

# Energy Choice Matters

June 27, 2008

## PUCT Posting Complaint Stats Online

The PUCT has given shoppers more tools to evaluate their potential REP by posting a complaint comparison chart and other REP business information on Power to Choose.

Currently, the Commission has posted a comparison of complaints that compares each REP's ratio of small customer complaints to customers, to the average ratio in the market, and ranks where the REP falls in relation to that average. The calculation is performed monthly, and the Commission averages the results into a six-month score for each REP, to minimize the effects of a month with a disproportionate amount of complaints.

REPs are then divided among five groupings of approximately equal size based on their complaint ratio, with some adjustment to ensure that REPs with similar complaint ratios will have similar scores.

The Commission will soon be posting gross complaint numbers as well, broken out by type of complaint.

The PUCT cautions customers that significant changes in the complaint score may occur from month to month for smaller REPs since one or two complaints may dramatically change the complaint ratio. In terms of gross complaints, large REPs will naturally have a greater total number of complaints because of their size, the Commission noted.

The Commission also informs customers that the data includes all complaints received by the PUCT, irrespective of whether or not the REP was determined to be at fault or adequately resolved the customer's complaint.

The Commission also posted a list which shows customers, among other things, the type of financial qualification (e.g. unused cash resources, credit rating, etc.) used by the REP in obtaining its certificate. The list also includes the date of the REP's license, its type of corporate structure, and links to relevant documents submitted during its certification process.

See page 6 for the PUCT's complaint statistics as posted on Power to Choose.

## Supreme Court Backs Mobile-Sierra Standard for Contract Review, But Remands Case to FERC

The U. S. Supreme Court broadly backed the so-called "public interest" standard of review at FERC in a decision relating to the Western energy crisis, though the Court did remand to FERC review of certain contracts in order to examine two issues the Court felt were not considered in FERC's initial review under the public interest test.

At issue are long-term contracts entered into by utilities which ended up being much more expensive than short-term prices once the crisis passed. The Court held that FERC may abrogate a "valid" contract only if the contract harms the public interest.

The high court mostly rejected the logic of the Ninth Circuit regarding the public interest standard, while still affirming its remand decision on alternate grounds. "The Ninth Circuit's standard would give short shrift to the important role of contracts in the FPA, as reflected in our decision in Sierra, and would threaten to inject more volatility into the electricity market by undermining a key source of stability."

Under the public interest, or Mobile-Sierra, standard, FERC can only abrogate contracts when such action is in the public interest. It's a higher hurdle to overcome than the "just and reasonable" standard, which would allow the Commission to reject contracts simply when doing so is just and reasonable. The Court, however, considers the public interest test merely a different application of the just and reasonable standard, not a separate standard of review, and thus is compliant with the Federal Power Act.

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## DPUC Accepts July 1 Default Service Rates

The Connecticut DPUC accepted as filed the latest Standard Service (Matters, 6/2/08) and Last Resort Service rates for Connecticut Light and Power and Last Resort rates for United Illuminating (Matters, 6/12/08).

### CL&P

#### July 1 2008 - Dec. 31, 2008 Standard Service

Class	GSC plus BFMCC (¢/kWh)
Rate 1, 5	11.793
Rate 7	14.320 On Peak 10.820 Off Peak
Rate 18, 30, 35, 40	11.970
Rate 27	14.022 On Peak 11.022 Off Peak
Rate 41*, 55*, 56*	14.300 On Peak 11.300 Off Peak

### Last Resort Rates

#### Non Time-of-Use

##### Rates 21, 39

July	14.933
August	15.091
September	13.740

#### Time-of-Use

##### Rates 41\*, 55\*, 56\*, 57, 58

July	17.660 On Peak 13.735 Off Peak
August	17.883 On Peak 13.971 Off Peak
September	15.219 On Peak 13.079 Off Peak

\*Customers in Rates 41, 55 and 56 may be either Standard Service customers or Last Resort customers based on demand.

### UI

#### Last Resort Rates

July	15.7243 On Peak 15.7243 Off Peak
August	15.8286 On Peak 15.8286 Off Peak
September	14.0455 On Peak 14.0455 Off Peak

## Briefly:

### Pa. Rate Mitigation Plan Heads to Full Senate

The Pennsylvania Senate Consumer Protection and Professional Licensure Committee approved a bill which would offer mass market

customers a five-year mitigation plan when electricity price caps end in 2010 and 2011. Under SB 1134 as voted out of committee, a five-year, opt-in rate mitigation plan would be offered to residential and small commercial customers under 25 kW. The plan would limit a customer's price increase to 9% of existing rates in the first post-cap year, 18% in year 2, 27% in year 3, 36% in year 4, and 45% in year 5. The mitigation plans are to be "competitively neutral" and available to customers of alternate generation suppliers, though the bill is not explicit in requiring the deferral to be reflected in a non-bypassable credit. The bill would also require default service providers to procure a "least cost" portfolio which could include spot market purchases, purchases from auctions or RFPs, bilateral contracts, and long-term contracts lasting up to 20 years (or even longer under a special finding by the PUC). Mass market default service prices could not change more frequently than quarterly. The bill goes to the full Senate.

### PUCT Compliance Review to Start as Clearinghouse for Previous Filings

The PUCT Staff's project (35806) relating to a REP compliance review pursuant to requirements in Subst. R. 25.107(f)-(g) is initially to serve as a clearinghouse for staff to gather and review various financial and managerial compliance filings made by REPs (Matters, 6/26/08). Depending on their content, REP compliance filings could be in the annual report docket (25721), REPs' individual certificate application dockets, certificate amendment dockets, or new dockets specifically created for individual REP compliance filings. For example, REPs using unused cash resources to pass financial qualifications are required to inform the PUCT when their TDU billings exceed \$250,000, at which time the REP must maintain an appropriate cash ratio to their billings, as opposed to the minimum \$100,000 required. REPs are also required to file evidence showing compliance with rules requiring financial resources equal to the sum of deposits and advance payments collected, upon collecting their first deposit or advanced payment. Especially when REPs themselves do not style such filings, it can sometimes be placed in the annual reports dockets, while other times being

filed in their individual certificate dockets.

### **D.C. PSC Gives Net Metering Customers Full Retail Rate**

Net metering customers in Washington, D.C. will be paid the "full retail rate" for their generation, including transmission and distribution charges, under a PSC order (FC 945). Although Pepco and the Office of People's Counsel favored paying excess generation at the generation rate only since net metering displaces generation but not the use of wires (Matters, 2/12/08), the PSC found that a "comprehensive" net metering program will provide benefits to customers. Any subsidy paid by customers not using net metering will be constrained by the 100 kW limit on net metering installations, the PSC reasoned. The PSC also believes that compensation at the full retail rate will provide an important incentive to solar development, noting that distributed generation could have positive impacts on the transmission and distribution system.

### **Direct Energy Offering Guaranteed Discount in Alberta**

Direct Energy launched a guaranteed discount off tariff product in the Alberta electricity market, a variable rate that's 5% below the Regulated Rate Option. Direct positioned its Guaranteed Savings Plan for customers who aren't confident enough to lock-in a fixed rate but still want savings off the default rate.

### **Calif. PUC Adopts 2009 Local Procurement Obligations**

The California PUC yesterday adopted 2009 local procurement obligations for jurisdictional LSEs, and made a few refinements to the RA program (Matters, 5/28/08). But left until Phase II of the proceeding (R. 08-01-025) is consideration of changing the quarterly allocation of cost allocation methodology (CAM) related RA credits to a monthly allocation. Also kicked to Phase II was consideration of changes to the load forecasting methods used by electric service providers.

### **CHP Rulemaking Opened in California**

The California PUC instituted a rulemaking to implement the provisions of AB 1613 and establish the policies and procedures for IOUs' purchase of electricity from new combined heat

and power systems (Mattes, 6/17/08).

### **NRG Adds 40 MW in Conn.**

NRG Energy completed a 40-MW addition to its Cos Cob peaker in Connecticut, bringing the total capacity of the plant to 100 MW.

### **ARB Releases GHG Draft**

The California Air Resources Board released its draft to combat climate change, though there are hardly any surprises for the electric industry. While proposing a cap-and-trade for electricity, transportation fuels, natural gas, and large industrial sources of greenhouse gases, the draft doesn't address allocation of allowances. The cap-and-trade program would be developed in conjunction with the Western Climate Initiative. RPS would also be increased to 33% under the draft.

### **N.Y. PSC Staff Says Market Power Still a Concern Under Iberdrola RD**

An ALJ's recommended decision regarding the Iberdrola-Energy East acquisition erred by not extending the prohibition on Iberdrola owning generation in the Energy East territories to all areas of the state if the Commission ultimately accepts the merger, PSC Staff argued in exceptions to the RD (07-M-0906). The Petitioners, plus consumer and environmental groups, countered that the RD was rather too restrictive on generation, and contended that Iberdrola should be allowed to own wind resources in the Energy East territories (Matters, 6/17/08).

In Staff's view, the RD, "disregards the fact that upstate New York is one market for generation," and thus vertical market power concerns arise even when Iberdrola's generation is outside of the Energy East utility areas. Actions within the NYSEG and RG&E service territories affect generation prices for all of upstate New York, Staff reasoned. Staff cited a hypothetical decision by either utility to not build a needed transmission line in their territories in order to raise prices elsewhere in the state as one possible example of the exercise market power which would raise the prices not only in the NYSEG and RG&E service territories, but also throughout Zones A-E. The

anti-competitive impact of the "transmission line that doesn't get built" is virtually undetectable, Staff cautioned.

But the Petitioners reiterated that wind's variable nature makes the exercise of market power impossible. Iberdrola and Energy East also reminded the Commission that its wind resources would be on the low cost side of a major transmission constraint. Multiple Intervenors suggested vertical market power could be mitigated without the need for an outright prohibition on wind ownership in the NYSEG/RG&E areas. The Consumer Protection Board also opposed any restrictions on Iberdrola's wind ownership not placed on other utility holding companies in New York.

Strategic Power Management called the RD's prohibition on Iberdrola's wind ownership in the Energy East service area "sad," and claimed the RD has, "already hurt New York State as an investment destination."

Petitioners and CPB opposed the RD's proposal to make Energy East divest its hydropower units in addition to its fossil generation. Multiple Intervenors also opposed hydro divestiture, unless a demonstration is made that such divestiture truly is in the public interest. NYSEG and RG&E collectively own approximately 118 MW of hydropower generation at eight locations.

Divesting the hydro units would increase customer costs \$49-55 million per year, the Petitioners cautioned.

The Independent Power Producers of New York argued that the ALJ erred by not imposing a specific deadline for divestiture of Energy East's generation.

The RD proposed that the timing of the divestiture be established by a collaborative process instituted after resolution of the merger docket. IPPNY wants divestiture completed within nine months of the Commission's ruling on the merger, to prevent undue delay.

IPPNY is concerned that Energy East would seek to delay divestiture absent a firm deadline, particularly, "given RG&E's very recent behavior with respect to one of these assets, its 257 MW coal-fired Russell Station."

IPPNY claimed that RG&E, by previously proposing a repowering for Russell, had, "unilaterally attempted to dodge," a commitment to divest the Russell plant once the Rochester

Transmission Project was operational.

Thus a firm deadline is needed, IPPNY asserted, to ensure that Energy East, "cannot again attempt to evade its commitments."

Staff urged that the Commission adopt its proposed standard of conduct that would prohibit any competitive Iberdrola affiliate from using the Energy East, NYSEG or RG&E name, a proposal not included in the RD. That proposal would force Iberdrola to change the name of NYSEG's ESCO affiliate, NYSEG Solutions. Staff claimed such a change would not be burdensome, noting that RG&E's ESCO affiliate, Energetix, does not share RG&E's corporate name.

Staff also recommended that the requirements of the NYSEG Commodity Order should be applied to RG&E's fixed price option product, including a reduction in the mark-up RG&E can earn to the level NYSEG currently earns. The earnings sharing mechanism should be modified to conform to the NYSEG conditions, with 85% of the over-earnings accruing to ratepayers and 15% accruing to shareholders, above a threshold level of \$4.5 million of pre-tax earnings that shareholders may retain, Staff argued.

Staff wants NYSEG and RG&E to conform to its bill issuance and payment processing (BIPP) policy under which ESCO customers are not charged a BIPP fee by the utility, since the ESCO is charged the fee.

The unbundling process for the Energy East utilities is not yet complete, Staff noted, arguing that RG&E in particular should be required to file revised tariffs that convert all existing back-out credits to unbundled charges in a revenue neutral manner, including the merchant function credit and metering back-out credits.

Staff favors directing NYSEG and RG&E to examine ESCO Referral Programs similar to the requirements recently placed on KeySpan and National Fuel Gas.

Multiple Intervenors urged the Commission not to defer the question of allocating benefits from any divestitures. A favorable allocation of net proceeds from the auction of fossil-fuel generation provides an opportunity to increase the pool of financial benefits available to customers if the transaction is consummated, the industrials argued.

Multiple Intervenors suggested that

allocation of 100% of the above-book auction proceeds to customers is justified since customers paid for the construction, operation and maintenance of the power plants, and would be the ones losing the benefit of their output.

## ***Surges and Circuits***

### **Power Surges**



**Texas Customers:** PUCT gives them more power when shopping by posting complaint stats online.

### **Short Circuits**



**CenterPoint, Reliant:** Collaboration on developing AMIN plan being battered as unseemly and discriminatory by other REPs.



**California Mass Market ESPs:** Absent legislative changes, rate caps for residential customers would last until 2022 under a PUC draft.

## ***SCOTUS ... from 1***

The Court did not agree with the Ninth Circuit that FERC must inquire into whether a contract was formed in an environment of market "dysfunction" before applying the Mobile-Sierra presumption.

"It would be a perverse rule that rendered contracts less likely to be enforced when there is volatility in the market," the Court held.

"By enabling sophisticated parties who weathered market turmoil by entering long-term contracts to renounce those contracts once the storm has passed, the Ninth Circuit's holding would reduce the incentive to conclude such contracts in the future," the Court found.

The, "mere fact that the market is imperfect, or even chaotic, is no reason to undermine the stabilizing force of contracts that the FPA embraced as an alternative to 'purely tariff-based regulation,'" the Court concluded.

However, the Court did stress that if the dysfunctional market conditions under which the contract was formed were caused by illegal action of one of the parties, FERC should not apply the Mobile-Sierra standard.

The Court also rapped the Ninth Circuit's "zone of reasonableness" test for rates. The test, "fails to accord an adequate level of protection to contracts," the Court ruled.

But two errors in FERC's analysis when

determining whether the contracts could be abrogated led the Court to favor remand.

First, the Court observed that FERC, when reviewing the contracts, may have only looked at whether consumers' rates increased immediately upon the relevant contracts' commencement, rather than determining whether the contracts imposed an excessive burden on consumers "down the line," relative to the rates they could have obtained (but for the contracts) after elimination of the dysfunctional market. That future excessive burden could be against the public interest and thus needs to be examined as part of a Mobile-Sierra review, the Court held.

Second, the Court explained that, like fraud and duress, unlawful market activity that directly affects contract negotiations eliminates the premise on which the Mobile-Sierra presumption rests: that the contract rates are the product of fair, arms-length negotiations.

Since a FERC staff report concluded that unlawful activities of various sellers in the spot market affected prices in the forward market, the Commission needed to address whether there was a causal connection between unlawful activity and the contract rate when determining whether abrogating the contract would be in the public interest.

"[I]f it is clear that one party to a contract engaged in such extensive unlawful market manipulation as to alter the playing field for contract negotiations, the Commission should not presume that the contract is just and reasonable," the Court ruled.

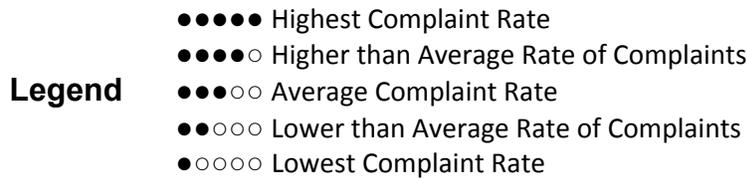
Still, "There is no reason why FERC should be able to abrogate a contract on these grounds without finding a causal connection between unlawful activity and the contract rate," the high court added.

On remand, the Commission was directed to amplify or clarify its findings on those two points.

The Court reiterated that it was not addressing the lawfulness of FERC's market-based rate policy.

Dissenting were Justices John Paul Stevens and David Souter, who favored affording FERC greater discretion. Chief Justice John Roberts and Justice Stephen Breyer were recused from the cases, which were *Morgan Stanley Capital Group v. Public Utility District 1, 06-1457*; and *American Electric Power Service Corp. v. Public Utility District 1, 06-1462*.

# REP Complaint Metrics as Reported by PUCT on Power to Choose



REP	June 2008 Complaint Score	Last Month's Score
1 Gateway Power	●○○○○	●○○○○
2 Nueces Electric Coop	●○○○○	●○○○○
3 Champion Energy	●○○○○	●○○○○
4 Reliant Energy	●○○○○	●○○○○
5 CPL Retail Energy	●○○○○	●○○○○
6 WTU Retail	●○○○○	●●○○○
7 Spark Energy	●○○○○	●●○○○
8 Tara Energy	●●○○○	●●○○○
9 Direct Energy	●●○○○	●●○○○
10 TXU Energy	●●○○○	●●○○○
11 Green Mountain Energy	●●○○○	●●●○○
12 StarTex Power (Star Electricity)	●●○○○	●●●○○
13 Stream Energy	●●○○○	●●●○○
14 Hudson Energy Services	●●●○○	●●○○○
15 U.S. Energy Savings Corp (Just Energy)	●●●○○	●●●○○
16 Amigo Energy (Vega Resources)	●●●○○	●●○○○
17 Cirro Energy	●●●○○	●●●○○
18 Gexa Energy	●●●○○	●●●○○
19 Brilliant Energy	●●●○○	●○○○○
20 Simple Power (Chain Lakes Power, LLC)	●●●○○	●○○○○
21 Ambit Energy	●●●●○	●●●●○
22 Texas Power	●●●●○	●●●●○
23 MX Energy	●●●●○	●●●●○
24 Affordable Power	●●●●○	●●●●○
25 Liberty Power	●●●●○	●●●●○
26 DPI Energy	●●●●○	●●●●○
27 First Choice Power	●●●●○	●●●●●
28 Commerce Energy	●●●●○	●●●●●
29 Texpo Energy	●●●●●	●●●●●
30 Mega Energy	●●●●●	●○○○○
31 Dynowatt (Accent Energy)	●●●●●	●●●●●
32 OnPAC Energy (Pegasus Alliance Corp)	●●●●●	●●●●●
33 Freedom Power	●●●●●	●●●●●