

# Energy Choice

# Matters

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## N.Y. PSC Denies Rebundling of Central Hudson Retail Access Lost Revenues

The New York PSC denied Staff's request to rebundle retail access lost revenues at Central Hudson Gas & Electric, in a written order issued in Central Hudson's rate case. However, the Commission did order changes related to the method of collection of the electric retail access lost revenues (while not changing the allocation of cost responsibility), to prevent interclass revenue transfers from the interaction with a revenue decoupling mechanism (08-E-0887).

For electricity at Central Hudson, fifty percent of forecast retail access lost revenue is recovered by adding a separate component to the Merchant Function Charge (MFC) Supply Charge on an MFC group-specific basis, which is bypassable. The remaining fifty percent is recovered through the MFC group-specific Transition Adjustment which is paid by all customers. As only reported by *Matters*, Staff argued that 100% of lost retail access revenues should be placed in nonbypassable delivery rates, so migrated customers bear the full costs of the POLR function, and to avoid interference with the revenue decoupling mechanism (*Matters*, 4/13/09).

However, the Commission agreed with the ALJs' that the current 50/50 split in cost allocation is a reasonable compromise, that gives some benefit to ESCO customers while not completely absolving them for some POLR-related charges.

While, "Staff is correct in noting that we left open the possibility that this sharing ratio could be changed in future rate cases ... that change should not be merely another assumption. It should be supported by a new consensus of the interested parties, or by substantive analysis which the [recommended decision] found to be lacking in this case," the Commission said.

While rejecting Staff's application to place all retail access lost revenue charges in base rates, the Commission did agree that some modifications are required to avoid unintended interactions with

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## MXenergy, DPUC Staff Reach Settlement on Renewal Notice, Welcome Letter Complaints

MXenergy and Connecticut DPUC Staff have entered into a settlement agreement that would see the retailer revise its third-party verifications (TPVs) and make several other internal process changes, but would not include any fine, for a series of complaints last summer resulting from delayed renewal notices and ambiguous welcome letters received by customers. The Office of Consumer Counsel and Connecticut Attorney General are also signatories to the stipulation.

As only reported by *Matters* last fall, DPUC Prosecutorial Staff was not recommending any fines or sanctions for MXenergy's actions, but did recommend several changes to MXenergy's sales and verification procedures (*Matters*, 11/5/08).

MXenergy experienced an increase in customer complaints mostly related to late renewal letters sent to about 2,000 fixed-price customers at United Illuminating, and welcome letters and Third Party Verifications for 7,600 customers on an introductory rate offer at UI and Connecticut Light and Power that did not clearly re-emphasize that rates would move to monthly market rates in July 2008 after the introductory period, as disclosed during the sale. About 80 customers at UI also erroneously

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## NRG Says Uncommitted ERCOT Capacity Near Zero in Some Periods due to Reliant Load

NRG Energy, at times, has near zero uncommitted capacity in ERCOT since acquiring Reliant Energy's Texas retail book, NRG reported in a rehearing request of a FERC order which authorized Exelon's hostile acquisition of NRG (EC09-32).

NRG sought rehearing of FERC's order so that various third-party PPAs are not required to be divested if Exelon ultimately is successful in its acquisition attempt. Exelon's application was, "based upon incomplete and erroneous analysis that was not updated after the filing of Exelon's application," NRG said.

Prior to issuance of FERC's order, NRG announced that it is constructing a 150 MW wind farm, the Langford Wind Project, to be on-line by the end of 2009, and also acquired the Reliant Energy Texas retail business from RRI Energy. The acquisition, NRG noted, consisted of Reliant's supply portfolio that includes long-term contracts for four additional generation facilities, as well as substantial load obligations.

"These changes in circumstances have a significant impact on the divestiture proposal approved by the Commission and reflect a material departure from the facts Exelon provided in the Application," NRG said.

More specifically, NRG said it acquired four power purchase agreements in its Reliant acquisition - three with Luminant (Permian Basin, Stryker Creek Unit #1 and Trinidad Unit #6) and one with an affiliate of FPL Group (King Mountain Wind Ranch 1). The power NRG purchases under the four PPAs is from generation assets with a combined nameplate capacity of 1,141 MW.

Reliant's retail load obligations in ERCOT are equivalent to peak load obligations of over 13,000 MW in 2008, NRG added.

Accordingly, NRG argued that should the transaction proceed, FERC should not require the divestiture of the PPAs (along with two other PPAs included in Exelon's mitigation plan), as the PPAs provide supply for NRG's retail obligations. If the PPAs were divested, generation from the PPAs would have to be replaced.

As a result of the Reliant acquisition, the uncommitted capacity that NRG has available for the wholesale market is reduced significantly, NRG said "Indeed, in some periods, NRG has almost zero uncommitted capacity," it told FERC.

NRG presented the following information regarding its uncommitted capacity:

### Summer Peak Unforced Capacity (MW)

NRG's Existing Capacity	12,570
Reliant PPAs	755
NRG's New Wind (Langford)	45
<b>Sub-total</b>	<b>13,370</b>

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NRG's Peak Load (2008 actual) 13,000

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### Effective NRG Capacity

**Net of Load Obligation** 370

Although FERC said its decision did not affect the PUCT's authority over the transaction, NRG still argued that, in approving Exelon's proposed ERCOT mitigation, the Commission failed to adhere to its policy of not unduly interfering with historical state commission regulation of intrastate markets.

Separately, the U.S. District Court for the Southern District of New York has rejected remaining claims in a suit filed by NRG Energy on March 17 against Exelon regarding Exelon's hostile exchange offer. In the ruling, the Court rejected NRG's remaining claim that Exelon does not intend to complete the exchange offer according to its terms, and entered judgment in favor of Exelon.

## EPSA Says Limit on OTC Markets Would Raise Consumer Prices

The Electric Power Supply Association opposed various federal legislative proposals that would require the clearing of all hedging instruments through centrally cleared exchanges and prohibit the use of over-the-counter (OTC) markets, cautioning that the forced use of exchanges could increase consumer prices due to higher collateral costs.

"Because of the high cash collateral requirements associated with mandatory clearing through exchanges, a requirement to clear all hedging instruments through exchanges would impose extremely large and

untenable cost increases. The overly broad imposition of mandatory clearing requirements would also reduce market liquidity, increase costs and severely limit the product and service offerings companies can provide to energy consumers," EPSA said in a white paper.

OTC markets provide greater flexibility for collateral requirements and other customized solutions that meet the individual needs of customers. Limiting the use of OTC transactions would hinder energy suppliers' ability to hedge price volatility, EPSA added.

As an alternative, EPSA suggested that reporting requirements for all OTC contracts could be developed and submitted to the CFTC, similar to the Electric Quarterly Reports model used by FERC.

Senate Agriculture Committee Chairman Tom Harkin is among those favoring legislation which would require all OTC derivative trades be cleared through a regulated exchange.

## ***Briefly:***

### **Universal Energy Approves Acquisition by Just Energy**

As anticipated, Universal Energy Group reported that its shareholders have approved its acquisition by Just Energy (f/k/a Energy Savings) Income Fund, under an arrangement which will see Just Energy indirectly acquire all of the outstanding common shares of Universal Energy Group. Closing, subject to certain conditions including court approval, is expected to be completed around July 1, 2009 (First in Matters, 4/14/09). The combined retailer will have approximately 2.3 million residential customer equivalents.

### **Ultimate Energy Advisors Seeks Texas Aggregation Certificate**

Broker Ultimate Energy Advisors has applied for an aggregation certificate in Texas, to pool residential, commercial and industrial customers. Principals Bobby Schiff and Arnold Felner worked for Power Brokers for five years through 2008.

### **DPUC Would Grant Acclaim Energy Aggregation License Under Draft**

The Connecticut DPUC would grant an electric

aggregator certificate to Acclaim Energy, Ltd., f/k/a Legacy CMS Group, to serve commercial, industrial, municipal and governmental customers, under a draft decision issued yesterday (Matters, 5/21/09).

### **DPUC Dismisses Palmco Power Supplier Application**

The Connecticut DPUC dismissed without prejudice Palmco Power CT's application for certification as an electric supplier, as Palmco has not rectified its incomplete application since a DPUC notice of deficiency issued March 4. Palmco is affiliated with New York electric and gas ESCO (and fuel oil supplier) Columbia Utilities (Matters, 2/20/09). Legal entities Palmco Power CT, LLC, Palmco Power NJ, LLC and Palmco Power PA, LLC are currently seeking market-based rate authorization from FERC.

### **TEPA Offering Certification for Member Employees**

The Texas Electricity Professionals Association (TEPA) announced it will be offering a certification process for employees of member brokers and consultants. The first TEPA Certified Electricity Professional exam will be administered June 25 and is intended to (1) establish a recognized standard of knowledge, competency and ethics; (2) formally recognize those who meet those standards; (3) and provide buyers seeking the services of an advisor, broker or consultant with a tool to identify skilled, knowledgeable professionals. Topics covered will include ethics and the TEPA Code of Conduct; Texas power market structure; industry terminology; fuel generation mix; and electricity product pricing components.

### **Del. PSC Approves Broker License for Constellation Energy Projects & Services**

The Delaware PSC approved Constellation Energy Projects & Services Group's application for a license to operate as an electric broker.

### **Del. PSC Adopts Lower Transmission Charge at Delmarva**

The Delaware PSC approved, on a temporary basis, Delmarva Power's application to reduce its Transmission Service Charge for both SOS

Fixed Price Service and SOS Hourly Priced Service customers from \$1.395 per kW-month to \$1.272484 per kW-month, to reflect a reduction in wholesale transmission rates passed through to Delmarva. The rate is subject to further review by the Commission.

### **Texas Bills Signed by Perry**

Texas Gov. Rick Perry signed bills requiring the withdrawal of Entergy's transition to competition plan (SB 1492), changing the timeline for fixed price renewals and requiring the use of common billing terms (HB 1822), requiring residential bills to direct customers to Power to Choose (HB 1799), and requiring the free broadcasting of PUCT and ERCOT meetings (HB 1783).

### **Mich. ALJ Issues Draft on Consumers' PSCR**

A Michigan ALJ has recommended that Consumers Energy to be authorized to charge a maximum power supply cost recovery factor of \$0.02619 per kWh for 2009, under a proposed decision released yesterday (U-15675). The rate excludes the company's requested surcharge of \$0.00061 per kWh for the Rate E-1 (economic development) discount, as the ALJ concluded that any recovery of the Rate E-1 discount should be determined in a general rate case.

### **FERC Intends to Revoke MBR Authority of PowerGrid Systems**

FERC notified PowerGrid Systems, Inc. of its intent to revoke PowerGrid's market-based rate authority for failure to timely file Electric Quarterly Reports unless corrective action is taken within 15 days.

### **Legislation Gives Pepco Approval for D.C. Smart Meters**

Pepco said it has obtained approval via emergency legislation adopted in the District of Columbia for implementation and cost recovery of its advanced metering infrastructure plan. Pepco's smart metering application had been pending at the PSC, subject to opposition from several load advocates.

### **Chiste Retiring from Comverge**

Comverge named current CFO Michael Picchi as interim president and chief executive, as

current CEO Robert Chiste has decided to retire. An executive search firm will help identify candidates to replace Chiste permanently.

### **Suez Retailer Adopts Tweaked Name**

Suez Energy Resources NA formally announced it has changed its name to GDF Suez Energy Resources NA to reflect last year's merger of its parent firm with Gaz de France, though the GDF moniker has been used recently ahead of yesterday's announcement. GDF Suez Energy Resources NA serves over 40,000 customer accounts for a total contracted load of 7,150 MW.

### **Central Hudson ... from 1**

the newly adopted revenue decoupling mechanism (RDM).

Currently, Central Hudson's Merchant Function Charges, MFC-related lost revenue recovery, and Transition Adjustment charges are calculated and accomplished within each of four MFC groupings. The RDM, by contrast, must be class specific and will reconcile each class's actual total delivery revenue (inclusive of MFC revenues) to the approved delivery revenue forecast. The Commission is concerned that the interaction of these two mechanisms could result in over- or under-recovery of retail access lost revenues and the potential for interclass revenue transfers resulting from interaction between the class-specific RDM and the group-specific MFC.

To address such concerns the Commission will require that MFCs and Transition Adjustment Charges will be calculated and applied on a class and sub-class specific basis, thus eliminating the transference of cost responsibility between classes and subclasses within each MFC group. Further, the PSC will require that the final reconciliation performed as part of the retail access lost revenue recovery mechanism be discontinued for classes subject to an RDM (the RDM will provide the final reconciliation), and that it be on a class and sub-class specific basis for classes and subclasses not subject to the RDM.

Finally, MFC and Transition Adjustment Charges are to be included in the RDM targets.

On the gas side, retail access lost revenues are also split in a 50/50 manner, and the

Commission likewise rejected Staff's petition to change that allocation. Unlike with electric retail access lost revenues, no changes were required to the recovery of gas retail access lost revenues.

The Commission also affirmed that the hourly pricing cutoff at Central Hudson should be lowered to 500 kW. Currently, mandatory hourly pricing (MHP) is applicable to customers 1,000 kW and above. There are 118 customers with demands within the 500 to 1,000 kW range, of which 75 buy their commodity supply from Central Hudson.

Central Hudson has opposed the lower threshold, arguing Staff had not justified that the 500 kW cutoff, applicable in other service areas, is appropriate for Central Hudson's specific territory and customers.

However, the Commission said Staff was not required to prove that benefits previously found to exist on a statewide basis from hourly pricing will also be realized for Central Hudson.

Central Hudson is to submit an implementation plan within 60 days which is subject to comment and review. After an outreach and education campaign, the final switch to hourly pricing is to occur in early 2011.

The Commission rejected the ALJs' recommendation that average demand might be a better allocation factor for capacity costs than peak demand under hourly pricing. The PSC held that since the threat of reliability shortfalls is highest during peak hours of the summer months, the generation capacity charge under hourly pricing should be based on a customer's demand during the NYISO peak hour, rather than average demand.

Such a calculation, "will send a strong price signal that will focus customers' attention on the high load hours that correspond to severe summer heat waves, which are the hours during which demand reductions benefit the State's electric system the most," the Commission said.

The recommended decision rejected a peak-based capacity charge because the ALJs reasoned that, if all customers took action to prevent their forecast peaks, the peak would be shifted to other hours, with costs shifted to other customers.

However, the Commission reasoned that uncertainty as to what hours will actually be peak (due to customer load switching to avoid

peak charges), "effectively spreads the generation capacity price signal received by customers beyond a single hour."

"In practice, this effect gives customers a signal to cut back during the afternoon hours of all summer heat waves. Such a price signal is a vast improvement over Central Hudson's current, excessively diluted approach," the PSC held.

Still, the Commission is concerned about the timing of implementation for the new peak-hour capacity charge, which under Staff's proposal would begin in May 2010.

"Because of a lag inherent in the NYISO's generation capacity pricing rules, this would make each customer's contribution to the NYISO's 2009 summer peak crucial. Given that the summer of 2009 is already underway, customers would not have time to understand their new generation capacity charge in time to react to a July or even August peak, and certainly not to a June peak," the PSC noted.

Accordingly, the current volumetric approach to capacity costs will be maintained for an additional year, with the peak-hour based charge going into effect in time to be applied to each customer's contribution to the system's 2010 summer peak.

The Commission also ordered that the Retail Access Collaborative for Central Hudson shall be continued, with Staff directed to schedule a meeting of the collaborative within 30 days to consider the funding of retail access initiatives from the deferred balance attributable to the Competition Education Fund.

## ***MXenergy ... from 1***

received welcome letters for a 36-month fixed price contract, rather than 6 months, and about 60 customers also had trouble cancelling service due to an error in an MXenergy backoffice system.

Under the settlement, subject to DPUC approval, MXenergy will revise its TPVs so that they include specific language to verify that customers understand when a specific price ends and, if applicable, a new rate begins. The new TPVs will clearly inform customers of any post-introductory price period, and also inform customers regarding what renewal information they will receive and when to expect it. The

TPVs will also inform customers of what other communications they will receive from MXenergy (such as welcome letters) after enrollment.

Among other changes in its marketing, MXenergy will require newly hired sales representatives to pass a certification test. MXenergy will also mandate that its vendors confirm that their sales materials will be required to include accurate specifics on the product's rate term and the customer's options thereafter.

MXenergy's quality assurance department will expand current monitoring of telesales and door-to-door sales, and will make a "best effort" to contact all door-to-door sales customers, both residential and small commercial, to review the solicitation.

The retailer will also ensure that its marketing efforts are properly timed and coordinated so that solicitations for products with a specific end date are only marketed to customers well enough in advance so customers have sufficient time to complete enrollment so they can take advantage of the offer's full length before the pricing changes.

MXenergy has offered various forms of rate relief due to the errors since last summer. However, some 1,500 fixed-price customers who received late renewal notices at UI haven't yet elected a form of relief. MXenergy will send such customers, even if no longer with the supplier, a check reflecting the difference between the market rate customers were billed through August 2008, and the fixed rate customers had previously been receiving before their product expired and moved to a market rate at the end of June. Another 1,500 customers who were on an introductory variable rate that moved to a market rate at the end of June also have not yet chosen a form of relief. MXenergy will similarly send those customers a check, regardless of their current supplier, for the difference between the introductory rate and the market rate for the July billing period.

The retailer will also use sync files provided by the distribution utilities to verify customer cancellations.

The stipulation requires MXenergy to report monthly customer service performance metrics for 12 months. The supplier will also submit reports, for two years, on high priority complaints

to the DPUC, OCC, impacted utilities, and the AG. Reporting to the DPUC, OCC, and impacted utilities will continue after two years.

MXenergy will also refine its complaint process and implement a business response team to identify and quickly escalate and inform regulators of potentially systemic problems or other high priority complaints affecting multiple customers, such as those relating to billing, customer communication, or customer service. The team will include members of the retailer's legal, regulatory affairs, customer operations, customer care, marketing, sales and Information Technology departments, as well as other senior management officials.