Energy Choice Matters

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PUCT Staff Proposes Two Types of Fixed Products

The PUCT Staff have filed proposed revisions to implement changes regarding REP product labeling and small customer disclosures that would, among other things, define fixed priced products as either "guaranteed fixed" or "limited fixed" (35768, Matters, 7/18/08). Other major highlights in the proposal for publication include the provision for a price to change at the end of an initial term when a contract is automatically renewed, and proration of termination fees.

A guaranteed fixed price product would be defined as a product for which the price for each billing period is the same and will not change throughout the term of the contract and includes all Transmission and Distribution Utility (TDU) recurring charges.

A limited fixed price product would be a product for which the price (including recurring TDU charges) for each billing period of the contract period is the same throughout the contract and may vary from the disclosed amount solely to reflect actual changes in the TDU charges, changes to the ERCOT administrative fee or Texas Regional Entity Fee, or changes resulting from federal state or local laws that impose new or modified fees or costs on a REP that are beyond the REP's control.

The rule would also include indexed and variable products. An indexed product would be a product for which the price, including recurring TDU charges, can vary according to a pre-defined pricing formula that is based on publicly available indices or elements and is disclosed to the customer. A variable product would be a product for which price may vary according to a method determined by the REP and that is disclosed to the customer.

Recurring charges would be defined as a charge expected to appear on a customer's bill in every billing period or appear in three or more billing periods in a calendar year. A charge would not be considered recurring if it will be billed by the TDU and passed on to the customer and will either not

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Energy Savings Income Fund Posts Higher Earnings

Energy Savings Income Fund reported quarterly net income of C$34.2 million, up 32% from C$25.9 million a year ago, despite a C$5 million loss attributed to load following contracts in ERCOT.

Seasonally adjusted sales were up 7% to C$401.8 million year over year while seasonally adjusted gross margin grew 8% to C$59.7 million. Seasonal adjustments apply solely to the Canadian gas market.

Noting that the industry is entering a "consolidation phase," CEO Ken Hartwick reported that Energy Savings will be "active" in reviewing and potentially acquiring smaller competitors. Energy Savings continues to monitor expansion into new markets, and in New York is entering the KeySpan gas and National Grid electric and gas markets. Most recent growth has been in the U.S. and that trend will continue, executives said.

In addition to its recently added green product, Energy Savings will start selling tankless water heaters in September, using a dedicated sales force aside from that used for commodity sales. It's planning to offer home energy audits as well.

The marketer also continues to evaluate offering shorter term contract options, as well as products that will appeal to larger commercial customers.

Quarterly delivered electricity volumes increased 9% year over year to 1.9 million kWh, partially attributed to a full quarter (versus five weeks last year) of including acquired Just Energy customers in results, and higher than expected renewals of short-term Texas customers. Due to those factors,

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Integrys Energy Services Earnings Rise on Hedging Gains

Integrys Energy Services reported earnings of $9.0 million in the second quarter, up from a net loss of $44.0 million a year ago on hedging gains.

After taxes, Integrys Energy Services recorded a $72.7 million increase in retail and wholesale electric margins during the quarter, $72.4 million of which was primarily from mark-to-market activity. The competitive marketer also saw a $13.2 million increase in realized retail and wholesale natural gas margins, which was offset by a $50.9 million decrease in gas margins from mark-to-market activity.

Retail electric sales grew to 4,037 million kWh in the second quarter, up from 3,420 million kWh a year ago. Realized per unit margins for the quarter were $3.22/MWh, down from $4.27/MWh a year ago.

The Illinois market has been a "bright spot" for Integrys Energy Services, the unit's president Mark Radtke reported, as the marketer begins to see top line synergies from the Peoples Energy merger. Radtke also attributed higher volumes to contributions from an expanded sales team across the Mid-Atlantic region, New York and Texas.

Forward contracted electric volumes grew to 112.9 million MWh by the end of the second quarter, up from 82.4 million MWh in the year-ago period.

Retail natural gas volumes during the quarter dipped 0.2 bcf to 73.3 bcf from the year-ago period, but most of the lost sales were low margin deals and the decrease did not materially impact results, Radtke said. Accordingly, realized per unit margins improved to $0.14/dekatherm compared with $0.09/dekatherm a year ago.

Forward contracted natural gas sales rose to 587.9 bcf during the quarter, up from 555.3 bcf a year ago.

Although the second quarter continued the trend of customer resistance to long-term contracting, in favor of seasonal and monthly products, Integrys Energy Services has since seen signs of customers returning to more traditional contracting terms as prices have fallen, Radtke reported.

While year-to-date managerial gross margin, an adjusted metric the marketer uses to measure performance, is down about $5 million from 2007, Radtke noted that the prior year's numbers included value from the Peoples Energy merger. Excluding the merger impacts, managerial gross margin has grown $22.3 million so far in 2008 compared with 2007.

Integrys Energy Services' new renewables unit is working on a number of customer-sited solar projects as well as a dedicated landfill gas delivery pipeline.

In New York, the marketer has also launched a product that bundles green energy with rebates to invest in energy efficiency and conservation measures that are most relevant to a customer's specific business. Measures can include upgrades to process equipment or deploying more efficient auxiliary equipment.

Parent Integrys Energy Group reported income available for common shareholders of $24.1 million for the quarter, compared with a net loss of $16.4 million a year ago.

Power Marketers Warn of Harm from ISO-NE External Transaction Proposal

A proposal from ISO New England that would allow the ISO to schedule External Transactions between the New England Control Area and neighboring balancing authority control areas more frequently than once an hour is only supported by "speculative" benefits and could actually harm the market, several power marketers told FERC (ER08-1277).

ISO-NE has sought more flexibility to schedule external transactions in response to changing real-time conditions, and would be permitted to schedule on an intra-hour basis under the proposed tariff revisions. Other market participants would still have to provide bids 60 minutes ahead of the hour in which they want to schedule external transactions.

The market is not efficient if conditions change in real time but ISO-NE responds by scheduling external transactions that are based on conditions that have become "stale" by the time ISO-NE acts, cautioned Constellation Energy, PPL EnergyPlus, Shell Energy North America and Brookfield Energy Marketing.

If market participants transact on the basis that they expect ISO-NE to achieve convergence, but the ISO fails to do so with any degree of certainty, then market participants will be discouraged from entering into transactions that will bring true price convergence, the marketers reasoned, thus damaging the market.

"Price convergence is not possible where actual market participants engage in transactions based on one set of tools, while another entity, the market administrator in this case, can unilaterally move the same market with a different set of tools," the power marketers added.

"Price arbitrage based on different sets of rules will turn into a process of market participants trying to second guess ISO-NE's actions, instead of trying to arbitrage markets based on equal information and tools they have at hand. If ISO-NE wants to achieve a greater degree of price convergence through intra-hour scheduling, it must establish rules that allow market participants to engage in this activity, not move into the market itself based on a speculative claim that it can lower LMPs," the marketers argued.

Several logistical questions remain unanswered, the marketers reported. ISO-NE does not address what would happen if it errs in its evaluation and the priced transactions turn out not to be "close" to the estimated LMP. Should ISO-NE turn out to be mistaken, all market participants are exposed to increased uplift or related failure penalties, the marketers observed.

FERC should also require clarification of whether ISO-NE would be permitted to curtail existing external transactions in order to schedule more "efficient" transactions on an intra-hour basis, and what would happen to properly scheduled transactions (whether wheel-through or import) that ISO-NE deems "uneconomic," marketers urged.

Marketers recommended that market participants be given the same rights to offer bids closer to the hour and to adjust bids during the hour, to help ensure that ISO-NE is not scheduling "stale" bids that do not accurately reflect the changing real time conditions in the market. ISO-NE should also consider allowing market participants to offer priced external transactions in the real-time market, marketers added.

Should the Commission accept the proposal, marketers urged that it be limited to a pilot program applying only to the New Brunswick interface.

Dynegy Hurt by Higher Basis Differentials at Key Hubs

Adjusted EBITDA at Dynegy fell to $185 million in the second quarter, down from $215 million a year ago, largely on unexpected basis differentials among the Illinois Hub, Cinergy Hub and PJM. Compressed realized spark spreads in the Northeast and West also impacted sales volumes, further offsetting pricing and operational gains.

On a GAAP basis, Dynegy reported a net loss of $272 million for the second quarter, including net mark-to-market losses of $481 million, compared with net income of $76 million for the second quarter of 2007.

Dynegy sells physical power primarily into the Illinois Hub because it is closest to its facilities, but has preferred to sell power forward at the Cinergy Hub or PJM because both offer more liquidity, with historical correlations to the Illinois Hub.

But the June 2008 basis moved well outside the anticipated range due to several factors. Increasing natural gas prices caused a widening between PJM and Cinergy, as PJM is more exposed to movements in the natural gas market. Warmer temperatures in the east compounded the issue, causing a substantial difference in prices between PJM and Cinergy. In Indiana, a transmission line outage caused congestion that further impacted the spread between the hubs, as power could not move from west to east.

Those factors caused the price difference between the hubs to widen, and produced lower earnings for Dynegy's Midwest plants due to higher price variances between PJM and Cinergy and the actual delivery points of power. Average day-ahead on-peak power prices ranged from $60-80/MWh at the Illinois Hub, but were $80-95 at the Cinergy Hub and were $100 to nearly $130 at the PJM Hub.

In July, power prices at all three of the hubs have moved back to levels that are much closer to their historic correlation, Dynegy told analysts.

Adjusted EBITDA for Dynegy's Midwest segment fell to $170 million for the second quarter, down from $181 million, with an 8% fall in volume to 5.5 million MWh.

Dynegy's West unit posted adjusted EBITDA of $31 million, down from $42 million a year ago. Volumes fell 15% to 2.3 million MWh on compressed realized spark spreads. In the Northeast, adjusted EBITDA decreased to $12 million compared to $32 million a year ago due to an extended planned outage and compressed realized spark spreads. Northeast volumes dipped 11% to 1.6 million MWh.

Dynegy reported that it is commercializing 2009 as prices increase, and recently financially contracted approximately 1,400 MW of the Midwest coal fleet's 2009 on-peak power at an average price of approximately $79/MWh.

Utilities See Net Benefit in DWR Novation Under Certain Assumptions

Accelerating the removal of the Department of Water Resources from supplying power to California IOUs would appear to produce a net benefit to Southern California Edison customers of $68 million under a January 2010 contract novation date and specific set of assumptions and circumstances, SCE total the PUC (R.07-05-025, Matters, 7/10/08).

A July 2010 novation date would produce $21 million in benefits, assuming all contracts are novated. Both scenarios only count benefits from lowering DWR's operating reserves and administrative costs, and do not include benefits such as efficiencies in fuel and power portfolio management.

However, the costs do not include changes in collateral costs. SCE noted that if contract terms change as part of novation (which it expects), SCE could incur costs for both current collateral and stress case collateral. Changes in the assumptions, such as requirements for new collateral or partial novation, could drastically change the potential net benefit or costs, SCE cautioned.

Reliant Energy submitted an analysis showing a $381 million net benefit assuming a January 2010 novation date, and $112 million in benefits under a July 2012 date. Reliant's calculations assume that the credit rating agencies do not impute debt to the IOUs as a result of novation of the DWR contracts.

The California Alliance for Competitive Energy Solutions and the Alliance for Retail Energy Markets projected benefits from novation at $152-$185 million, based on the benefits of lower DWR operating reserves plus administrative savings, and costs of quantifiable debt equivalence, collateral, and stress liquidity. When including other benefits, such as contract renegotiation benefits and efficiencies in fuel and power portfolio management, ratepayer savings approach $1 billion, the groups said.

Pacific Gas & Electric's projections show a benefit of $58 million from January 2010 novation, or $8 million from January 2012 novation, though benefits may easily become a cost if certain assumptions change.

TURN stressed that the cost of the rulemaking itself, and the novation negotiation process, must be accounted for as well, estimating that the proceeding has cost parties about $1 million to date, including time at workshops plus time devoted to drafting written pleadings

The Division of Ratepayer Advocates did not provide its own cost/benefit analysis, since many of the costs involved in novating the contracts are utility-specific.

However, DRA asserted that the Commission would violate Public Utilities Code § 454.5 if it required any utility to step into the shoes of DWR without allowing other suppliers to compete to provide the energy needs currently provided by the DWR contracts.

DRA also noted that, "Recent experiences in the Texas Direct Access market (in which several Direct Access providers abruptly ceased serving their customers) raise questions about how Providers of Last Resort ('POLRs') should prepare for the increased customer volume volatility that may result from the possible return of Direct Access to California."

DRA thus questioned whether the IOUs should be expected to plan for the failure of some ESPs if Direct Access is to expand, and should procure long-term contracts to serve those customers.

"The upcoming implementation of MRTU is expected to give rise to increased wholesale energy market volatility, perhaps akin to that currently taking place in Texas," DRA added.

Briefly:

Hinojosa Files for Disconnect Moratorium

Texas State Senator Juan Hinojosa petitioned the PUCT to adopt an emergency rule to suspend disconnection of retail electric provider and utility services due to extreme and persistent heat. The filing was not available at press time. The PUCT adopted an emergency summer disconnect moratorium due to extreme heat in 2006 but declined to implement one last year due to milder weather.

PPL's Competitively Neutral Rate Stabilization Plan Approved

The Pennsylvania PUC approved PPL's competitively neutral, opt-in rate stabilization plan to glide customers onto market pricing starting in 2010. Commissioner Tyrone Christy didn't miss an opportunity to take a swipe at the restructured industry, noting that he was, "disappointed that more meaningful proposals are not on the table at this time," though supporting the rate plan. "I believe we must continue to pursue every possible measure to protect customers from the lethal combination of a dysfunctional wholesale market and a retail framework that adds unnecessary costs to already-high wholesale prices," Christy said, who feared the plan's approval could remove pressure on lawmakers to address the electric industry design. The plan does not affect a customer's price to compare, and customers retain any amounts paid in advance to PPL when switching suppliers (Matters, 3/11/08).

AREO Sees Continued Monopolization in Utilities' ESPs

After reviewing the Ohio distribution utilities' electric security plans, "it appears that the Ohio electric utilities want to make sure that Ohio citizens are forever relegated to the status of monopoly rate payers versus consumers in an open market exercising their ability to freely choose among a number of different offers from a variety of competitive suppliers actively vying for their business," the Alliance for Real Energy Options told PUCO in reply comments on draft standard service offer rules (08-777-EL-ORD, Matters, 8/7/08). Accordingly, "the Commission in its rules must reign in the use of deferrals," since deferrals "deceive" customers as to the true cost of electricity today, and will require customers to pay significant carrying charges later. "Without greater clarity in the Rules, the Ohio electric utilities will continue to push for measures that are designed to make virtually all ratepayers captive and that will deprive consumers of the benefits of competition," AREO cautioned.

Pa. PUC Preparing Market Analysis of Rate Cap Expiration

The Pennsylvania PUC intends to release estimates comparing current market prices for electricity with capped rates within a week. Vice Chairman James Cawley urged customers to understand that, "these estimates represent a snapshot of current market prices in the short term, and do not in any way represent a Commission forecast of retail rates two or three years from now when the remaining rate caps expire."

Pa. PUC OKs LSE Reporting Requirements

The Pennsylvania PUC adopted reporting requirements for electric distribution companies (EDCs) and electric generation suppliers (EGSs) that are to provide specific data that will facilitate Commission efforts to monitor customer switching from the EDC to the EGS for electric generation supply, as well as customer preference for other products and services such as real time or time of use service. The reports will collect data on residential, industrial and commercial rate classes and will include total sales of both EDCs and EGSs and total customers. EDCs will be required to file quarterly reports while EGSs will file annually. The reports will be available to the public.

West Penn Power Gets Green Option

The Pennsylvania PUC approved a voluntary green product to be offered by West Penn Power (Allegheny) under which customers may purchase blocks of 100 kWh of wind energy renewable attributes. The rate per block would be $2.50, which would be in addition to the regular monthly cost per kilowatt-hour of electricity. The customer will be able to designate any number of blocks to be purchased per month, up to 100% of the customer's total usage.

World Energy Solutions Loss Widens

Online procurement manager World Energy Solutions posted a net loss for the second quarter of $2.4 million, up from a loss of $1.2 million a year ago, on higher operating expenses. Revenue grew 43% to $2.8 million, which includes organic customer growth as well the acquisition of the assets of EnergyGateway. Sales and marketing expenses grew to $2.8 million in the quarter from $1.8 million a year ago. Annualized retail backlog as of June 30, 2008 grew to $8.5 million from $6.0 million a year ago and includes contracted backlog of $7.2 million and expected management fees of $1.3 million. While executives reported that customers had been waiting on the sideline during the second quarter as energy prices rose, "early signs" point to a strong third quarter with vigorous buying activity, as revenues from wholesale customers from July already exceed the second-quarter total from that class.

PECO, UGI Education Plans Approved

The Pennsylvania PUC gave final approval to consumer education plans related to electric rate cap removal and price increase mitigation for PECO Energy and UGI Utilities.

Constellation Buys Fla. ESCO

Constellation Energy's Projects & Services Group is acquiring St. Petersburg, Fla., based Water & Energy Savings Corporation to give Constellation's energy services unit a base to grow Florida and Southeast sales. W&ESCO will retain its St. Petersburg base and operate under the Constellation brand. W&ESCO provides a full range of performance-based water and energy solutions.

PUCT Disclosures ... *from 1*

be applied to all customers of that class within the TDU territory, or cannot be known until the customer enrolls or requests a specific service.

Under the proposal, pricing methodology and contract period cannot change even with a 45-day advanced material change notice for guaranteed or limited fixed price contracts, or variable and indexed contracts with contract periods exceeding 31 days. Pricing changes under limited fixed products required by actual changes to TDU fees or similar measures would not require REPs to send the 45-day notice.

The proposal also clarifies that under a material change notice, a customer has 60 days from the date that the notice is sent to the customer to terminate the contract without penalty.

REPs would have to file a copy of their Terms of Service (TOS) and Electricity Facts Label (EFL) with the PUCT for each product offered during the quarter on March 30, June 30, September 30, and December 30 of each year. The proposal keeps the strawman's provision that the TOS, EFL, and YRAC shall be provided to customers upon a customer's request at any time free of charge.

Under the proposal, REPs that offer online enrollment are to "prominently display" the EFL for any products offered without the consumer having to enter any personal information other than zip code and type of service being sought (residential or commercial). The EFL, TOS, and YRAC for any products offered for enrollment on the website shall be available for viewing or downloading.

The proposal rejects suggestions from REPs to allow retailers to charge customers relocating within the same TDU area a termination fee where applicable. A contract is limited to service at a location specified in the contract, the proposal affirms, and if the customer moves from that location, the customer is under no obligation to continue the contract at another location. Customers must provide "reasonable" evidence of relocation, and the Staff asked for comments on what would constitute reasonable documentation.

REPs are to not use a credit score, credit history, or utility payment data as the basis for determining the price for electric service for a product with a contract period of 12 months or less.

For contracts due to expire, REPs are to send an expiration notice separate from the bill at least 60 days prior to the date of contract expiration but no more than 75 days in advance of expiration. The notice must include a statement in bold lettering no smaller than 14 point font stating that no termination penalty shall apply for 60 days from the date that the notice is sent. Depending on meter read schedules and how quickly the customer acts on the notice, the proposal could ostensibly allow the customer to switch to another REP with one month left on their contract without paying any otherwise applicable termination fee.

The expiration notice would have to disclose that if the customer does not renew (or if no renewal offer is made), the failure of the customer to switch to another REP by a specified date will result in the "disconnection of service," which presumably requires REPs to disconnect all non-renewing customers who don't switch, rather than having customers dropped to POLR. The statement must inform customers that establishing service with another REP can take up to 45 days.

Automatic renewals would be allowed on a maximum 31-day basis, and the proposal confirms that the pricing for an automatic renewal after the term of the original contract may be different than the pricing for the original term, under certain conditions. An auto-renewal price must be consistent with the contract, and the original TOS shall contain a statement disclosing automatic renewal provisions, including whether pricing will change and how it will be determined consistent with the disclosure requirements for each of the four product types listed above.

For any contract with a term of one year or longer, early termination fees are to be prorated after three quarters of the term has expired, if the customer is current in the payment of all charges. The REP shall prorate such a fee by reducing the fee by the ratio of the portion of the original term that has expired to the original term (in months). While this is simple to apply to flat fees, REPs charging fees which already "naturally" prorate the fee (either by tying the calculation to remaining months or expected usage in the contract, whereby early termination later in the contract will cost less) may want to consider the implications of this proposal.

Outside of auto-renewals REPs renewing current customers may obtain affirmative consent either using the same procedures for new enrollments, or by following a separate set of procedures for renewals that requires consent in a recording, electronic document, or written letter of authorization.

EFLs under the proposal would include certain questions and answers about the product, and would remove fuel mix and emissions information and simply list a product's renewable percentage as compared to the state average. Fuel mix and emissions data would be contained in a separate document available upon request. EFL questions include "Can my price change during [the] contract period;" "Do I have a cancellation fee or any fees associated with cancelling or terminating service;" and, "What other fees may I be charged?"

If the REP offers a promotional rate, the REP may put the charges for the promotional period on the EFL, but only below the average charges otherwise in effect. REPs must clearly label the promotional rate and the time for which it is in effect, and shall notify the customer how much the price may change during the contract.

The proposal states that, "All small commercial customers over 50 kW are to be given a copy of the list of rights they are waiving to enter into a contract, and must affirmatively choose to waive those rights," which has us confused since by definition in §25.471, which is not otherwise modified or superseded by the proposal, small commercial customers are defined as less than 50 kW. Based on Staff's memo attached to the proposal, it seems that the proposal means to say all small commercial customers under 50 kW may waive the protections upon affirmative consent, though we do not mean to definitively ascribe such as Staff's intent.

In any event, such disclosure shall also inform the customer that they have the right to choose a product from the REP (if applicable) and other REPs that do not require a waiver of the rights. The Staff asked what customer protection provisions should be delineated in such a waiver.

Staff also sought comments on whether there should be a disclosure statement in the contract for the purchase of electricity by a REP from a Distributed Renewable Generation owner or Independent School District Solar Generation Owner, and what such disclosures should entail.

REPs would have three months from the effective date of the changes, when approved, to conform all electricity products and contract documents to the new requirements. REPs would not be required to conform term contracts in effect on December 31, 2008, but any renewal of a term contract after December 31, 2008 would have to comply with the new requirements.

The proposal would implement new PUC Sub. R. § 25.475 and revised § 25.476.

ESIF ... *from 1*

U.S. electric sales jumped 322% year over year to 429,000 kWh. U.S. electric revenues rose to C$47.6 million from C$28.3 million a year ago,

U.S. electricity gross margin fell to negative C$482,000 from positive C$2.4 million a year ago, due to a C$5.0 million loss stemming from liability for incremental power purchases for Texas customers on load following contracts and excessive heat during the quarter. Those load-following customers have an average remaining contract life of less than one year, and Energy Savings expects to renew such customers on their standard contract under which customers have a fixed price for a set amount of power, with pass throughs for additional usage.

Natural gas customer volumes dipped 3% to 19.8 million GJ from a year ago. The decline in gas sales were all attributed to the Canadian business as U.S. volumes grew 38% to 2.9 million GJ. Canadian attrition outpaced acquisitions while U.S. growth was hampered by adverse press coverage surrounding legal actions in both Illinois and New York, Energy Savings said. U.S. gas revenues rose to C$40.0 million from C$28.1 million a year ago. U.S. gas gross margin increased 52% for the quarter to C$6.0 million

Gross margin for newly acquired customers during the quarter averaged C$14.28/MWh for U.S. electric customers and C$1.59/GJ for U.S. gas customers.

Annualized electricity attrition in the U.S. was 18%, in line with targets, but U.S. gas attrition hit 33%, above management's 20% target, due to negative press coverage surrounding Attorney General actions in both Illinois and New York.

However, Energy Savings has seen a decline in attrition in recent weeks as utility natural gas prices rise. While April and May had been slower than expected for sales, June and July have been much stronger and ahead of targets, executives said. Customers in Illinois and New York had not seen utility energy prices to justify a long-term fixed contract until now, executives added.

Executives told analysts that they see a natural limit to renewal success rates, and won't sacrifice margins to retain customers. It's more effective to grow the sales force to win higher-margin customers, executives said. While incremental gains in retention are possible (from a target 80% to 85%), investors should not expect 95% retention rates because too much margin would be sacrificed.

Bad debt expense for the quarter dropped to 1.2% from 2.5% a year ago.

While Energy Savings hopes to use an assurance of discontinuance with the New York Attorney General as a model to resolve an Illinois lawsuit, attempts to settle have fallen on deaf ears, executives reported. As energy prices have risen, and the value of Energy Savings' fixed price offers have become more apparent, the Illinois AG has been silent, executives said.