

Knowing What to Look for: Criteria for Negotiating a Winning Contract with Your Retail Energy Services Provider

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Deregulation of the electric utility industry in the United States provides commercial and residential (C&I) customers the opportunity to choose their energy services provider. The opportunity to choose works best when the energy services provider and the customer have a clear understanding of the key components in a bilateral, market-based agreement and, more importantly, what's required for a successful, long-term, mutually beneficial relationship.

C&I customers are the biggest consumers of electric power in this country. They stand to win or lose millions of dollars based on the negotiated terms and conditions that ultimately govern their relationship with an energy services provider. Therefore, it is imperative that going into contract negotiations, customers have a clear idea of what to look for and how to mutually resolve issues.

As a rule of thumb, most contract negotiations should move smoothly – about one week is adequate so that customers can reach an agreement, sign up and get started with their new provider. Specifically, the best contracts should have these four success criteria in common:

- 1. The contract must be bilateral;**
- 2. The contract must be easy to understand with terms and conditions detailed completely and clearly;**

3. **The contract must have appropriate remedies for events of default; and;**
4. **Negotiations should be void of “red flags.”**

Bilateral Nature of the Contract

Obligations and responsibilities are a two-way street. The agreement between C&I customers and energy service providers should reflect that concept. Both parties should be seeing and working toward a common theme or goal with shared obligations. Customers should be sure they understand their rights and responsibilities in the midst of newly deregulated markets and being inundated with mass quantities of information offered by their energy services provider.

C& I customers should always ask their energy provider for a sample contract to review. Becoming familiar with the terms and conditions of a sample agreement, the C&I customer will be better equipped to make a comparison among energy suppliers, and the eventual relationship with the selected energy supplier will benefit from it. Some customers may find it helpful to walk through the sample contract almost line-by-line to fully understand the product offering and their relationship with an energy supplier.

Easy to Understand

Speaking of understanding and comprehension, contract negotiations should not be difficult. The easier the contract negotiations, the greater likelihood for a successful working relationship.

First, consider what *is* included and what is *not* specified in the agreement. Closely review the prices that are being offered and ask for a detailed breakdown of the pricing structure. Some of the costs cover energy, ancillary services, transmission line losses, capacity charges and transmission congestion charges. Customers have a right to know whether these costs are included in the price or if certain costs will be added on top of the negotiated price.

C&I customers should also understand the features of the offered energy service product. Agreements should not only specify how a product is priced, but also whether or not there are any limitations on the quantities of energy eligible for the negotiated price. When buying an indexed product, customers should be clear on which index their costs are being set against. The index price typically only covers energy, and usually there is an extra charge added to cover any other services. The components of that extra charge should be clearly specified.

Additionally, the terms governing billing and payment should be spelled out. Ask for a sample bill. Be sure that the contract stipulates whether or not there is a monthly bill, and when the payment is due. Many customers do not receive bills for months, and thus find planning and budgeting for their power usage to be much more challenging than they expected.

Finally, customers should check out their energy services provider as much as their provider checks them out for credit worthiness and financial stability. Customers should be wary of energy service providers with financial difficulties and without the backing of a financially sound corporate entity.

In some cases, the energy services provider will ask for a deposit. And, if at some time during the relationship with an energy services provider the customer becomes concerned about the provider's financial stability, the customer should also have the right to request some type of credit assurances.

Defaulting

Customers should always be concerned that if there is a default, the benefit of the bargain is preserved. In many cases, energy providers have provisions permitting the non-defaulting party to profit from a default. Those providers are betting that over time, there will be the occasional customer default and the resulting liquidation of the transaction will result in a windfall for the supplier.

In the event of a default, both parties should attempt to resolve the dispute. Events of default usually have an assortment of remedies including, the ability to terminate the relationship and collect damages. Usually, both parties will be given a "cure period" to remedy any potential events of default.

Red Flags

As with any business negotiation, customers should trust their instincts and watch for "red flags," which can signal a potential transaction where the allocation of risk is unfairly slanted against the customer. Some of the most common red flags customers should watch for include:

1. Unwillingness of a supplier to respond to customer needs
2. Lack of clarity that causes many questions to be raised
3. Failure of a contract to address all the issues surrounding a transaction.
4. Vague response to questions about the commencement of service
5. Reluctance to provide a sample contract
6. Hesitance to provide customer references
7. Lack of proof of licensing or meeting of compliance standards
8. Numerous complaints against the provider
9. Open-ended issues in contracts.
10. If a customer sees a “sea” of red flags, he or she should always be able to end the relationship in a reasonable and professional manner.

The Bottom Line:

Customers should be fully engaged in the contract negotiation process and ultimately feel empowered – not deflated – by the process.