Contingencies To Build Into Your Power Contract

Lindsay Audin
President
Energywiz, Inc.

Planning to sign up for deregulated electricity? Ready to sign that contract? Think carefully and consider what might change during its term. Even a short (i.e., one-year) contract can carry with it some hidden liabilities. And remember: we are all in a *transition to competition,* not yet in a world where real utility competition exists. In most states, that transition may continue for several years, during which public utility commissions (PUCs), the Federal Energy Regulatory Commission (FERC), legislatures, and courts may change the rules. Here's a checklist to use when reviewing even simple power contracts.

WHAT IF...

there is a delay imposed on the deregulation schedule? Does the contract still start on its stated initiation date? If not, what about any financial guarantees you assumed would occur? We have already seen two grass-roots referenda to overturn dereg laws (California and Massachusetts), utility lawsuits challenging a state dereg law (Nevada), and postponements for a variety of unforeseen reasons (Arizona and other states). If signing your contract caused you to lose an existing benefit (such as a special rate or subsidy), can you get it back during the delay or otherwise secure its value from your vendor?

WHAT IF...

the rules concerning utility metering change during the contract, and the expensive meters that were part of the deal are now subject to competition, or otherwise impacted (e.g., making them no longer acceptable)? Who pays for that "stranded investment?

WHAT IF...

your utility comes up with new or altered rates that are better than those in your contract? Can you switch back to secure those savings or renegotiate your power pricing? If so, is there any penalty? Some contracts involve a fee equal to 75% (or more) of the remaining value of the contract, making it unfeasible to return to bundled service at a better rate. In some cases, contracts have even limited the ability of a customer to switch back at the end of a contract. How can that be? A contract may state that the customer agrees to remain with the non-utility supplier unless he gives that supplier at least 60 days notice of a desire to switch before the end of the contract term. Any failure to provide the necessary notice results in the contract being automatically renewed.

WHAT IF...

tax laws/rules/amounts change? In at least one major utility service area, a misinterpretation of a sales tax law created over 90% of the savings due to deregulation. For a few customers, correction of the tax law could have resulted in a power price actually higher than if they never signed a power contract.

WHAT IF...

an Independent System Operator (ISO) and/or wholesale power exchange (PX) opens up, significantly changing how power and transmission costs are handled? For some large customers, many new options could appear, possibly resulting in greater savings if the contract were terminated, or at least renegotiated. Likewise, new price risk could result, impacting the likelihood that promised pricing would be maintained.

WHAT IF...

the PUC or FERC changes their rules, either for deregulation or for the still regulated portion of a customer's utility bill? If, for example, stranded costs are collected earlier than expected, does one's power price immediately drop, despite what is seen in the contract? Some states are already beginning to look at deregulation of distribution systems, and FERC has already accepted some redefinition of transmission assets as distribution assets, changing which agency regulates them. Could doing so impact your vendor's ability to supply power at the price he promised, and allow him to void the contract?

WHAT IF...

highly volatile wholesale power pricing forces your vendor to use a more expensive source than he assumed would be available, or threatens to put him out of business? Some vendors have already "dumped" large numbers of customers back onto utility service when prevailing prices could cause the vendors to take a loss. While the customer's lights will remain on, what happens in states where a return to utility service could limit a customer's ability to switch to a new vendor for many months? How will he explain those lost savings to his superiors?

NOT AN EXHAUSTIVE LIST

The above is by no means a complete list of "what ifs." It does, however, show the kinds of contingencies that need to be addressed in a good power contract. In some cases, a general "re-opener" clause may suffice, or an exit clause could be made more flexible. Nothing says that you must accept a vendor's standard contract just because he has it ready for your signature. Be ready to say "no, not unless you change a few things." If he refuses, you may have just avoided a problem you never even thought of.

This article appeared as one of Mr. Audin's "Tips of the Month" commentaries. More can be found at www.EnergyBuyer.org. They are brief excerpts from the Energywiz seminar "Profiting From Deregulation: Power Techniques for Power Purchasing," the only seminar focused on training customers and consultants to handle retail power procurement. For those interested in taking this course, more information is available at www.energywiz.com and www.energyseminars.com

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ABOUT THE AUTHOR

Lindsay Audin (CEM, CLEP, CEP, IES), is the president of Energywiz, Inc., an energy consulting firm serving the competitive energy market, government agencies, large end users, and other consultants.

Audin has been named Energy Manager of the Year by three different national or regional organizations, most recently by the Association of Professional Energy Managers in 1995. In 1993, the Association of Energy Engineers (AEE) named him their International Energy Manager of the Year, and in 1996 inducted him into its Energy Manager's Hall of Fame, the highest recognition in that field. His work has won many other national and regional awards, and has been featured in videos, case studies, and magazine articles.

He served on the board of the New York Designer's Lighting Forum, the *Energy User News* Technical Advisory Board, and an ASHRAE 90.1 technical committee. His column on lighting and energy issues has appeared quarterly in *Architectural Record* magazine since 1991, and his work appears frequently in energy-related publications and on such Web-based magazines as E-Source's *Power Tools*.

Energywiz, Inc., One Everett Avenue, Ossining, NY 10562, 914-762-4939, fax same; energywiz@aol.com; www.energywiz.com