

Energy Choice Matters

May 29, 2008

Md. PSC Not Persuaded by Arguments Against Its Type II Mitigation Plan

The Maryland PSC, citing its "clear authority," voted 4-0 to approve mitigated SOS rates for new Type II customers as originally proposed in a letter order on May 16 (Matters, 5/20/08). Commissioner Allen Freifeld was not present at the administrative meeting.

Despite protests from large industrials and reservations from aggregators and retailers, the Commission found that the bedrock regulatory principle of avoiding rate shock compelled its mitigation plan which caps the increase for new Type II customers at 15% and finances the mitigation through a distribution surcharge on all non-residential customers. The cap is applicable to about 17,000 customers at Baltimore Gas and Electric, Delmarva, and Allegheny Power.

Chairman Steven Larsen stressed that the order should not become a regular action by the Commission and attributed it to a unique vestige of the transition to competition.

Larsen explained that Public Utility Companies Article § 4-101 and other PUC provisions must be viewed in the context of the SOS mechanism, where the Commission has limited time and limited options after the auctions are conducted. While such constraints do not permit a full rate case, that does not mean the Commission is compelled to abandon just and reasonable rates and the public interest, Larsen argued, responding to criticisms from the Maryland Energy Group (Matters, 5/28/08).

The opportunity to comment at the public meeting provided due process to affected parties, Larsen added, chastising MEG for not bringing customers or representatives who could speak on specific bill

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REPs Ask for Power to Send Invoices More Frequently to Facilitate Prepaid Plans

REPs should be allowed to invoice customers more than monthly in order to accommodate pre-payment options, several REPs told the PUCT in its prepaid rulemaking (35533, Matters, 4/11/08).

Many customers are paid weekly or bi-weekly, and more frequent invoices make it easier for them to make timely payments and budget for their electric usage, reasoned Scott Evans, who has worked at several prepaid REPs including Electric Now, Freedom Power and Fire Fly Electricity.

More frequent bills will also lessen the strain on customers from true-ups, Evans noted.

With 30 day invoices, any true-up from estimated pre-payments has to be held until the next monthly invoice, which means the time between the under-billed usage period and payment due date on the disconnection notice can be over 60 days, Evans noted.

Often, the extra amount of the true-up on top of the invoice amount causes customers to not pay and find another provider, leaving the prepaid REP with substantial bad debt - a problem which has forced some REPs to leave the market, Evans observed.

The Retail Market Group (RMG, consisting of First Choice Power, Reliant Energy and TXU Energy) noted that the substantive rules allow bills to be issued less frequently than monthly and sees no policy reason to limit customers from adopting more frequent billing.

A REP may choose, for example, to bill the initial prepay amount in installments of less than one month rather than require payment of an entire month's consumption in one bill. Furthermore, a REP may require an initial prepay amount to be paid based on an estimate of one month's consumption followed by an invoice sent two weeks later for the second month's estimated consumption. That sequence allows a REP to receive payment (16 days after the bill is issued) for the second's month's

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Briefly:

Spark to Re-Enter Ohio Gas Market

Spark Energy applied for a retail natural gas supplier license in Ohio, asking for approval to serve all customer classes in all four LDCs (08-0638-GA-CRS). However, Spark initially intends to limit marketing to Dominion East Ohio's territory. Spark was formerly licensed in Ohio as Utility Resource Solutions, with the license expiring in 2007. Spark reported that it is also seeking a gas marketer's license in New Jersey and recently withdrew an application for a marketer's license in Georgia.

Duke Ohio Gas to Convene Collaborative on Auction for SSO

PUCO approved Duke Energy Ohio's natural gas distribution rate case settlement which provides that Duke is to convene a working group within 60 days to explore implementing an auction to supply the standard service offer. The working group is to also review whether the present allocation of 80% of the net revenues from Duke's asset management agreement should continue to flow to GCR customers only, or should be changed to flow to Gas Cost Recovery customers and choice customers. Under the pact, Duke agreed to move approximately \$5 million of carrying costs associated with gas inventory from base distribution rates to the GCR mechanism (Matters, 2/29/08). That's to ensure shopping customers don't pay the costs twice, once in their distribution rates and once to their supplier.

Oncor Files AMS Deployment Plan

Oncor filed its advanced meter deployment plan with the PUCT yesterday in docket 35718 (Matters, 5/23/08). Oncor reported that the advanced meter surcharge starting Jan. 1, 2009 would be an average of \$2.29 per month for 11 years for residential customers and an average of \$3.90 per month for 11 years for non-residential customers. Aside from pilot meters, Oncor plans to install an additional 75,000 advanced meters in 2008, and approximately 600,000 advanced meters in 2009, and 900,000 advanced meters annually in 2010, 2011, and 2012. The Dallas-Fort Worth area is scheduled to get the smart meters in 2009. TDSPs are still working to implement a common advanced meter web portal, Oncor noted, so during the

interim Oncor will provide meter data through alternate means. REPs will obtain customer data through email or a File Transfer Protocol site, while customers and third parties will be able to obtain data through the Oncor Customer Contact Center or through an upgrade to the existing web portal. Oncor expects an interim solution to be available in 2009, while the common advanced meter web portal will take approximately two years to implement after a system integrator or vendor is selected by the TDSPs.

Stakeholders Debate FERC Funding Mechanism

Stakeholders' positions regarding potential changes to FERC's regulatory assessment largely were predictable and generally centered on what fees stakeholders are paying now (AD08-7, Matters, 4/18/08). Generally, transmission owners outside of RTOs (such as Portland General Electric, Sierra Pacific Resources, Southern Company) and power marketers (Dynegy, FPL Group, Epic Merchant Energy, New England Power Generators Association) opposed changing the current framework. Wholesale marketers argued that FERC's primary job remains regulating transmission, and that a fee on wholesale sales would thus be inappropriate. Epic added that marketers already pay the fee indirectly through ISO charges. Likewise, non-RTO transmission owners opposed any change that would end the current exemption for transmission reserved for bundled retail load. RTOs and transmission owners in RTOs (Exelon, Detroit Edison, ISO/RTO Council), however, countered that vertically integrated transmission owners still create sizable workload for the Commission and the exemption constitutes inequitable treatment. Exelon also cited expanded Commission workload for non-transmission functions (merger review, reliability, market oversight, etc.) as requiring an expansion of entities assessed the fee.

AEP Ohio Wants Green Power

AEP Ohio issued an RFP to procure on long-term contracts 300 MW of commercially proven renewable generation interconnected to PJM and operational no later than Dec. 31, 2010 (<http://www.AEPOhio.com/go/rfp>).

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impacts. The administrative meetings are pretty much "open mic night," Larsen said, and Larsen rejected the notion that stakeholders were denied an opportunity to present their cases because the meetings are not a contested case proceeding with cross examination.

Larsen also noted subsidization among rate classes is "pretty standard stuff," noting cross-subsidization in the most recent Pepco and Delmarva rate cases. Staff dug up a few cases involving ratepayer subsidization of the transition of Eastalco onto higher rates in the 1980s.

Larsen disagreed with MEG's contention that since SB 1 (2006) explicitly directed the Commission to mitigate residential prices, it meant legislators thought the Commission lacked the power to mitigate prices without legislative action. Legislators, Larsen noted, could believe the Commission had authority to act on its own, but were dissatisfied with how the Commission was, or was not, using its authority at that time.

In the absence of specific language, the Commission must fall back on the general principle of ratemaking: to produce just and reasonable rates, the chair concluded.

Larsen agreed that the Type II mitigation for new customers was not the perfect solution, but it was the "fairest, best" solution given the circumstances. Utilities reported that they could not, in fact, create opt-in deferral plans in only four weeks. BGE noted that while it implemented its second rate stabilization plan five weeks after an order last year, BGE built it off an existing plan, and had been working on the plan for over five months as it awaited Commission approval.

Larsen highlighted the Commission's position entering the April auction which produced the higher rates. Aside from inheriting the order which established the new Type I definition from a much differently constituted Commission, Larsen pointed to January 2008 testimony from the Retail Energy Supply Association suggesting that even customers as small as 5 kW would see lower prices from quarterly pricing instead of the Type I blended rate, although the RESA excerpt started by stating no one can predict future rates. Larsen's

point, however, was the speed at which unprecedented price spikes differed from the Commission's expectations regarding the Type II transition and left the PSC with few alternatives.

Still, the subsidization-related distribution increases will be significant for some large customers. SeverStal Sparrows Point steel will pay about \$410,000 more for the three summer months, while chemical producer W. R. Grace and John Hopkins are to each pay \$35,000 more, according to representatives at the administrative meeting.

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estimated consumption before the second month's consumption begins, RMG explained.

P.U.C. SUBST. R. 25.483 should be modified to allow disconnection for nonpayment of an estimated bill, since advance pay options inherently rely on estimated usage, RMG added. Current language prohibits disconnection for nonpayment of an estimated bill unless the bill is based on an estimated meter read by the TDU. The prerequisites for disconnection for nonpayment of an advance pay invoice, such as whether a true-up is required and the timelines related to that true-up, should be examined by the Commission in the rulemaking, RMG said.

RMG recommended that REPs be allowed to send a disconnection notice concurrent with the invoice for advance payment, similar to REPs' ability to send the disconnect notice at the same time a deposit request is sent to the customer. In each case the REP is mitigating its exposure for non-payment, RMG reasoned.

Texas Ratepayers' Organization to Save Energy and Texas Legal Services Center (ROSE) opposed broader disconnect authority.

"Disconnection of service is serious business," ROSE argued.

"Disconnection of service endangers health and safety and can result in unnecessary death. Even with the standards in place today, children die in fires started by candles being used to provide light for doing homework because the power was disconnected. Elderly people are found every summer dead in their homes because of a lack of air conditioning. Texas has already seen its first disconnection tragedy in

2008. A young couple in Corpus Christi died in their sleep after their electricity was disconnected. They died from carbon monoxide poisoning from a gas powered generator," ROSE told the Commission.

Rather than changing disconnect rules for prepaid service, ROSE suggested prohibiting disconnection from May through September.

Prepaid vs. Advance Pay

RMG urged the Commission to make two distinctions regarding prepaid service.

First, RMG considers any prepaid mechanism a billing option that could be available on any product. Prepaid and advance pay features are not "product offerings" since their distinguishing characteristic is the timing of the customer's payment for electricity - not the price or other terms of service, RMG reasoned.

Second, the Commission's rules should reflect two types of prepaid service - one using in-home technology to allow the customer to pay and track usage in near real-time, and another in which the customer receives traditional billing statements but makes advance payments.

A "prepaid" option would be the option using an in-home prepayment meter or other device as contemplated in P.U.C. SUBST. R. 25.498. Other mechanisms not relying on in-home technology should be considered "advance pay" options, RMG suggested.

Prepaid and advance pay options have distinct differences with respect to necessary equipment, billing, payment, true-up process, and disconnection timing, RMG noted.

Under the prepaid method, customers have an in-home device, do not receive bills, and pay at their desired frequency as previously bought usage is consumed, with usage tracked near real-time and disconnection occurring when the prepaid usage is fully consumed.

The advance pay method includes periodic billing statements, a specific timeline for payment, and true-ups of usage based on monthly TDSP meter reads, with disconnection only occurring after nonpayment of a bill and notice.

Security Deposits and Other Fees

REPs should be allowed to collect security deposits from advance pay customers, RMG argued. While the number of days at risk for

nonpayment is reduced under the advance pay option, the risk of nonpayment is not eliminated, RMG explained, because of possible true-ups from estimated invoices.

Accordingly, rules need to be clarified so that a REP may assess an initial deposit for an existing customer who initiated service as an advance pay customer (at which time the REP decided not to impose a deposit) but who then switches their billing option to post pay (traditional billing), RMG argued, since post pay carries different risks. P.U.C. SUBST. R. 25.478(c)(3) restricts a REP from collecting an initial deposit from an existing customer, subject to certain circumstances, RMG noted.

ROSE, however, claimed the risk to REPs from prepaid service is lower than standard service, but pointed out that prepaid service is typically more expensive despite this lower risk. "Customers who pay before they use the product represent less risk to the REP; thus, customers who prepay should benefit from lower costs," ROSE reasoned.

ROSE concluded that prepaid customers should not be charged a security deposit since the risk of serving the customer is covered by the prepayment, making a security deposit, "totally unnecessary."

A REP should be prohibited from charging cancellation, termination or reactivation fees for prepaid products, ROSE urged, and added that those fees should be prohibited for any other electric service as well.

"Cancellation fees serve to restrict a customer's ability to change providers. In the market envisioned by the Commission it is of utmost importance for consumers to be able to vote for REPs with their pocketbooks and switch providers. Cancellation, termination, activation, and deactivation fees increase the cost of switching REPs and inhibit consumer choice and should therefore be prohibited," ROSE stated.

ROSE also favors a maximum term of one billing cycle for prepaid products since consumers should be able to switch when a better price or better service becomes available.

The ratepayers group sees the need for a new rule to ensure that prepaid REPs return any unused balance to a customer who switches providers within five days of the switch being completed.

While RMG and consumer groups

maintained that the rescission period and switch notification for advance pay customers should not be modified, prepaid REP eTricity argued that customers making a prepayment should waive their right to rescind the contract.

REPs agreed that estimation and true-up methodologies should be disclosed in terms of service, but cautioned against the PUCT proscribing specific methods. The maximum interval between true-ups should be no more than 30 days, the Office of Public Utility Counsel observed.

ERCOT Transactions

RMG opposed any rule that requires different, faster market transaction requirements simply because the customer has chosen an advance pay or prepaid option, such as faster switches for prepaid customers.

But Evans argued that 99% of prepaid customers need their power turned on immediately. Some prepaid REPs use a Move-in transaction to facilitate a speedy transfer even though they should be using a Switch with a waiver, he noted. But Move-ins will usually take only 2-5 days to complete, versus 5-10 days for Switches with a waiver. Evans urged that Move-in transactions be accepted for all the prepaid customers, not just those moving in to a residence for the first time.

Similarly, some prepaid REPs will issue Move-out transactions after issuing a Disconnect for Nonpayment if they can't contact the customer five days after sending the DNP, in order to quickly stop the charges they are incurring from the TDSP, Evans explained. Such use of Move-outs should be an acceptable transaction for prepaid REPs, Evans suggested, given the "transient" nature of many prepaid customers.

The statutory rate cap on prepaid rates is unfair, Evans added, because prepaid services are the only competitive service for which the price is capped.

"Ultimately the consumer suffers from this restriction because it has contributed heavily to prepaid REPs being forced to exit the market when wholesale rates spike upward," Evans reported.

Evans sees adequate competition keeping retail prices down without the cap.

eTricity argued it would be helpful if historical

usage was made more readily available to prepaid REPs or permitted as an extract from ERCOT that could be accessed whether or not the REP had ownership of the ESI ID.

eTricity also recommended that the Inadvertent Gain Process be reviewed so that when an ESI ID that was inadvertently switched is regained by the original provider, that ESI ID is in the same status it was in when the ESI ID was inadvertently switched.

For example, if the ESI ID was in a Disconnect for Non-Pay status before it was lost, it should be put back into the Disconnect for Non-Pay status when it is regained, with the Dunning Notice still in full force and effect.

Additionally, the stacking rules should also be reviewed such that the Disconnect for Non-Pay does not process if the REP is no longer the REP of Record, eTricity argued.

The Steering Committee of Cities Served by Oncor cautioned the Commission from attempting to facilitate or favor one type of retail service over others, and opposed special rules for prepaid products.

"The fact that pre-pay service has not reached significant market popularity in ERCOT suggests that the service is not as appealing to consumers as other market offerings," the cities concluded.

Prepay customers should never be forced to prepay for a fixed block of service that could run out before the end of the customer's billing cycle, ROSE argued.

Because of weather sensitivity it would be relatively difficult for most consumers to be able to accurately estimate their monthly electricity needs, ROSE noted.

"Given the essential nature of electric service this type of prepaid service is unacceptable. If the customer is left without electricity, health and safety are endangered," ROSE concluded.

In addition, ROSE contended that prepayment customers should not be forced to accept non-firm terms of service such as time of use, demand response rates or variable pricing.