

# Energy Choice Matters

March 20, 2008

## Clear Termination Fee Disclosure, “Plain Language” Are Main Aims of Revised UBPs

The New York PSC has put out for comment changes to its Uniform Business Practices (UBPs) to boost the Commission’s power to deal with bad actors in the competitive market, strengthen customer protection rules, and blunt the use of unexpected termination fees (Cases 98-M-1343, 07-M-1514, and 08-G-0078).

The Commission’s actions stem from the Consumer Protection Board’s petition to the PSC to codify the voluntary Statement of Marketing Principles developed by a collaborative led by Strategic Energy in 2006. The proposals also incorporate some of the suggestions submitted by National Fuel Gas, but the Commission stressed that ESCO polices need to be set statewide and should not differ by utility.

Staff’s greatest concerns among complaints are ESCOs targeting the elderly and those with English as a second language. Termination fees, not surprisingly, are also one of the biggest complaints from consumers.

Most ESCOs are not bad actors, PSC Chair Garry Brown noted in approving publication of the proposed changes, and many ESCOs favor remedying rules to prevent bad actors from damaging the market.

Brown favors putting all the proposals together in one case and reaching a conclusion so that ESCOs have a set direction from the Commission and can grow customer choice under defined policies.

CPB and the Commission have to get on the same page when it comes to handling consumer complaints, Commissioner Cheryl Buley said. Buley was surprised at CPB’s level of intervention

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## ICC OKs Ameren Interim Procurement

Ameren Energy Marketing and Constellation Energy Commodities Group were the two winning bidders in Ameren’s interim SOS procurement in Illinois designed to bridge the one-year gap until the state power authority procures SOS power. New blended retail rates were not available at press time.

The supplies from the RFP are to meet 10% of residential and small commercial power for the June 1, 2008 - May 31, 2009 period. About 20% will be supplied via bilateral contracts with Ameren Energy Marketing entered into last summer as part of the rate cap settlement, while the remaining power was procured in the original fall 2006 descending clock auction which was to have created a three-year laddered portfolio. Ameren is to procure capacity later this month while both it and ComEd will buy SOS RECs in mid-April.

The load weighted average of the winning bid prices for each contract type and for each contract term for Ameren’s procurement are:

Product	Term	Type	Average \$/MWh
A	Annual	7x24	59.73
B	January and February 09	5x16	79.33
C	June 08	5x16	79.09
D	September 08	5x16	76.19
E	July and August 08	5x16	104.35
F	October, November and December 08	5x16	73.13

## **New Price to Compare Coming to NYSEG Electric Bills**

Mass market electricity shopping will become a bit more transparent for NYSEG electric customers as the utility lists a new price to compare on all bills for incumbent customers not on mandatory hourly pricing.

The price to compare was developed in collaboration with ESCOs after the PSC implemented the variable price option as NYSEG's default service (Case 07-E-0479), and received final approval from the PSC yesterday. It would reflect the charges that a customer avoids when electing to take supply from an ESCO.

NYSEG is to list the new price to compare on bills after March 31 via a "must print" notice, although some months the price could be bumped by higher priority notices, such as emergency news and disconnect notices.

"The Price-to-Compare proposal will allow customers to make informed decisions and should result in less customer confusion in evaluating supply options available to him or her," the Commission found. "This should further customer choice and advance our goal of developing a fair, transparent, and competitive supply market."

The price to compare in dollars per kWh in the bill message will be calculated for each customer for each billing period as the sum of the average overall supply price per kWh (total supply charges divided by total kWh). The Merchant Function Charge (MFC) reported in the notice is calculated from the price per kWh applicable to the customer's service classification.

The price to compare format will be:

The NYSEG price for providing electricity supply during this billing period was x.xx/kWh, which includes a Merchant Function Charge of x.xx/kWh. If you decide to shop for electricity supply, you can compare this information with prices offered by energy services companies (ESCOs). You could achieve some tax savings if you switch to an ESCO. Additionally, if the ESCO includes its charges on your NYSEG bill, you would not have to pay NYSEG's bill issuance charge of 89 cents per month. If you buy electricity from an ESCO, NYSEG will continue to

deliver the electricity to you and you will continue to pay NYSEG for delivery, transition and basic service charges.

## **NERA Catalogues Value-Adding Products From Choice**

Lost in the debate over electricity competition are the value-added products prevalent in mature markets such as ERCOT and New York, National Economic Research Associates found in a study for the COMPETE Coalition and Alliance for Retail Choice.

"The evidence from the more advanced retail electric markets, shows that customers do not necessarily want the 'plain vanilla' electric service that has been provided by the traditional regulatory process -- a process in which the desires of customers can often get lost," NERA found.

NERA catalogued a wealth of new products in competitive markets, including a guaranteed-discount off SOS, fixed-price terms, portfolio planning, distributed generation, demand response, renewable energy (including commodity, RECs and green branding), energy efficiency (including performance contracting, HVAC services, green buildings, facilities management and home automation) and carbon-neutralizing products.

In ERCOT, over 100 residential offers are available, and customized products for larger customers are essentially unlimited.

Of course, we can point to innovation in monopoly territories too: pre-paid pricing at Salt River Project, flat-bill at Georgia Power, etc.

But while franchised utilities can petition for new products, it's tough to make them non-discriminatory under a traditional cost-of-service regime, former New York PSC Chair Bill Flynn told us.

Monopoly programs with a capped level of participation are especially troubling to regulators, Flynn added, though sometimes are necessary in pilots. But with competition, the floodgates of innovation are opened because cross-class subsidization is a thing of the past. The decision is placed in the customers' hands, Flynn stressed, labeling

rate cases an “arcane” process.

NERA noted that aside from new products, competitive retailers are providing a full portfolio of payment options including credit card and bank drafts as well as the traditional methods of walk-in or mailed payments. In ERCOT, customers are eligible for discounts on their price for using certain billing methods (typically automatic draft).

But while some utilities accept credit cards or payment via phone or online, it again poses a cost allocation question for regulators which can slow innovation, Flynn noted.

Should only those customers benefiting from new payment methods have to pay for them (since utilities have to pay for merchant card fees, processing fees, or for new hardware/software) or should those costs be subsidized by everyone to expand their reach, potentially making customers who can't access (e.g. due to the digital divide) new payment methods pay for them.

In competitive markets, the customer gets to decide, Flynn succinctly noted.

## **Buley Talks Competitive Distribution in OKing ConEd Rate Hike**

Without greater competition in the distribution side of the business, Consolidated Edison's unresponsive attitude won't change, Commissioner Cheryl Buley argued before approving along with her fellow Commissioners a ConEd delivery rate hike despite her misgivings (07-E-0523).

Buley complained that ConEd was an “entrenched monopoly” and it was difficult to trust their cost data since they went 70% over their last allocated rate proceeding, Buley said. The PSC is being forced to hire outside consultants to review ConEd's opaque books, she added, noting the utility is quick to come forward with proposals taking advantage of tax laws that benefit the company but are less eager to come forward with customer-benefitting changes.

While Buley appreciates the need for a reliable and secure network, and understands the challenges ConEd faces with its complicated system to feed New York City's

imperative need for electricity, power has to be affordable as well, she noted.

The Commission approved a \$425 million boost in ConEd's delivery revenues, estimated to raise bills 4.7% on a system-wide basis. ConEd had asked for \$1.2 billion.

Most ESCO-related polices brought up in the rate case were kicked into the current review of UBPs that the Commission opened (see story above).

However, Buley questioned staff to make sure ConEd verified that bilateral supply contracts and hedges that have been transferred to the Market Supply Charge (a de facto price to compare paid by non-shoppers) were verified as appropriately belonging in the MSC instead of the Monthly Adjustment Clause (MAC), which is paid by all distribution customers.

Staff informed Buley that while legacy hedges from the transition to competition belong in the MAC since they were originally entered into for the benefit of all customers, new contracts with Entergy's Indian Point nuclear plant belong in the MSC since the pacts were entered into recently to serve bundled customers.

## **National Grid Must Revise Arrearages, Connection Policy**

The New York PSC ordered National Grid to end its practice requiring all residential applicants with prior arrearages and who have defaulted on a minimum deferred payment agreement to pay either \$1,000 or the arrearages in full (whichever is less) before initiating service (07-M-1245).

The PSC found the “one-size-fits-all” approach is inconsistent with the intent of Commission regulations requiring individualized consideration for residential energy service applicants.

National Grid's “inflexible” practice is not consistent with the requirement that energy utilities provide service that is in all respects just and reasonable, the PSC added.

The Commission explained that Grid's policy did not consider that the financial circumstances of an applicant who has previously broken a minimum deferred

payment agreement may (particularly if substantial time has passed since the breach) have improved such that the applicant is in a better position to reduce prior arrears and assure reliable payment of a new deferred payment agreement and ongoing bills.

The PSC denied a related petition by the Public Utility Law Project (PULP) that claimed National Grid should have provided a deferred payment agreement to any applicant for residential service that has previously breached a minimum deferred payment agreement.

The Commission found that its rules do not require a utility to offer an applicant for residential service a deferred payment agreement if that applicant previously had an account as a utility customer, owes arrears on that account, and entered into and defaulted on a previous minimum deferred payment agreement within the last six years.

### ***Briefly:***

#### **Energy East To Reveal Suitors to PSC Staff**

Energy East will have to confidentially disclose to PSC staff the identities of two potential suitors that the utility rejected in favor of its merger with Iberdrola (07-M-0906), per a Commission ruling yesterday. Energy East had argued the PSC staff's request to know the identity of the suitors was not relevant, and noted the potential deals were not identical to the Iberdrola acquisition; suitors only wanted to buy specific Energy East subsidiaries, not the entire company. Nevertheless the Commission found that review of alternate proposals, even if not identical, is relevant to determining whether the Iberdrola deal is in the public interest, and to compare the merits of the acquisition versus the merits of available alternatives. Disclosing the identities of the suitors will enable staff to review relevant financial information about the entities which will aid staff's comparisons of the offers.

#### **Dominion Seeks Illinois Electric License**

Dominion Retail filed an application to become an alternative retail electric supplier in Illinois. Documents included in the filing weren't available at press time.

#### **Constellation, O'Malley Tensions Cool, Talks Begin**

Constellation Energy and Gov. Martin O'Malley, D, have been talking about ending their rival lawsuits over \$386 million in nuclear decommission credits awarded to ratepayers in SB1 back in 2006. O'Malley told Constellation he was looking to settle more than just the lawsuits and that the parties needed to work together to avoid rolling blackouts. We think that should raise a concern for retail marketers, since blackouts are code for new generation which the state could rule is needed via long-term contracts or integrated resource planning.

#### **APPA Study Says RPM Not Attracting New Capacity**

Although in its February white paper APPA said the time for rivaling statistics was over (Matters, 2/28/2008), APPA released its latest shot at capacity markets by noting a LECG study of PJM's Reliability Pricing Model found RPM to have, "attracted very little new capacity to date." More than 90% of RPM payments have simply transferred dollars to the owners of existing generation, APPA said. APPA claimed its report found two instances where withholding by generation owners raised prices, though it did not allege any tariff violation. APPA also argued RPM clashes with energy efficiency by not incorporating forecasted demand reductions into its projections. "As a result, RPM may require consumers to purchase capacity that will not be needed, driving up prices and costs," APPA noted.

#### **DPUC OKs UI Meter Upgrades**

The Connecticut DPUC accepted United Illuminating's proposal to spend \$3 million on a meter data management (MDM) system that would gradually upgrade UI's current advanced meters to accommodate more data communication and more complex pricing structures (07-07-02). The decision was largely the same as an earlier draft (Matters, 2/26/08), although the DPUC in the final order directed UI to study the Department's decision in docket 05-06-04RE04 regarding real-time pricing to determine whether the current

Customer Information System can accommodate the DPUC's tariff preference. The upgraded MDM system would enable hourly billing and enhance real-time pricing, variable peak pricing and critical peak pricing rate design options that UI expects will be implemented in the near future.

### **NewEnergy Complied with Conn. RPS**

Constellation NewEnergy complied with its 2006 RPS obligations in Connecticut, the retailer assured the DPUC (07-09-14). The DPUC in a draft (Matters, 3/11/2008) stated NewEnergy should be assessed an alternative compliance payment of \$2 million for not reaching RPS goals, but NewEnergy thinks the Department was confused by a mistake in the company's compliance filing. Originally, NewEnergy attached NEPOOL Generation Information System (GIS) reports reflecting RECs from the last three quarters of 2006 and the first quarter of 2007, which accounted for NewEnergy appearing short. The retailer has since submitted the correct GIS verification for the year 2006, showing full compliance. Connecticut Light & Power asked the DPUC to clarify that while it will remit to the DPUC a \$3 million ACP, utilities are not subject to RPS goals; their wholesaler SOS suppliers are. Thus, the Department should clarify the CL&P will collect the appropriate ACP from its wholesale suppliers so that suppliers understand they have the ultimate legal responsibility for compliance.

### **CPV Protests Dominion Interconnection Pact**

Although most stakeholders support a settlement regarding Dominion Resources' interconnection complaint against PJM (Matters, 3/13/2008), Competitive Power Ventures protested the pact, arguing the settlement would waive OATT requirements for conducting System Impact Studies (SIS) and allocating the cost of network upgrades for CPV's 640 MW St. Charles County gas-fired, combined cycle project and 13 other projects, while replacing them with new SIS and cost allocation procedures (FERC docket EL08-36). The pact would retroactively change the terms and conditions of the OATT, CPV claimed, in

violation of the filed rate doctrine and without satisfying the Mobile-Sierra public interest standard. The new SIS exposes CPV to material increases in network upgrade costs, the IPP explained. FERC should hold CPV harmless from adverse impacts of the pact if the Commission accepts it, CPV urged.

### **National Grid, Emera Team to Further Link Canada, New England Markets**

National Grid and Emera are to work together to study a 660-MW Northeast Energy Link to supply energy to southern New England's power markets from northern Maine and Canada's maritime provinces. Spectra Energy is part of the project as well that could tap new renewable resources in the Maritimes.

### **NY UBPs ... From 1**

as described in one of its press releases, especially its work to intervene and get ESCOs to cancel disputed accounts. Those actions should be reflected in the PSC's complaint data, she said.

Buley also criticized a CPB press release that tells customers not to give out their utility account numbers to door-to-door marketers. The UBPs require ESCOs to have a customer's account number when enrolling a customer, and CPB's advice creates confusion for customers, Buley observed.

Under the proposed UBP changes, ESCO contracts would have to use "plain language" and have the, "price, term and termination fee, if applicable, clearly stated on the first page of the agreement."

ESCOs desiring to impose a termination fee on residential accounts could not impose the fee until a minimum of 30 days after customer receipt of the first bill for commodity service from the ESCO, to give customers a chance to leave without penalty after seeing how their first bill compared with marketing promises.

ESCOs would need to follow additional protections for telephonic enrollments as well.

For example, the authorization recording would have to include a description of any early termination fee in addition to a description of prices and terms. Although ESCOs should have been disclosing exit fees on telephonic enrollments previously, since

they are a “material” term of the contract, the requirement would now be explicit.

Also, customers would have to accept such terms and conditions, “unaided or prompted by the ESCO marketing representative.”

Voice verification would have to include a statement from the ESCO that no savings are guaranteed, or if savings are guaranteed, a clear description of the conditions that must be present in order for the savings to be provided. Written or online authorizations would have to include similar language.

Additionally, customers would need to acknowledge that the agreement for service is with the ESCO and not the local distribution utility.

The bulk of the revisions come in new UBP Section 10, Marketing Standards, which would apply to residential customers and generally build on the voluntary Statement of Marketing Principles.

Under the proposal, ESCO marketing representatives would have to possess:

1. Knowledge of UBP Section 10 and awareness of the other sections of the UBPs;
2. Knowledge of the ESCO’s products and services;
3. Knowledge of rates, payment options and the customers’ right to cancel, including the applicability of an early termination fee;
4. Knowledge of the applicable provisions of the Home Energy Fair Practices Act that pertains to residential consumers; and,
5. The ability to provide the customer with a toll-free number from which the customer may obtain information about the ESCO’s mechanisms for handling billing questions, disputes, and complaints.

Similar to the voluntary principles, sales agents visiting customers outside of an ESCO’s place of business would need to wear clearly visible IDs and not represent that they were with the utility.

Additionally, if the customer informs the ESCO marketing representative, or where it is apparent, that the customer’s English language skills are insufficient to allow the customer to understand and respond to the information conveyed by the ESCO representative, the ESCO representative shall either find a representative who is fluent in the

customer’s language to continue the marketing activity in his/her stead or terminate the in-person contact with the customer.

Telephonic rules would include the above language protections and also require ESCOs to state the purpose of the call.

Both telephonic and in-person sales agents would have to clearly indicate that taking service from an ESCO will not affect the customer’s distribution service and such service will continue to be provided by the customer’s distribution utility.

Under Section 10, ESCOs shall:

- Not engage in misleading or deceptive conduct as defined by State (and/or federal) law, regulation or Commission Order;
- Not make false or misleading representations including misrepresenting rates or savings offered by the ESCO;
- Use plain language, including words and images that facilitate customer understanding of ESCO products and services;
- Ensure that any product or service offerings that are made by an ESCO contain information that is designed to be understood by the Customer. That shall include providing any written information to the Customer in the language in which the ESCO market representative had substantive discussions with the Customer or in which a contract is negotiated.

For violating the rules, ESCOs could face:

- Suspension/revocation of their marketing license;
- Suspension of their ability to enroll new customers;
- Imposition of a requirement to record all telephonic marketing presentations, which shall be made available to the PSC for review;
- Reimbursements to customers who did not receive savings promised in the ESCO’s sales agreement or substantially demonstrated to have been included in the ESCO’s marketing presentation; and/or
- Release of customers from sales agreements without imposition of early termination fees.

The updated UBPs would require ESCOs to resubmit their entire retail access application package to the PSC every three years, starting from the date of their eligibility letter. The

requirement would be in addition to the annual update which ESCOs can complete by informing the PSC there are no changes to their applications.

The PSC asked for comments on the revisions, including answers to the following:

1. Should the ESCOs be subject to the utility assessments provided by PSL §18-a (which requires utilities to fund the PSC out of their gross operating intrastate revenues)?

2. Should the customer of record be the only person qualified to enroll the residential account with an ESCO?

3. Should early termination fees for residential customers be limited to: (a) a flat amount (e.g. \$200); (b) an amount based upon a set fee per month multiplied by the number of months remaining on the contract (e.g. \$8 x 20 months = \$160); or (c) some other variation?

4. Should there be a grace period for the application of early termination fees to residential customers, and if so, what is the appropriate length of time for the grace period?

5. Is the number of Customers served by an ESCO proprietary trade secret information, under the standards set forth in the State Freedom of Information Law?

6. Should the UBP provisions with respect to Marketing Standards be applicable to small commercial customers? If so, how should small commercial customers be defined?

7. Should ESCOs that include early termination fees in residential sales agreements be required to obtain a “wet” signature on the sales agreement?

8. How often do ESCOs enforce early termination fees for residential contracts? If available, the Commission seeks this information on an annual basis separated by contract types, e.g. fixed and variable price contracts.

9. How should the term “plain language” as used in Section 2.B.1.b of the UBP be defined?

10. Are there additional modifications to the UBP that should be considered?

Commissioner Maureen Harris, in discussing a proposal in Consolidated Edison’s rate case regarding ESCOs’ and consultants’ access to customer account numbers and other information, suggested the last question above is a “catch-all” and encouraged stakeholders to submit any other relevant changes to the UBPs the PSC should

consider. Any and all additions or deletions stakeholders feel are needed to the UBPs should be made in the marketing practices proceeding, Harris said. Brown agreed, calling the last question an “omnibus.”

Previously, tweaks to the UBPs have come up in individual rate cases, and fixing statewide policies in specific rate cases is incredibly inefficient, Harris noted.

We expect some ESCOs would ask that UBPs be refined to allow customers (or ESCOs) to remotely access their account numbers to facilitate shopping in places customers do not have access to their utility bill (e.g. mall or sporting event kiosks, etc.). Previously Accent Energy had pursued a UBP change for such a policy and utilities were required to propose systems to allow customers to access the data remotely.

The issue of a “contest period” or an EDI transaction that would allow an incumbent ESCO to verify that a switch request from a new ESCO is legitimate and not a “slam” is also ripe for discussion in the case. U.S. Energy Savings had petitioned for a contest period in a still-open docket before the PSC.

Finally, ESCOs will likely suggest UBP changes that would allow them to enroll new delivery service customers coincident to the start of the new energy service, instead of having to wait for the customer to be served on incumbent service for one meter read. ESCOs had petitioned for such a policy in ConEd’s rate case.

Responses to the UBP proposals are due by April 18.