

# Energy Choice Matters

July 14, 2008

## Texas Consumer Groups Want Deposit, Switching Fee Waivers for Low-Income Customers Stranded by Defaults

Texas Legal Services Center and Texas Ratepayers' Organization to Save Energy have asked the PUCT for an emergency rulemaking to temporarily suspend current credit and deposit requirements and switching fees to allow low-income residential consumers whose REPs have gone out of business, or otherwise stopped serving them, to be able to select another REP without having to pay a security deposit or any fees related to switching, including the out-of-cycle meter reading charge (35868).

The waivers would relate to PUC Subst. R. 25.43, 25.474, and 25.478.

Over 43,000 residential customers have been involuntarily transferred to a POLR or another REP as a result of market defaults and exits, TLSC and ROSE noted.

Those dropped customers were on average previously paying between 11.8¢/kWh to 16.9¢/kWh, but would pay from 15.3¢/kWh to 35.0¢/kWh under POLR rates, TLSC and ROSE reported.

Such rate increases are on top of lost security deposits and lost prepaid amounts and advance payments, the consumer groups added.

Getting off POLR service is not as easy for customers as it should be, TLSC and ROSE argued.

For example, many customers who tried to completely avoid taking POLR service requested a switch before their providers went out of business. But due to meter read cycles, only a small portion of those customers actually avoided POLR service -- those customers whose switches were scheduled

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## Direct Energy Applies to Become Conn. Energy Efficiency Partner

Direct Energy Services applied with the DPUC to become a General Partner and Vendor Partner in the Connecticut Energy Efficiency Partners (EEP) Program (08-07-06).

Legislators authorized the DPUC to spend up to \$60 million annually to fund projects that will reduce Connecticut's peak electric demand under the EEP Program. After a recent decision in docket 07-06-59, the Program will initially offer grants for gas-driven chillers and ice-based thermal storage.

Direct intends to market, sell, and install a product line of chillers with ice storage equipment. Direct may also sell high-efficiency chillers and/or equipment allowing such chillers to be operated with natural gas at a later date.

Employees and/or subcontractors of Direct will deliver the services related to the engineering, installation and maintenance of the chillers, ice storage units and gas generation equipment provided through the Program.

Direct's role as a partner organization in the EEP Program will be to act as the entity that connects end use business customers with the chiller, which will be manufactured and provided by Smardt, Inc. or a comparable provider of a Turbocor based product. Direct will also provide the link to associated ice storage equipment and gas generation equipment. In most cases, the specific chillers that will be provided in both applications (with and without ice storage capability) will be the Smardt chiller with Turbocor oil-free centrifugal compressor technology.

Direct intends to target customers with existing chillers ready for replacement and where the use

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## Energy Michigan, CNE Ask for Rehearing on POR, School Discount

Energy Michigan and Constellation NewEnergy petitioned the Michigan PSC for rehearing of Consumers Energy's rate case (U-15245) because the PSC failed to take substantive action on Purchase of Receivables and also implemented a duplicative and discriminatory subsidy for schools (Matters, 6/11/08).

The Commission declined to adopt POR in its order, citing a lack of residential shopping and thus demand for the program. The PSC only encouraged the Staff to investigate the issue.

Constellation NewEnergy found such logic to be circular, with the unintended consequence of delaying residential competition.

Energy Michigan noted that Ron Cerniglia, on behalf of the National Energy Marketers Association, established in testimony that the lack of a POR program was one of the main barriers to establishing an effective and economical retail access program for residential customers.

"In many ways, the absence of a POR program prevents the very residential [retail access] participation which the Commission found requisite to establishing a POR program," Energy Michigan pointed out.

"This is the classic 'chicken and egg' situation in which a new program cannot be developed until a new approach to some problem such as receivables is implemented," Energy Michigan added.

Energy Michigan and NewEnergy urged the Commission to direct Staff to commence an investigation into POR rather than only encouraging such a review.

NewEnergy found the Commission's treatment of POR inconsistent with its adoption of the General Educational Institution (GEI) credit, a discount rate for schools taking Consumers' bundled service.

On the one hand, the Commission approved Consumers' GEI rate proposal on the basis that there is a perceived need for that rate given the state's current economic environment. On the other hand, the Commission has recognized a perceived need for residential competition, but has refused to approve actions designed to

increase such competition by rejecting POR. "To approve one proposal on the basis of a perceived need but reject another proposal even though there is a ... need for that proposal as well is nothing short of arbitrary and capricious," NewEnergy charged.

Energy Michigan explained that the GEI credit overlaps and duplicates new and existing discounts to schools which are based on seasonal and time of day variations from other loads. Thus, educational institutions will in effect receive a double credit due to the adoption of both the GEI Credit and seasonal rates.

"This double credit will disadvantage other similarly situated non-educational customers who will be denied such a double credit. The GEI Credit will also disadvantage non-educational customers who must provide an unwarranted, duplicative subsidy to educational institutions," Energy Michigan cautioned.

Customers not eligible for the GEI credit would be hit twice, Energy Michigan added.

First, non-participating customers would be forced to make up the difference between a standard retail rate for service and a discount rate offered under the GEI Credit, a subsidy of approximately \$8.6 million.

Second, in the case of new load attracted to Consumers by customers returning to GEI service, the rates paid by such customers would not cover almost \$19 million of costs of incremental purchases of power necessary to serve them, Energy Michigan reported.

## AMP-Ohio Sees PJM Penalty Pass-Through Proposal as End-Run Around NERC Registry

A proposal by PJM that would let it or a Member allocate the costs of NERC penalties would allow an end-run against FERC's determination that entities without a material impact on the bulk power system should not be liable for compliance with NERC reliability rules, American Municipal Power-Ohio cautioned (ER08-1144).

PJM has requested to amend its OATT and Operating Agreement by adding a new Schedule 11 to the Operating Agreement to allocate the costs of NERC penalties. Schedule 11 would create a process by which either PJM or a PJM Member may directly assign financial penalties

imposed by NERC on a NERC Registered Entity to the entity or entities whose behavior is determined by NERC to have led to a reliability standard violation - even a PJM Member which is not registered on NERC's Reliability Functional Model Compliance Registry, AMP-Ohio reported.

Such a rule would impose a large burden on smaller entities who have not had to register with NERC, AMP-Ohio argued, by nevertheless making them be cognizant of all reliability rules to avoid being charged a pass-through penalty.

"The proposal would accomplish indirectly what may not be accomplished directly," AMP-Ohio contended.

PJM or a PJM Member should not have the authority to directly pass-through a NERC penalty to an entity that is not a Registered Entity under NERC's Compliance Registry, since FERC has recognized smaller entities that do not have a material impact on the reliability of the bulk electric system should not be forced to comply with complex and onerous reliability rules, AMP-Ohio contended.

PJM's proposal would undermine the logic and efficiency of NERC's Compliance Registry, AMP-Ohio added. By placing entities into specific categories, the Registry informs entities which standards they must be responsible for and adhere to, thereby focusing compliance and reducing burden. But under PJM's pass-through proposal, entities could be assigned penalty costs for any reliability standard, even those outside of their registration category or even where they are not registered altogether. Thus PJM's proposal would make all bulk power system users subject to all reliability standards in contravention of the methodical categorizations of the NERC Registry, AMP-Ohio concluded.

PJM's proposal would also contravene FERC's policy of consistent enforcement of NERC standards, since unregistered entities in other parts of the country would not be burdened with knowing and following every reliability rule, but those wishing to avoid PJM pass-through penalties would have to know all such rules.

AMP-Ohio added that in Order No. 693 the Commission explicitly stated that it would not assess penalties against an entity if it had not been put on notice of the potential penalties

through the NERC registration process. While PJM's operating agreement language would provide notice, AMP-Ohio argued such notice is insufficient since it is not accomplished through the "NERC registration process" as FERC ordered.

Duke Energy and Rockland Electric also raised concerns about the ability of PJM to allocate its own costs to Members under its proposal.

Since NERC in some case will not be able to assign exact percentages of liability where multiple entities caused a violation, PJM's proposal would let PJM or its Members apportion a penalty, "on a basis reasonably proportional to the parties' relative fault." Duke raised the possibility that if NERC assesses PJM a \$10,000 penalty and determines that PJM and three of its Members are at fault, but does not assign percentages of fault, PJM could allocate the \$10,000 penalty as it feels appropriate, subject to further review by FERC (or non-binding arbitration).

"The Guidance Order, however, made it clear - or should have made it clear - that RTOs and ISOs, let alone PJM Members, should not be in the business of determining allocations of liability or fault. Under no circumstances should PJM or its Members that are Registered Entities find it necessary to further determine the degree of fault," Duke argued. NERC should be determining such fault.

Rockland Electric claimed that, "PJM could not act as a disinterested allocator of costs because the allocation would relieve PJM of a financial burden. Given that financial interest, PJM's allocation of penalties would compromise the independence expected of an RTO."

But PSEG urged FERC to adopt PJM's proposal, which was the result of a stakeholder process.

Without PJM's proposed language, NERC's "root cause" finding on the penalty would be rendered inconsequential, PSEG cautioned, and PJM and its Members would be left with a situation where market participants within PJM are forced to pay penalties for another Member's improper conduct.

## ***Briefly:***

### **D.C. Proposes Codifying Fuel Mix, Emission Orders**

The Washington D.C. PSC has issued a NOPR to codify current rules regarding electricity Fuel Mix and Emissions Disclosure Reports as Chapter 42 of Title 15 DCMR (FC945). The proposal would essentially codify current rules issued in Orders No. 12765, 13391, 13589 and 13880, which call for semi-annual reports to be sent to customers within the June and December billing cycles, with reports also submitted to the PSC. As required now, the June report would list fuel mix and emissions data for the previous calendar year, while the December report would list data for the period of January through June of the current year. Failure to file an environmental information report or disclose information to customers may result revocation of a supplier license or imposition of a civil penalty up to \$10,000 per violation.

### **Liberty Can Serve Conn. Residentials**

Liberty Power Holdings received an expanded electric supplier license in Connecticut to serve residential customers (Matters, 6/24/08)

### **Survey Shows Support for \$4 Charge to Access Texas Wind Power**

About 55% of Texans would be willing to pay \$4 more per month on their electric bills to finance construction of transmission needed to access more wind power, according to a recent poll commissioned by wind industry. Some 43% of respondents were opposed to the charge. A question asking Texans' support for paying, "a few dollars more each month," drew less support, with only 49% of respondents in favor of such a charge; 46% of respondents were opposed. At 35%, energy prices were picked as the top issue for the Legislature to address. The survey by Baseline & Associates included 804 registered voters polled between July 1-2.

### ***Texas Deposit Rules ... from***

to occur within a two-day window of the mass transition.

Some consumers tried to switch after their REP's default and paid a security deposit to a competitive REP, TLSC and ROSE pointed out,

as customers erroneously assumed that their switch request would be honored and their service continued. Instead, customers were ultimately disconnected by the POLR because they did not have enough money to pay a security deposit to both the POLR and to a competitive REP while the switching process took place.

"No matter what strategy a low-income residential consumer applies they will likely be expected to pay two security deposits - one to the POLR and another to their chosen competitive REP," TLSC and ROSE observed.

Since deposits paid to the POLR cannot be used to establish service with another lower-cost provider, POLR deposits are often a waste on the consumer's part as they are securing service that the consumer will ultimately be unable to afford, TLSC and ROSE contended.

Because of the higher POLR rates, POLR deposits are commensurately higher, the consumer groups observed.

But because of the financial plight of their former REPs, customers are not seeing the timely return of their deposits and many will never get their deposits back, the consumer groups said. In addition, many of those customers were receiving service from prepaid providers, which means that they are unlikely to ever see the amounts they prepaid for service, TLSC and ROSE added. For most prepaid customers, those amounts will be significant as they were either required to prepay large amounts upfront when starting service, or were overcharged on an ongoing basis due to being charged for estimated usage that was much higher than the actual usage, TLSC and ROSE explained.

On top of higher than average deposits and lost prepayments, in order to switch quickly customers must also be able to pay for an out-of-cycle meter read, or must stay on the POLR until their regular meter read. "Combined with the high fuel costs that are being passed on directly to customers, these costs present a real barrier to switching for low-income customers," TLSC and ROSE noted.

This confluence of high fuel prices, high temperatures and customers being involuntarily transferred to POLR service has created an "imminent peril" to the public health, safety, and welfare, the consumer groups concluded.

The emergency rule changes would allow low-income customers who have been involuntarily transferred to POLR service to establish satisfactory credit when applying for residential electric service without paying a security deposit, and would prohibit the charging of any fees associated with switching for the duration of the emergency provisions.

Applicants would be able to qualify by (1) showing that they have been involuntarily transferred to the POLR for continuity of service and (2) providing proof of income. Eligible low-income customers would be those defined in PUC Subst. R. 25.5 -- an electric customer whose household income is not more than 125% of the federal poverty guidelines, or who receives food stamps from the Texas Department of Human Services (TDHS) or medical assistance from a state agency administering a part of the medical assistance program.

The proposal would also require a POLR or acquiring REP to notify transitioned customers of the provisions.

### ***Direct CEEP ... from 1***

of the Smardt Chiller with Turbocor compressor technology (with or without ice storage equipment) as the replacement technology are most likely to meet the EEP Program's goals of reduced peak demand.

In Canada and Texas, Direct has an exclusive relationship with Smardt, Inc. as a distributor of Smardt Chillers and Smardt Chillers with Turbocor compressor technology.