bound to an uneconomic agreement with no opportunity to amend it. It acknowledged that "not only would such a requirement be inequitable for a competitive retail electric service provider, but [it] could affect consumers as well, as it could result in providers charging much higher rates in fixed-price contracts in [an] attempt to hedge, or [the] elimination of fixed-price contracts from the market."

- If an agreement includes a pass-through provision, it must now be labeled as a variable-rate contract or an introductory offer. The term "introductory offer" must be applied to any contracts with fixed rates lasting less than three months.

- PUCO noted that it is mindful of the need for more straightforward contract language and terms for retail supply consumers; however, it did not establish any parameters for such language in the ruling.

The Issue

Typically, contracts between competitive retail electric suppliers and Ohio commercial and industrial customers do not carry the titles of "fixed-rate," "variable-rate," or "introductory." Instead, they have detailed sections that outline how specific energy-related components are treated (i.e., by charging a fixed price or variable/index price) for the duration of the agreement. There is also a section addressing change-in-law scenarios, describing how unforeseen regulatory or other legal changes, such as taxes or tariffs, might influence the contract rate. These types of contracts have been in use for several years, have been vetted by General Counsils, and presented to regulatory bodies.

Lumping together all contracts that do not meet the PUCO's narrow definition of a fixed-rate agreement under the categories of variable-rate plan or introductory offer means that no distinction is made between a highly volatile index-based product – one that has a very wide range of potential budgetary outcomes for consumers – and product structures for which 99 percent of the energy-related components are fixed, ensuring an extremely high degree of budget certainty.

GDF SUEZ Energy Resources' Position

First and foremost, GDF SUEZ Energy Resources has taken every necessary step to comply with the PUCO's order to label all contracts that do not meet its fixed-rate definition as a variable-rate plan. However, we strongly believe that, rather than focusing on the broader labeling of contract types, the PUCO should get to the heart of the issue: what constitutes a "change-in-law" scenario.

Under no circumstances should retail electricity providers be permitted to use weather-related events as justification to exercise "price majeure," transferring new costs to end users on contracts that have suddenly become economically less favorable.

However, GDF SUEZ Energy Resources, along with several other suppliers, has asked the PUCO to add clarity to this aspect and to consider applying its narrow definition of fixed-rate contracts only to the small commercial and residential markets, excluding large commercial and industrial customers.

In the meantime, we strongly encourage large energy users to ask their suppliers how they are treating their retail supply contracts in light of PUCO's "fixed means fixed" guideline. As such a user, you should understand the terms and conditions that make up your contract, and know when your supplier will exercise a change-in-law provision. Only with this information can you make the most informed energy buying decisions.

In December, the Retail Energy Supply Association (RESA) sought a stay to extend the Jan. 1 deadline for suppliers to conform to the "fixed means fixed" guidelines, submitting several questions and concerns over the ruling's impact on current contracts and the general implementation of the guidelines. The PUCO was expected to make a decision on RESA's action in January. However, as of press time, PUCO has yet to issue a ruling.

Making the right choice means knowing your business drivers.

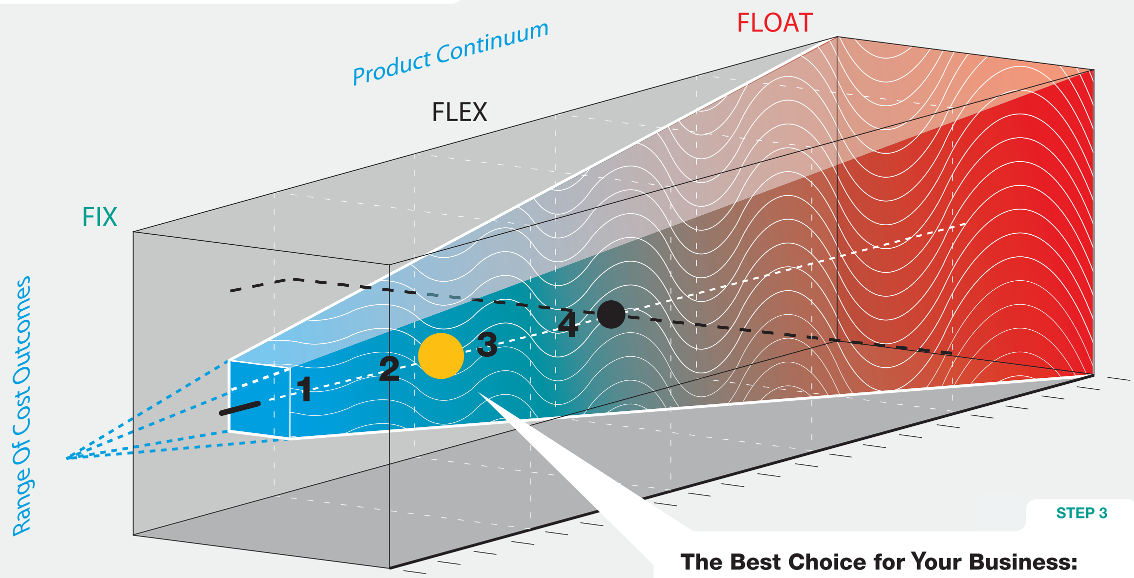
STEP 1

Customer Scenarios:
Risk and Reward Spectrum

1. Product History
2. Budget Mechanics
3. Revenues vs. Costs
4. Buying Influence Objectives

STEP 2

Risk Premiums - - - - - - - - - - - - - -
Fix = High Certainty and High Risk Premiums
Float = Low Certainty and Low Risk Premiums



STEP 3

The Best Choice for Your Business:
Your key business drivers can point you toward the right level of risk and reward, ensuring that you choose the right contract.

Understanding key business drivers plays a critical role in making the right product selection for your business. These factors can point you toward the appropriate level of risk and reward, ensuring that your energy strategy aligns with primary business goals and objectives.

Industry Leadership
We're a leader in the electricity business, and our parent company, ENGIE, is the No. 1 utility in the world.

Financial Strength
We're backed by one of the world's largest corporations, ENGIE, and hold an "A" credit rating from Standard & Poor's.

Tools and Insights
We're committed to giving you insightful tools and information over the long term with our historical data app and our selling process designed to determine your business drivers — not just deliver another sales pitch.

Proven Performance
Most of our business is repeat business — and almost exclusively earned through word of mouth. Find out why.

Billing Accuracy
With our 99.8 percent billing accuracy rate at GDF SUEZ Energy Resources NA, your invoice comes without surprises. And when you have questions, getting answers is fast and easy.

Customer Service
Ninety percent of our customers are highly satisfied. So whether you have a question about renewal or need help dealing with a business issue, you can take comfort in our commitment to providing consistently quick, accountable service and advice that is easy to understand.

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GDF SUEZ Energy Resources to Acquire Guttman Energy Customer Portfolio

Strengthening the Retail Electricity Provider's National Growth Efforts, Bringing Best-in-Class Service and Satisfaction to a Broader Range of Customers

HOUSTON – January 08, 2016 – GDF SUEZ Energy Resources NA, Inc. – the third-largest non-residential electricity provider in the U.S. – and Guttman Energy Inc. announced today that they have entered into an agreement under which GDF SUEZ Energy Resources will acquire Guttman Energy's power customers. This move further reinforces GDF SUEZ Energy Resources' commitment to customers in Ohio and Pennsylvania and follows through on a strategic growth objective in those states.

"GDF SUEZ Energy Resources has been in business since 2002, and since opening our doors, we have taken great pride in building our business 100 percent organically," stated Graham Leith, VP of Sales. "Now – as one of the largest commercial and industrial electricity suppliers in the nation – we are shifting our focus to bring our customer service, risk management capabilities, and products and services to a broader range of customers."

Guttman Energy is one of the largest privately held organizations in Pennsylvania, marketing refined petroleum products in 16 states and providing natural gas and electricity to commercial and industrial customers in Ohio and Pennsylvania. Guttman Energy entered the retail natural gas and electricity market in 2013 and has grown considerably since then, establishing a reputation for building and sustaining long-term customer and partner relationships through transparency, competitive pricing, and ease of doing business.

Mike Senff, President of Guttman Energy, commented, "Through the efforts of a very dedicated and talented team, we've enjoyed much success in the sale of retail electricity. However, we've decided to redeploy capital into assets that are more closely related to our core operations, which continues to include natural gas marketing. We're confident that GDF SUEZ Energy Resources can continue to deliver on the commitments we've made to both customers and the broker community. We look forward to working closely together on a smooth transition for our power customers."

Leith added, "The transaction is a fivefold increase in the number of customers we serve in Ohio and Pennsylvania. GDF SUEZ Energy Resources will honor each and every customer and broker contract that Guttman Energy has in place. Guttman Energy and GDF SUEZ Energy Resources will work closely together to ensure the transition is as seamless as possible."

The transaction is expected to close by the end of February.

About Guttman Energy

Since 1931, Guttman Energy has been helping customers meet their energy needs. Guttman Energy provides a diverse array of energy solutions to wholesale, commercial, and industrial customers through two divisions. The Fuels Division, which operates in 16 states east of the Mississippi, distributes more than 1.4B gallons per year of petroleum products and offers programs designed to help customers most effectively purchase and manage these products. The Natural Gas Division helps businesses identify and obtain solutions to their natural gas commodity purchasing needs by providing the service that best addresses each customer's unique financial, operational, and risk considerations. For more information about Guttman Energy, visit www.guttmanenergy.com.

About GDF SUEZ Energy Resources

Soon to rebrand under the ENGIE name in 2016, GDF SUEZ Energy Resources is the third-largest non-residential retail electricity supplier in the United States and currently serves commercial, industrial, and institutional customers in 12 markets: Delaware, Texas, Massachusetts, Maine, Maryland, New York, New Jersey, Pennsylvania, Illinois, Connecticut, Ohio, and Washington, D.C. The company serves over 61,000 accounts for customers having a peak demand ranging from 50 KW to more than 200 MW, with an estimated peak load totaling nearly 10,000 MW. The company offers electricity service to residential and small business customers under the brand Think Energy®.

For more about GDF SUEZ Energy Resources, visit www.gdfsuezenergyresources.com or call 1-866-999-8374. Follow GDF SUEZ Energy Resources on LinkedIn, Twitter, and Facebook. GDF SUEZ Energy Resources is a subsidiary of GDF SUEZ Energy North America, which manages a range of energy businesses in the U.S. and Canada, including electricity generation and cogeneration, natural gas and liquefied natural gas (LNG) distribution and sales, and retail energy sales and related services to commercial and industrial customers. GDF SUEZ Energy Resources is a part of the international energy group ENGIE. For more information, please visit www.gdfsuezna.com and @gdfsuezna.