Energy Choice Matters

July 8, 2008

PUCT Staff Strawman Would Limit Price Changes for Auto Renewals

REPs would no longer be able to automatically renew fixed-price customers onto a variable monthly product under a customer disclosure strawman released by the PUCT Staff (35768, Matters, 7/4/08).

As under the current PUC SUBST. R. §25.475, automatic renewals under the strawman cannot exceed 31 days, although they can be repeatedly renewed for 31 days. However, the strawman adds the following language regarding renewals:

"A REP may materially change the terms and conditions of a contract for a retail electric product in accordance with this subsection in connection with an automatic renewal, but may not change the price, pricing methodology in a contract, or the contract term, without obtaining the customer's affirmative consent, in accordance with §25.474 of this title [relating to initial REP selection]."

We interpret that language to mean that an automatic renewal of a fixed-price contract must occur at the same price. Additionally, combined with the proposed new definition of a fixed-price contract, we do not believe that a REP could try and shoehorn a variable-priced renewal into the Terms of Service by including that provision in the original contract and claiming disclosure and customer consent, because fixed-price contracts are defined as having no price changes for the term of the contract, excluding actual changes in TDSP charges. Thus, REPs which currently have fixed-term contracts but allow for automatic renewal onto a variable rate could not call such products fixed-price products, in our interpretation.

The strawman retains the current provision that REPs must notify customers 45 days in advance of material changes to their contract (when the contract allows for such a change). However, the strawman adds that customers must have at least 60 days from the issuance of the material change

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Columbia Shippers Warn FERC Columbia Is Moving Ahead with Changes Related to MLI Docket

Columbia Shippers asked FERC to direct Columbia Gas Transmission to suspend its point shift and Maximum Daily Delivery Obligation (MDDO) request procedure until the Commission has reviewed the procedure and issued an order determining whether the procedure is just and reasonable (RP08-401 et. al.).

Shippers cautioned FERC that Columbia is moving forward with procedures related to changes to its Master List of Interconnections (MLI) in a manner that may irreparably impair the contractual rights of Columbia's firm shippers by effectively forcing them to amend their contracts before the Commission has issued a further order on the MLI changes following a required technical conference (Matters, 7/3/08).

"Unless Columbia is directed to suspend all such activity, the Commission's review will at best require the unscrambling of many eggs as Columbia's Measuring Point and MDDO awards are undone in whole or part," shippers warned. At worst, the Commission's order will be meaningless because Columbia will have proceeded with and completed the reallocation of Measuring Point and MDDO capacity without awaiting resolution of the issues set for technical conference, marketers added.

Marketers told FERC that after announcing the MLI changes, Columbia stated that it would utilize a queue procedure to address point/MDDO shift requests. However, following the filing of Columbia Shippers' complaint, Columbia "suddenly" withdrew the point/MDDO shift request queue procedure,

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RESA Asks DPUC for Softer Language on Re-bill Violations

The Retail Energy Supply Association asked the Connecticut DPUC to not make a formal finding that several competitive suppliers' inadvertent, technical failure to comply with the Department's interpretation of billing error statutes constitute a statutory violation (08-02-06).

In a draft order relating to Connecticut Light and Power's billing errors which saw bills not produced for time-of-use customers for several months, the DPUC would find that Consolidated Edison Solutions, Glacial Energy, Hess, Sempra Energy Solutions, Strategic Energy and Suez Energy Resources NA violated Conn. Gen. Stat. § 16-259a(d) by not offering affected customers who were re-billed a payment plan, or by offering a plan inconsistent with the statute's provisions (Matters, 6/23/08).

RESA argued that the DPUC should look at the complete record in the case to find that suppliers' actions do not warrant a formal finding of violation.

Any such finding would have to be reported by suppliers in various renewal and annual update filings in other jurisdictions, which could adversely affect the supplier's ability to do business in other states, RESA noted. Thus, the repercussions of a statutory violation can go far beyond the damage to the supplier's reputation in the public eye.

RESA noted that there was a lack of clarity regarding the applicability of Section 16-259a prior to the Commission's first express interpretation of its meaning in the draft decision.

Even the Attorney General and Office of Consumer Counsel disagreed on the applicability of 16-259a to a situation where bills are not timely sent to customers, as opposed to cases where a bill is issued but is inaccurate, RESA pointed out.

"Given that two state agencies charged with protecting consumer rights disagreed as to the requirements of Section 16-259a and that the Statute had not been previously interpreted by the Department, RESA respectfully submits that the balance of equities would make it appear a bit severe to find that the named suppliers violated a statutory mandate not based upon the Department's ultimate interpretation of the Statute in the Draft Decision," RESA argued.

Suppliers fully cooperated to ensure affected customers would be taken care of in a manner that achieves the Department's goals in resolving the billing problems, and voluntarily agreed to payment plans for affected customers that are well in excess of the scope required by Section 16-259a, despite suppliers' relative lack of culpability in comparison to CL&P, RESA added.

The draft decision, RESA noted, appears to take a harsher view of suppliers whose testimony at a hearing regarding amounts applied to customer re-bills was more precise.

Suppliers who could not provide exact data on re-bills, and whether they exceeded limits in Section 16-259a, seemed to avoid "violator" status, while those who had documented their billing data were "rewarded" with being labeled as violators. Other suppliers avoided violating Section 16-259a by sheer chance, RESA suggested, because the CL&P billing errors actually resulted in a credit, rather than additional charges, to certain suppliers' customers.

RESA questioned whether the six suppliers named as violators were really more culpable than the other four affected suppliers with respect to awareness of and compliance with Section 16-259a. The record, RESA added, is incomplete on that question, and thus exposing the six suppliers to the potentially serious adverse impacts of a statutory violation does not produce the most equitable result.

RESA noted that the AG, in a brief, suggested that, "the DPUC should allow the affected electricity suppliers a reasonable opportunity to come into compliance with the requirements of § 16-259a."

Thus, RESA suggested that the DPUC find that the six suppliers, "failed to provide payment plans that were consistent with the requirements of Conn. Gen. Stat. § 16-259a, as clarified by the Department in this Decision," rather than finding the suppliers violated the statute.

Maryland PSC Reports on Bad Debt Levels

The simultaneous occurrence of hot weather and higher energy prices in Maryland have combined to put significant financial pressure on residential customers, which has manifested itself in higher levels of arrearages, termination notices, and terminations, the PSC reported. Gross residential arrearages are increasing dramatically and perhaps sustainably, unless energy prices fall or incomes increase, the PSC observed in a review of utility bad debt levels released last week.

However, the number of customers with an arrearage has only increased moderately, while the average arrearage among customers with an arrearage has increased dramatically. The statewide average residential arrearage (for customers with arrearages) for the first three months of 2008 was $354, and peaked in the final month of available data (March) at $377. BGE customers have the highest average arrearage, which peaked at $637 in the final month of reported data, March, 2008. BGE data reflects combined electric and gas service data.

BGE and Delmarva have aggressively issued termination notices in a preemptive attempt to spur customers to pay their bills. The strategy has seemed to be effective, the PSC reported, because the actual number of terminations is lower than otherwise might be expected in those territories. In particular, the PSC observed that BGE, whose customers incurred the largest price increase among Maryland ratepayers in 2007, did not terminate service to an increased percentage of customers. Data for the four major utilities are below; statewide averages also reflect smaller cooperatives in addition to the IOUs listed.

Average Gross Residential Arrearage

Year	Statewide	BGE	Pepco	Delmarva	Allegheny	WGL
2006	$88,259,033	$45,234,757	$13,118,963	$7,808,932	$4,003,646	$11,313,070
2007	$106,836,195	$54,976,049	$19,225,488	$10,223,741	$4,729,066	$9,559,876
2008	$144,345,341	$81,282,314	$24,510,785	$11,362,950	$6,184,812	$9,327,485

2008 average is through March

Percentage of Residential Customers With Arrearages

Year	Statewide	BGE	Pepco	Delmarva	Allegheny	WGL
2006	16.9%	12.5%	17.3%	22.0%	15.4%	17.1%
2007	17.4%	12.9%	18.8%	24.0%	16.4%	14.7%

Average Individual Residential Arrearage For Customers With Arrearages

Year	Statewide	BGE	Pepco	Delmarva	Allegheny	WGL
2006	$228	$337	$160	$206	$119	$161
2007	$261	$369	$215	$249	$131	$149
2008	$354	$621	$253	$274	$162	$174

2008 average is through March

Termination Notices as Percentage of Customers

Year	Statewide	BGE	Pepco	Delmarva	Allegheny	WGL
2006	8%	11%	6%	7%	2%	11%
2007	9%	15%	8%	11%	3%	10%

Terminations (actual and percent of customers)

Year	Statewide	BGE	Pepco	Delmarva	Allegheny	WGL
2006	73,384	24,654	14,300	5,110	2,439	14,496
	2.6%	2.3%	3.0%	3.0%	1.1%	3.7%
2007	75,696	22,898	16,974	5,168	3,155	15,518
	2.8%	2.0%	3.6%	3.0%	1.5%	3.9%

CAISO Offers Tweaks to Ease CRR Credit Reporting Obligation

The California ISO offered new tariff language to ease financial marketers' concerns about proposed reporting requirements for Congestion Revenue Rights (CRR).

As originally drafted, the proposal would have required CRR bidders to disclose and report on all their affiliates, regardless of whether they are market participants in CAISO or another RTO (ER08-1059, Matters, 6/23/08). Financial marketers had argued that the requirement was unduly burdensome for large financial institutions that have thousands of subsidiaries, most of which are not involved in power marketing.

CAISO has now proposed that a CRR bidder only notify CAISO of all affiliates that are CRR Holders, Candidate CRR Holders, or CAISO Market Participants and their guarantors, and any affiliates participating in an organized electricity market in North America. CAISO would have the authority to obtain, from a Market Participant that requests an Unsecured Credit Limit, financial and/or other information concerning all of the Market Participant's affiliates.

The modified proposal limits the general disclosure requirements while allowing CAISO to access all affiliate information when assessing how much, if any, unsecured credit to extend to an entity.

Merchant Grid Builder Concerned About TOs' Acceleration Cost Calculations

Merchant transmission builder Strategic Transmission has again protested the issue of costs for accelerated reliability projects in PJM (ER06-1474-006).

The gist of Strategic Transmission's protest at FERC is that transmission owners are also the dominant generation owners in PJM, and thus, according to Strategic Transmission, the largest beneficiaries from congestion rents. "Therefore, transmission owners are unlikely to adversely affect their shareholders by voluntarily reducing congestion rents," Strategic Transmission alleged.

The, "ability of transmission owners to frustrate or delay economic accelerations with unfettered control over cost claims is a demonstrated threat to the integrity of the economic planning process under the approach proposed by PJM," Strategic Transmission asserted.

Strategic Transmission pointed to accelerated reliability upgrades as a means of lowering congestion costs and producing tangible savings to customers.

But Strategic Transmission claimed PJM's process for calculating the costs of accelerating projects (so a cost-benefit comparison can be performed) would "hamstring" merchant acceleration efforts by giving incumbent transmission owners "complete control" of the acceleration process and particularly cost calculation.

Strategic Transmission noted PJM Tariff Section 217.3 states that the acceleration cost "shall be limited solely to the time value of advancing the required investment," which Strategic Transmission finds a "common-sense" approach.

While PJM's new proposal includes a definition of "Total Enhancement Cost" that is meant to reflect its previous interpretation of Section 217.3, Strategic Transmission contended that it is less than clear how the new definition would be applied in practice, which could open the door for transmission owners to claim a, "mass of unsubstantiated line items," when performing cost calculations.

PJM relies on transmission owners' cost figures because it does not have the information necessary to determine the costs of acceleration.

Briefly:

ERCOT Reports Short-Pay for July 3 Invoices

QSEs owed monies from ERCOT on invoices due on July 3 were short paid about $506,243.99 in aggregate due to recent defaults in the market. The amount ERCOT was short paid by QSE is:

QSE	Amount Short Paid
National Power (QSE)	$28,436.84
HWY 3 MHP (QSE)	$61,117.53
Sure Electric (Post Petition)	$414,464.66
Leach Energy Trading	$2,224.96

PUCT Staff Appeals Luminant Discovery Ruling

The PUCT Staff has appealed an ALJ's ruling prohibiting discovery of certain Luminant documents relating to an inadequate resource plan it submitted to ERCOT in October 2006 (34996, Matters, 6/30/08). The ALJ had determined the documents were protected by attorney-client privilege, but the Staff argues in its appeal that such a ruling is, "troubling because it applies the attorney-client communication and work product/core work product privileges so broadly that meaningful discovery concerning alleged misconduct in investigation and enforcement cases before the Commission may be severely limited if the ruling is applied as precedent." Staff contends the ruling would allow companies to invoke sweeping privilege over many items showing communications between and documents created by non-legal employees simply by invoking in-house counsel, however superficially, in the investigatory stages of events.

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notice to cancel their contract without penalty.

The Staff asked whether the notice period in SUBST. R. §25.493, relating to disclosures for non-POLR transfer or sale of customers between REPs, should be the same as required for material changes in a customer contract (§25.475(e)) in the strawman. The Staff asked whether the customer transfer notice, currently 30 days, should be even longer than the 45-day material change notice since it may involve not only a material change in service but a change in REP.

Under the strawman, the Electricity Facts Label for a variable product that includes a promotional price would either have to list the total average price for electric service when the promotional rate expires, or state that a separate EFL will be provided to the customer prior to the expiration of the promotional rate. If the EFL does not include the total average price for electric service when the promotional rate expires, the REP must provide the customer a separate EFL at least 10 days prior to the expiration of the promotional rate.

Terms of Service documents under the strawman must disclosure, for small commercial customers, a description of the TDSP demand charge and how it will be applied, if applicable, in addition to the currently required disclosures regarding TDSP fees for move-ins, out-of-cycle meter reads, and connections or reconnections.

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in favor of a first-come, first-served process, shippers noted. "Columbia's action was a direct retaliation for the filing of the Complaint," shippers claimed.

"By this act, Columbia has now created even greater uncertainty regarding the continuity of firm services and has unduly generated tremendous pressure on its shippers to scramble in establishing new point/MDDO shift requests. Columbia's elimination of the queue procedure has taken an untenable situation and made it worse. Columbia surely realized the uncertainty that elimination of the queue procedure would create, yet chose to proceed down that path nonetheless," shippers reported.

"Beyond retaliation, Columbia's abrupt change from a queue process to a first-come, first-served process evidences Columbia's intention to force its MLI changes (as well as Measuring Point and MDDO changes) on shippers before the Commission has had an opportunity to consider the Columbia Shippers' Complaint, Columbia's tariff filing, and the comments and protests of the other parties who have expressed concerns similar to the Columbia Shippers in those proceedings, and the record from the technical conference the Commission has required in the July 2 Order," shippers added.

Columbia is forcing shippers to make point/MDDO shift requests immediately or face an even greater risk of the inability to continue to serve their markets, shippers explained, despite FERC's order that Columbia must explain how it would carry out the changes in a shipper's service agreement at the technical conference.

Therefore, shippers urged the Commission to direct Columbia to suspend the point shift/MDDO request procedure associated with the MLI changes until Columbia has fully explained the procedure and its relationship to the MLI changes at the technical conference and the Commission has issued an order regarding the lawfulness of the procedure.