

# Energy Choice Matters

September 24, 2008

## ICC Staff Says Brokers Are Currently Subject to ABC Law

Illinois Commerce Commission Staff agreed that brokers and other intermediaries are currently subject to the ABC Law's Code of Conduct, while BlueStar Energy Services called a motion to dismiss its complaint from the three brokers involved "baseless," in responses filed with the ICC (08-0364, Matters, 9/11/08).

Staff clarified that, despite BlueStar's statement in its original complaint, Staff did not request BlueStar to file the complaint against American Energy Solutions, Affiliated Power Purchasers International, and Lower Electric. Staff did receive communications from BlueStar regarding the marketer's concern about possible violations of the ABC Code of Conduct, and suggested that BlueStar either investigate the violations itself and file a complaint if appropriate, or that BlueStar allow Staff to engage in a dialogue with the parties to discover the facts, review pertinent information, and determine if Staff had any concerns.

"Staff's offer to become involved as outlined above was not accepted. Rather, BlueStar filed the instant Complaint," Staff reported. Thus, Staff is not aware of the facts surrounding the complaint other than what is set forth on the face of the complaint.

Staff did agree, however, with BlueStar's argument that the Code of Conduct is currently applicable to brokers even though the ICC has not instituted formal ABC licensing procedures yet.

The requirements within the ABC Law became effective upon becoming law on October 11, 2007, Staff said. The law applies a Code of Conduct to entities that are licensed or required to be licensed, and the code is specified in the law and does not require ICC implementation, Staff noted.

Part of the code requires ABCs to, "disclose in plain language in writing to all persons it solicits the total anticipated remuneration to be paid to it by any third party over the period of the proposed underlying customer contract," which is the main issue in BlueStar's complaint.

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## SaveOnEnergy.com, Choose Energy to Announce Strategic Partnership

Two of Texas' most visible online electric brokers are set to announce a strategic partnership today, which may carry over into other, new markets.

Dallas-based SaveOnEnergy.com will unveil a strategic partnership with Choose Energy that will allow Choose Energy non-residential customers to utilize SaveOnEnergy.com's retail commercial exchange portal launched in October 2007. The initiative allows Choose Energy to focus on its residential expansion while utilizing the commercial driven technology of SaveOnEnergy.com's exchange portal, the two online brokers said.

SaveOnEnergy.com's exchange portal transmits a customer's pricing request to competing REPs in real-time, and permits the REPs to contact the customer directly with quotes, rather than having requests and quotes relayed through an internal sales force at the broker.

SaveOnEnergy.com and Choose Energy are looking into their current expansion campaigns and expect the partnership to carry over into new markets as well, the firms said. To date, both companies see New York as their next opportunity for market expansion, though SaveOnEnergy does offer online brokering for some New York territories already.

Choose Energy was recently spun off by Amen Properties and was bought by general manager Jerry Dyess (Matters, 8/15/08).

## CL&P Reports August Shopping Data

### Connecticut Light & Power Switching Statistics As of August 31, 2008

Total Accounts with Alternate Supplier: 90,010

Customer Count Breakdown:

<b>3rd Party Supplier</b>	<b>Residential</b>	<b>C&amp;I</b>	<b>Total</b>	<b>July 31, 2008 Total</b>
Clearview Electric	1	0	1	1
Consolidated Edison Solutions	1,537	1,237	2,774	2,975
Constellation NewEnergy	846	7,733	8,579	8,472
Direct Energy Services	12,194	3,452	15,646	15,242
Dominion Retail	42,969	1,756	44,725	44,923
Gexa Energy	0	43	43	42
Glacial Energy of New England	73	723	796	856
Hess Corporation	310	404	714	642
Integrus Energy Services	380	706	1,086	1,061
Liberty Power Holdings	0	114	114	41
MXenergy	2,154	4,084	6,238	6,323
Public Power & Utility	4,335	756	5,091	4,692
Sempra Energy Solutions	7	868	875	832
Strategic Energy	110	1,147	1,257	1,354
Suez Energy Resources NA	3	275	278	321
TransCanada	27	1,762	1,789	1,660
World Energy	0	4	4	4
<b>Totals</b>	<b>64,946</b>	<b>25,064</b>	<b>90,010</b>	<b>89,441</b>

### CTCleanEnergyOptions

	<b>Residential</b>	<b>C&amp;I</b>	<b>Total</b>
CTCleanEnergy - Community Energy 50%	1,415	13	1,428
CTCleanEnergy - Community Energy 100%	6,923	191	7,114
CTCleanEnergy - Sterling Planet 50%	1,398	12	1,410
CTCleanEnergy - Sterling Planet 100%	4,821	136	4,957
<b>Total All CTCleanEnergyOptions Suppliers</b>	<b>14,557</b>	<b>352</b>	<b>14,909</b>

### CL&P Last Resort Service (LRS)

Total # All LRS Accts	1,276	0.1%
Total All LRS MWhs	504,555.756	23.4%
Total 3rd Party LRS Accts	942	73.8%
Total 3rd Party LRS MWhs	403,517.225	80.0%

### CL&P C&I Standard Service

Total # All C&I SS Accts	117,017	9.6%
Total All C&I SS MWhs	722,561.135	33.6%
Total 3rd Party C&I SS Accts	24,122	20.6%
Total 3rd Party C&I SS MWhs	339,132.520	46.9%

### CL&P Residential Standard Service

Total # All SS Res. Accts	1,098,596	90.3%
Total All SS Res. MWhs	925,039.011	43.0%
Total 3rd Party SS Res. Accts	64,946	5.9%
Total 3rd Party SS Res. MWhs	65,715.417	7.1%

### Total All CL&P

Total # ALL Accts	1,216,889	100%
Total ALL MWhs	2,152,155.902	100%

<sup>^</sup> CL&P percentages reflect percent of CL&P *total* customers/MWh. Supplier percentages reflect suppliers' percent of customers/MWh in a specific *class*

## **Public Power & Utility Objects to License for Start-Up Discount Power**

New Milford, Conn., based Public Power & Utility urged the DPUC to withhold an electric supplier license from start-up Discount Power, alleging Discount has copied confidential information from Public Power & Utility (08-09-14, Matters, 9/19/08).

According to Public Power & Utility, Discount Power's principal, Michael Parrella, acted as a consultant to Public Power & Utility during March and April 2008, through his company Pardev, LLC.

Under the consulting agreement, Parrella and Pardev received a great deal of confidential information pertaining to Public Power & Utility, including customer lists, application procedures and marketing plans, Public Power & Utility said. Such information was covered under a confidentiality agreement, with materials to be returned to Public Power & Utility upon termination of the contract, Public Power & Utility said. However, such information, "is apparently being used by Discount Power, Inc. in connection with its application," Public Power & Utility alleged.

Public Power & Utility said that Discount Power's standard customer contract submitted as part of its application is "almost word for word" a copy of Public Power & Utility's own customer application and contract, alleging violation of its confidentiality agreement. Public Power & Utility has applied for a copyright of its customer application form, it told the DPUC.

Public Power & Utility, "will have no choice but to institute legal action," if the DPUC approves Discount Power's license application.

## **Calif. PUC to Address ESP Security, Re-entry Fees in Rulemaking**

The California PUC is to pick up its consideration of electric service provider security requirements and bundled service re-entry fees as part of proceeding R. 06-07-010.

The issues have been sitting in the rulemaking (and predecessor dockets) since the license deposit and re-entry rules were last set in 2003 in Decision 03-12-015.

A scoping ruling in R. 06-07-010 issued yesterday confirmed that a separate decision will address the unresolved issues about the size and form of ESP security and deposit requirements for licensing, and re-entry fees. The rulemaking primarily concerns Department of Water Resources revenue requirements.

AB 117 requires that if a customer of an ESP or community choice aggregator is involuntarily returned to bundled utility service, any re-entry fee imposed on that customer that the Commission deems is necessary to avoid imposing costs on other bundled service customers shall be the obligation of the ESP or community choice aggregator.

In its 2003 decision, the PUC only informed ESPs that it could change the level of ESP security from the then-current requirements to cover potential re-entry fees, but did not issue a decision modifying the levels at that time.

## **Md. Staff Says to Wait on EDI for Gas Market**

"Gas electronic data interexchange ('EDI') should be a goal but not a requirement at this time," the Maryland PSC Staff said in explaining their rationale for proposed retail gas consumer protection and supplier-utility coordination rules (RM35, Matters, 9/23/08).

Still, Staff does support greater uniformity in transactions, while recognizing it may not be possible for smaller LDCs.

Staff also explained that not using the first of the month as the date for switches would, "impose a change that would ripple throughout the industry," since the gas industry's business model is built around the first day of the month, with gas priced, balanced, and contracted for as of the first day of each month. But Staff supports proration of the first month's payment as a reasonable compromise to the lag between the gas day and the meter-read day so suppliers are fairly compensated for their deliveries.

Consideration should be given to treating "firm" gas customers differently from "interruptible" customers, Staff said, particularly in terms of switching procedures.

## Mich. PSC Opens Consideration of Deskewing Under New Law

Parties in Detroit Edison's current rate case (U-15244) were directed in their upcoming briefs to address various legislative requirements of HB 5524, which Gov. Jennifer Granholm has said will be signed into law, per a Michigan PSC order issued yesterday. The PSC opened docket U-15681 to consider the legislative mandates at Consumers Energy and receive stakeholder input.

Section 11(1) of HB 5524 states that the Commission shall phase in electric rates equal to the cost of providing service to each customer class over a five-year period beginning January 1, 2009. Under Section 11(2), the Commission shall ensure that the impact on residential and industrial metal melting rates due to the cost of service requirement in Section 11(1) is no more than 2.5% per year.

Section 11(4) of HB 5524 also provides that the Commission shall "establish rate schedules which ensure that public and private schools, universities, and community colleges are charged retail electric rates that reflect the actual cost of providing service to those customers." Under this subsection, the IOUs must file appropriate tariffs within 90 days of the effective date of the act.

## O'Malley Downplays Re-regulation as Part of Constellation Sale

Maryland Gov. Martin O'Malley moved to downplay suggestions from two state senators that the PSC and state should tie MidAmerican Energy Holdings' acquisition of Constellation Energy to re-regulation, during an appearance on radio station WTOP.

Senators E.J. Pipkin, R, and Jim Rosapepe, D, had penned an op-ed for the *Baltimore Sun* calling for any acquisition of CEG to scrap deregulation and return former Baltimore Gas & Electric plants to rate regulation and utility ownership.

O'Malley questioned the proposal, noting it's not clear MidAmerican would still buy Constellation under such conditions.

Pipkin and Rosapepe insisted, however, that if the state, "articulated our people's interests and made clear the PSC would approve a deal

that was a win for BGE ratepayers, not just for Constellation and Mr. Buffett, we are confident other bidders would come forward."

"Approving a deal that gives Mr. Buffett Maryland's electric plants at a lower price than even the sweetheart deal Constellation got under deregulation is not in the public interest. Thus, if it follows the law, the PSC cannot approve this bailout," Pipkin and Rosapepe said.

O'Malley said that he will let the PSC review the acquisition rather than getting lawmakers involved.

## DPU Orders Further Investigation Into FCM Revenues from Utility Efficiency Programs

The Massachusetts DPU ordered further investigation into the disbursement of Forward Capacity Market revenues resulting from Nstar (08-10) and National Grid (08-8) energy efficiency programs, in separate orders otherwise approving settlements to implement each IOU's 2008 energy efficiency plan.

Under current procedures, FCM revenues from energy efficiency projects performed under utility programs return to the utility, and are used to supplement the energy efficiency budget (Matters, 7/2/08, 6/19/08).

Wal-Mart has objected to that treatment, arguing that customers performing various energy efficiency upgrades and measures making FCM participation possible should receive the revenues. In the alternative, revenues from the FCM should be directed to efficiency programs directed at the specific customer class making the revenues possible, rather than placing the cash in the general efficiency fund, Wal-Mart has said.

The DPU is to establish a procedural schedule for an additional investigation to enable Wal-Mart to petition to intervene, conduct discovery, and participate in an evidentiary hearing, if necessary.

The additional investigation will be limited in scope to the following topics: (1) Nstar's and Grid's proposals to apply all proceeds from the participation of their energy efficiency programs in the FCM to their energy efficiency budget, and (2) the method by which the IOUs propose to allocate FCM proceeds among customer sectors and sub-sectors.

## **Briefly:**

### **Ambit Gets Ohio Gas License**

PUCO has granted a retail gas marketers license to Ambit Energy. Ambit intends to sell to residential and small commercial customers at Dominion East Ohio, Columbia, Duke and Vectren via advertisements, network marketing, and telesales (Matters, 8/19/08).

### **NRG Suggests ERCOT Develop Operating Reserve Demand Curve**

ERCOT Market Participants should begin a robust dialogue to develop a Protocol Revision Request to implement an operating reserve demand curve to better achieve scarcity pricing during shortage conditions, NRG Energy recommended in comments on PRR 776, Automatic MCPE Adjustment During Intervals of Non-Spinning Reserve Service Deployment (Matters, 9/18/08). NRG echoed comments by other generators that the proposed MCPE adder in PRR 776 would be unlikely to boost load response, but would instead further reduce the risk of real-time exposure to scarcity pricing.

### **Luminant Says Offer Floor for Responsive Reserves Redundant**

A Nodal Protocol Revision Request (NPRR 150) that would set an offer floor of \$0 for Responsive Reserve Service (RRS) in the Nodal Market should be rejected, Luminant said, since the credit risk meant to be negated by the NPRR is already addressed through credit qualification of Day-Ahead Market bids and offers in the Nodal Market (Matters, 9/1/08). Market Participants making offers for Loads Acting as Resources (LaaRs) to provide Responsive Reserve Service will not be allowed to offer beyond their established credit limit, Luminant noted, and an offer floor would be redundant.

### **Direct Energy Signs Toronto**

Direct Energy has struck a fixed-price agreement to provide a portion of Toronto's power requirements through a contracted base load of 20 MW. The deal was won through a competitive bidding process.

## **IL ABCs ... from 1**

Staff also agreed that BlueStar is authorized to file the complaint, since Section 10-108 of the Public Utilities Act permits complaints by "any person or corporation." Having filed the complaint, the burden of proving the allegations within the complaint is upon BlueStar, Staff said. BlueStar, countering the brokers' claim that BlueStar lacks standing since it did not suffer a direct injury from the allegations, pointed to the "plain language" of the Public Utilities Act as permitting its complaint.

BlueStar, responding to brokers' motion to dismiss, called the ABCs' arguments an, "attempt to distract the Commission by putting BlueStar on trial."

Although BlueStar disagreed with the assertion that it "is in direct competition" with agents, consultants and brokers, "BlueStar has an cognizable interest in a regulated marketplace in which the competition is fair and all of the participants play by the rules," the retail supplier said.

In their motion to dismiss, brokers had argued the materials submitted by BlueStar as part of the complaint (which did not list the compensation brokers would receive from suppliers) were preliminary marketing documents that do not, (and could not due to their preliminary nature) require such a compensation disclosure.

However, BlueStar responded by contending such arguments are improper in a motion to dismiss, since whether the documents in question are subject to the disclosure requirement is a question of fact, and thus cannot sustain a motion to dismiss.

BlueStar also asserted that, "it is clear that [the materials] are not preliminary or general marketing materials, but instead are communications from Respondents to specific potential customers whom Respondents are soliciting on behalf of the electricity providers whom they represent. In fact, each of the exhibits contains pricing proposals for the specific customers to whom the solicitation is directed," BlueStar said. "Thus, Respondents contention that they were unable to disclose their 'total anticipated remuneration' at the time they issued these solicitations is patently false," BlueStar claimed.

BlueStar also claimed that under the brokers' interpretation of the law, disclosure of compensation from suppliers to brokers may not be required until after a customer contract has already been signed. "Obviously, disclosure after a contract is already entered into in would do no good, and such an interpretation of the ABC law would entirely defeat its purpose," BlueStar said.