

Energy Choice Matters

June 24, 2009

Consumer Advocates Seek Disconnect Moratorium in Texas

Rep. Sylvester Turner and several consumer advocates are seeking an emergency summer electric disconnection moratorium in a request filed at the PUCT (37142). A similar moratorium was enacted in the summer of 2006, but denied in 2007 and 2008. AARP, One Voice Texas, Texas Legal Services Center, and Texas Ratepayers' Organization to Save Energy joined the petition.

Turner said that the current disconnect rule, which invokes a moratorium during an "extreme weather emergency," fails to provide adequate protection. PUC Subst. R. § 25.483 defines an extreme weather emergency as, among other things, occurring when the National Weather Service issues a "heat advisory" for a county, or when such advisory has been issued on any one of the preceding two calendar days in a county. However, Turner noted that Texas is seeing extremely high heat indices exceeding 105 degrees Fahrenheit without triggering the extreme weather emergency provision under the current rule.

The Houston area has already seen one death this summer related to heat, when an individual's air conditioning unit failed, Turner said, though the primary cause of death was ruled pre-existing cardiovascular and pulmonary diseases.

Under Turner's emergency proposal, a REP would be prohibited from disconnecting service to any residential customer during an extreme weather emergency or on a weekend day. Extreme weather emergency would be defined as:

(1) a day for which the National Weather Service forecasts that the heat index will reach or exceed 105 degrees Fahrenheit in any part of a county in the relevant service territory; or

(2) a period when, on any one of the previous two calendar days, the National Weather Service observes a heat index of 105 degrees Fahrenheit or more in any part of a county in the relevant

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Mass. DPU Opens Investigation of Electric Supplier Referral Program

Consistent with last year's Green Communities Act, the Massachusetts DPU has opened an investigation to develop the terms that would govern a type of electric supplier referral program to be administered by the distribution utilities.

The Act requires that residential or small commercial electric customers either (a) initiating new utility service; (b) reinstating service following a change of residence or business location (c) making an inquiry regarding their rates; or (d) seeking information regarding energy efficiency, shall be offered the option to learn about their ability to enroll with a participating non-utility competitive supplier.

Per the Act, customers expressing an interest in learning about their electric supply options shall be informed of offers available by participating competitive suppliers. The electric distribution company shall describe available offers through a method approved by the Department, according to the Act.

Furthermore, under the Act, participating competitive suppliers may list qualifying electric offers

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N.Y. PSC Approves New KeySpan Balancing System

The New York PSC declined to accelerate the KeySpan LDCs' proposed completion date of November 1, 2011 for a new gas balancing system, in approving and modifying aspects of a collaborative report on the changes (06-G-1185, Matters, 12/17/08).

As only reported in *Matters*, Staff said the November 2011 timeframe was not sufficiently aggressive, though Staff was the only party pushing for acceleration. The Commission refrained from adjusting the date, though KeySpan will be required to provide quarterly reports on the project scope, alternatives, schedule, and budget.

Under the Commission's order, KeySpan New York and KeySpan Long Island will institute two separate types of balancing services, monthly and daily. There will be two monthly balancing systems, one for firm core customers and one for non-core customers. Monthly balancing will be mandatory for all firm core customers receiving a mandatory assignment of capacity. A similar monthly balancing option will become available to non-core customers that supply their own upstream capacity and do not select the daily balancing option.

KeySpan will also develop a new daily balancing system that will significantly modify the existing program. The new system will provide transporters with internet accessible intra-day usage and nomination data, provide for the end-of-the-month trading of imbalances, and reduced balancing costs associated with a reduced balancing dead band. In the interim, the existing system will be maintained with these changes: implementation of a "no harm, no foul" rule for daily imbalances, a shift to Transco Zone 6 daily midpoint prices for cash-out purposes, and the capability for customers to switch to monthly balancing services during the interim period.

Staff had also raised concern about the elimination of monthly trading of city gate imbalances. Although transporters have not generally utilized monthly trading capability to reduce exposure to cash-outs in the past, that does not mean that these provisions would not be utilized and prove helpful in the future to

ameliorate the increased charges, Staff had said.

The Commission held that, "Transporters should have the capability to trade with similar market participants to ensure that the system is operated efficiently. Reducing exposure to the month end cash-outs will enable participants to better manage their imbalances. The capability of information systems to provide these transactions is critical to daily balancing and helpful to monthly balancing. The Company is required to provide a timetable of the availability of this and the new daily balancing system to customers. In the interim, monthly imbalance trading should be available for customers of KEDNY and KEDLI."

The Commission also ruled that, in the interim, a balancing level of 5% (rather than 2%) should be used for daily customers, as long as service at that level is priced appropriately to the level of assets required for its support.

Consumers Files to Lower Bypassable Renewable Charge for Some C&Is

Consumers Energy has filed for rehearing of the Michigan PSC's order adopting its Renewable Energy Plan to, among other things, lower the bypassable renewable surcharge imposed on certain non-residential customers (U-15805, Matters, 5/27/09).

Consumers originally divided secondary customers for purposes of the renewable surcharge into small (less than 1,250 kWh/month), medium (1,251 to 5,000 kWh/month), and large (above 5,000 kWh/month) subclasses for commercial and industrial customers based on their volume of usage. Likewise, the primary class was separated into small (less than 5,000 kWh/month), and large (above 5,000 kWh/month) subclasses.

However, Consumers now says that the surcharges approved by the Commission (up to \$187.50 per month for the primary industrial customer classes) disproportionately impacts some customers in the lower end of the "large" classes.

For primary customers, Consumers thus petitioned to implement additional tiers to lessen rate impacts on smaller customers, with such

tiers paying less than the current \$187.50 surcharge:

Revised Primary Service Tiers

Monthly kWh	Current Rate	Proposed Rate
0 - 5,000	\$15.00	\$15.00
5,001 - 10,000	\$187.50	\$50.00
10,001 - 30,000	\$187.50	\$100.00
30,001 - 50,000	\$187.50	\$150.00
Above 50,000	\$187.50	\$187.50

Consumers also sought to adopt five tiers instead of three tiers for secondary customers, with the third tier being industrial customers using 5,001 to 30,000 kWh/month; the fourth tier using 30,001 to 50,000 kWh/month; and the fifth tier using over 50,000 kWh/month. The renewable surcharges would remain at \$4.00 and \$15.00 respectively for the lowest two tiers. The surcharge would drop from \$140.00 to \$30.00 per month for the 5,001 to 30,000 kWh/month customers; drop from \$140.00 to \$90.00 per month for the 30,001 to 50,000 kWh/month customers; and remain at \$140.00 per month for secondary industrial customers using more than 50,000 kWh/month.

To make up for the revenue shortfall created by the new tiers, Consumers applied to increase the surcharge on residential customers to \$2.69 per month, which is still below the statutory cap of \$3.00 per month.

The renewable surcharges are bypassable, and Consumers' proposal would shift a greater share of renewable costs to the residential class, with the effect of making bundled service for some non-residential customers cheaper than it is under the current renewable surcharges.

Direct, PCL&P Say Customers Should Remain With Direct at Aggregation's End Absent Action

Pike County Light & Power and Direct Energy both argued that customers in the current Direct Energy opt-out aggregation should remain with Direct upon the aggregation's termination on May 31, 2011, absent an affirmative action from the customer to elect default service or another competitive supplier. The Office of Consumer Advocate, however, contended that customers must be returned to default service at the end of the aggregation's term.

The Pennsylvania PUC extended the

aggregation program for two additional years earlier this year (Matters, 2/6/09) but set for briefing the question of what should happen to customers at the end of the term.

Direct argued that there is no clear benefit from "forcibly" removing customers from Direct and returning them to default service, or placing them with another supplier, at the end of the term. Returning customers to Pike County for supply would elevate default service above competitive options and harm the competitive market, Direct warned.

Calling its service to customers "no different" from other competitive options, Direct contended that it had the right to automatically renew customers absent affirmative consent, and noted it raised such an issue in its initial pleadings to create the pool in 2006. Direct noted the PUC's original order held that contract extensions for aggregation customers would be permissible so long as they conformed to Commission regulations. At no time has the PUC held that an affirmative consent is needed to continue serving customers at the end of a product's term, Direct added.

Pike County agreed that customers not affirmatively electing to return to default service or switch to a different supplier should remain with Direct. Pike County was mostly concerned that the aggregation pool should not continue beyond May 2011, a position shared by Direct. Pike County said the pool has outlived its usefulness and cautioned that continuation would impede development of the competitive market. Direct likewise opposed continuing the aggregation or re-bidding the customers for assignment to other suppliers.

However, the Office of Consumer Advocate countered that since the aggregation customers have never affirmatively elected to receive service from Direct, they must be returned to default service upon the end of the aggregation, unless affirmatively choosing Direct or another supplier.

In particular, OCA noted that through the aggregation program, customers who were switched to Direct without affirmative consent have been protected because Direct's terms and rates have been subject to Commission approval. Such protection will end upon the termination of the pool, OCA noted, meaning

customers who have never made a choice to leave default service and its Commission-approved terms and conditions will be subject to terms and conditions of a competitive supplier that are not approved in a tariff.

Direct cautioned, however, that forcibly removing customers from a competitive supplier could dislodge a current supplier from the market or discourage other suppliers from entering, due to uncertainty.

PJM Asks for Duquesne Capacity Waivers

PJM asked FERC for one-time waivers of certain provisions of the Reliability Assurance Agreement among Load-Serving Entities in the PJM Region (RAA) and the PJM Open Access Transmission Tariff to facilitate implementation of a plan to secure capacity for loads in the Duquesne Light zone from June 1, 2011 through May 31, 2012, under a settlement previously approved by the Commission.

The settlement, which saw Duquesne remain a PJM member, provides that for the 2011-12 Delivery Year, Duquesne will submit to PJM a capacity plan for Duquesne-zone loads under the RAA's Fixed Resource Requirement (FRR) alternative, which allows LSEs to meet their RPM capacity obligations through capacity resources secured outside the RPM auctions under certain conditions. The Commission previously waived the requirements relating to the timing of FRR submissions (meant to prevent opportunistic elections) in approving the settlement, but PJM said questions have arisen regarding whether additional tariff waivers are needed.

While the approved settlement sought blanket waivers of any tariff provisions that would restrict Duquesne's compliance with the RAA and the PJM tariff under the FRR plan, PJM is seeking two additional waivers, to the extent necessary, out of an abundance of caution.

First, PJM requested a waiver to allow Duquesne to use locational UCAP in its capacity plan. The tariff defines locational UCAP as available only to a market participant that previously committed capacity through an RPM Auction.

PJM said the waiver regarding locational

UCAP will not harm capacity suppliers, which will only assume responsibility for resource commitments if they agree to do so in their negotiations with LSEs. The default will remain that Duquesne, as the FRR Entity, will be responsible for the availability and performance of the resources in its capacity plan.

Second, PJM sought a waiver to allow capacity procured by Duquesne-zone LSEs in the incremental auctions for the 2011-12 Delivery Year (or purchased by Duquesne-zone LSEs from other market participants that procured capacity in such incremental auctions) to be included in the capacity plan. The RAA prohibits an FRR Entity from including in its capacity plan any capacity resource that has cleared an RPM auction for that year, but PJM said since the FRR filing will occur after the first incremental auction, LSEs will face a limited market to acquire supplies. Allowing them to use capacity procured in the incremental auctions will broaden the supply of capacity available, PJM noted.

Dominion East Ohio Seeks Approval of Updated Pooling Agreements

Dominion East Ohio sought approval from the Public Utilities Commission of Ohio for several agreements and general terms and conditions including: (i) Full Requirements Pooling Service (FRPS) Agreement; (ii) Daily Pooling Service (DPS) Agreement; (iii) General Pooling Service (GPS) Agreement; (iv) Local Production Pooling Service (LPPS) Agreement; (v) Full Requirements Pooling Service Agreement - West Ohio Pool; (vi) Daily Pooling Service Agreement - West Ohio Pool; and (vii) General Pooling Service Agreement- West Ohio Pool.

The proposed Local Production Pooling Service Agreement provides for DEO to receive Production Volumes and Pool-to-Pool Volumes (as defined in the General Terms and Conditions) requested by a supplier to be delivered to the supplier's pools for allocation by DEO to the supplier's other pools or to LPPS accounts of other suppliers within the State of Ohio. Section 5 of the LPPS Agreement provides that DEO shall not operate its LPPS in a manner to provide any advantage or

disadvantage to any other supplier (including any of DEO's affiliates), either in preference to or in derogation of the rights of any other supplier.

The proposed FRPS, DPS and GPS Agreements reflect changes made primarily to conform to recent changes in DEO's tariffs for various transportation services, as authorized pursuant to Commission orders in DEO's last base rate case.

Briefly:

N.Y. PSC Staff Sets Conference on Customer Account Numbers, ESCO Referral Warm Transfers

New York PSC Staff will host a technical conference on July 8 regarding (1) the Commission's order to expand Consolidated Edison's ESCO Referral Program to new service customers and the "warm transfer" requirement; (2) access to customer account numbers; (3) follow-up on the Uniform Business Practice Phase II issues and working group reports; and (4) other UBP topics raised by parties.

Metromedia Power Seeks Pa. License

Metromedia Power applied for an electric supplier license in Pennsylvania, as a broker/aggregator for retail suppliers, for all sizes of non-residential customers. Affiliate Metromedia Energy currently holds a gas supply license in the state.

N.Y. Seeks Comment on Generator Deliverability Study Methodology

The New York PSC is considering whether to approve a Generator Energy Deliverability Study methodology for use in all service areas of the state. NYSEG and Rochester Gas & Electric filed their methods for performing economic deliverability studies for interconnecting generators in November, and the Commission is seeking comment on that filing, including whether the NYSEG/RG&E methodology is appropriate for other utilities (09-E-0497). The Commission said it will evaluate the NYSEG/RG&E proposal to (1) assist in determining the expected operating impacts of a proposed renewable generation project as part of the decision whether to grant a certificate of public convenience and necessity; (2) to obtain

information as to where congestion is likely to develop in the future to help direct requests for transmission studies; and (3) to consider incorporating the study results into the evaluation of projects for renewable portfolio standard payments in the event of a new auction.

CERA Says Power Plant Costs Fall Slightly

The latest IHS CERA Power Capital Costs Index (PCCI) shows that the costs of constructing new power plants fell an additional three percent over the past six months, signaling a broader downward trend that has now spread beyond nuclear to all classes of power plants. The index, pegged to the year 2000, shows that a power plant that cost \$1 billion in 2000 would, on average, cost \$2.17 billion today, versus \$2.24 billion at the end of Q3 2008. The decline over the past six months was driven primarily by a decrease in costs of construction steel, wire, cables, rebar and asphalt stemming from sharply lower prices for steel, copper and petroleum. The results mark the first time in nearly a decade that the costs of non-nuclear plants (coal, gas and wind) have decreased, CERA said. Wind has shown the sharpest decrease at 11 percent, while costs for combined-cycle and simple-cycle gas plants declined by six percent over the past six months. Coal power plant costs also fell six percent due to declines in both labor and ancillary equipment costs.

Oncor Nears 250,000 Deployed Advanced Meters

Oncor reported it has deployed nearly 250,000 smart meters. As previously reported, deployed meters stood at 220,000 at the end of May. By year-end, Oncor anticipates nearly 700,000 advanced meters and their communications systems to be in place.

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service territory.

Additionally, disconnections would be prohibited regardless of weather through September 30, 2009, to certain vulnerable customers, including:

(1) Low-income customers, as defined by PURA 39.903(l), who request and comply with

the terms of a deferred payment plan;

(2) Critical care residential customers for whom an interruption or suspension of electric service will create a dangerous or life-threatening condition.

The type of deferred payment plan mandated by the emergency rule would vary with the low-income customer's age.

Low-income customers younger than 65 years of age would be required to pay a minimum of 33 percent of the outstanding balance due, in order to be eligible for a deferred payment plan for the purposes of avoiding disconnection. Such customers are only eligible if they do not owe an outstanding balance from a deferred payment plan from a previous year that allowed the customer to avoid disconnection during the summer, and if the customer agrees to pay the remaining balance in equal installments over the next five billing cycles.

Low-income customers at least 65 years old could avoid disconnection by entering a deferred payment plan with no payment of any outstanding balance until after September 30. Such low-income seniors are eligible for a deferral plan if the customer agrees to pay a minimum of 25 percent of the deferred charges when the first bill issued to the customer after September 30 is due, with the remaining balance paid in equal installments over the next five billing cycles. Low-income seniors are not barred from participating in a deferral plan even if they have unpaid balances from a prior plan.

Turner agreed that a necessary component of any deferred payment plan must be a commitment from the customer to pay off the deferred amount. To the extent the proposed rule does not address that issue, Turner would support modification of the proposal to ensure its inclusion.

Turner's rule would require REPs to report on a monthly basis, from Aug. 1 through Jan. 1:

(A) the number of customers taking deferred payment plans under the extreme weather rules, the amount of the deferred payment plans extended, and the amount of revenue collected on the deferred payment plans, and

(B) the number of low-income, elderly and critical care customers taking deferred payment plans under the emergency rule, the amount of

the deferred payment plans extended, and the amount of revenue collected on the deferred payment plans.

TDUs and ERCOT would also be subject to reporting requirements regarding the dates for which the National Weather Service forecasts a heat index above 105 degrees, and the dates for which disconnections were prohibited due to such weather.

Turner reported that, from 1999-2004, there were 258 deaths reported among Texas residents with exposure to excessive natural heat as the underlying cause of death, or an average of 43 per year during that period.

"While it is not the opinion of the Petitioners that a disconnect moratorium can or will prevent all heat related deaths in the State of Texas, it is our position that adopting the proposed emergency rule will assure that such deaths will not occur because of lack of electricity in someone's place of residence," Turner said.

Furthermore, discounts under the System Benefit Fund and voluntary moratoriums offered by some REPs are inadequate to protect customers, Turner argued.

"Texans are paying 43% - 66% higher electricity rates for their residential electricity than neighboring states such as Oklahoma, Louisiana, and Arkansas according to information gathered from the United States Department of Energy," Turner said. The current economic crisis, an unemployment level of 7.1% (a level not seen in Texas since 1993) and the known fact that electricity usage and electricity bills increase in the summer months will further make customer payments difficult, Turner added.

During the months of May through September in 2008, when the Lite Up Texas discount was funded, over 446,000 residential customers had electricity service disconnected at some point during those months, Turner noted.

Only two REPs have publicly announced voluntary disconnect moratoriums to date -- TXU Energy and Reliant Energy, Turner reported.

Regardless, even if more programs were available, "[t]here are no regulatory assurances that these programs will be honored and implemented in a neutral and systematic manner which will equally protect all vulnerable customers," Turner said. Though not cited in the

emergency petition, PUCT Staff found last summer that customer service representatives at five of six REPs offering voluntary programs were unaware of the program during at least one mystery shopper call (Matters, 9/12/08).

Some of the voluntary programs offered last year only covered 85% of low-income customers, Turner noted, leaving 15% of such customers unprotected.

Additionally, switching to a REP offering a voluntary moratorium may entail costs (due to termination fees or new deposits), Turner added.

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to provide electric generation service to residential and small commercial customers in each customer's utility bill. The Act directs the DPU to determine the manner in which such information is presented in customers' utility bills.

The Act directs the Department to establish terms and conditions under which a participating competitive supplier may be included in such a program by September 1, 2009.

Accordingly, the DPU opened docket 09-46 to develop model terms and conditions governing the relationship between distribution companies and competitive suppliers under the referral program, stating that model terms and conditions set by the Department will, among other things, minimize inconsistencies that may arise in individual company adjudications of terms and conditions.

The Department directed utilities to provide by July 6 proposed revisions to their competitive supplier terms and conditions focusing on the following:

1. How to offer residential and small commercial customers the option to learn more about their ability to enroll with a participating non-utility competitive supplier upon the occurrence of one of the four specified events;
2. How to inform interested customers of the available offers; and
3. How "qualifying electric offers" should be listed in utility bills.

The Department will hold a technical session on July 13.