

# Energy Choice Matters

July 28, 2009

## Reliant, TIEC, Consumer Groups Say PUCT Lacks Authority to Create Payment Database

The PUCT lacks authority to create a customer payment history database, Reliant Energy, Texas Industrial Energy Consumers and several consumer groups said in comments at the Commission. The REP Coalition, however, read the same provisions in PURA as granting the Commission authority to institute a mandatory payment database (Matters, 7/23/09).

Reliant noted PURA §17.004(a)(6) entitles buyers of retail electric service to privacy of their consumption and credit information. While PURA §17.008 requires REPs to provide 12-month payment history information to the customer, the section does not compel a REP to provide the information to another REP or third party, Reliant noted. Combining these provisions with PURA 39.101(a)(2), which entitles customers to privacy of customer consumption and credit information, shows that the legislature did not intend for customer payment information to be shared among REPs or other third parties, TIEC said.

However, the REP Coalition countered that while PURA §§17.004(a)(6) and 39.101(a)(2) require the protection of customer consumption and credit information, the Commission has already adopted substantive rules to provide customers with such protections. The creation of a payment history database would, in fact, complement and enhance the provisions of PURA §17.008 by providing a means for REPs to verify the payment history as required under PURA §17.008(g), the REP Coalition added. The REP Coalition includes CPL Retail Energy, Direct Energy, First Choice Power, Gexa Energy, Green Mountain Energy, WTU Retail Energy, and the Texas Energy Association for Marketers.

The Commission has authority to implement a bill payment database under its general rulemaking powers under PURA, the REP Coalition argued, including the power to make reporting of customer

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## Several Mass. Suppliers Suggest Standardized, Six-Month Referral Product

Several Massachusetts competitive suppliers have suggested that an electric supplier referral program, to be offered by the state's distribution utilities, should use a standardized, six-month fixed product, with specific prices communicated to customers via the utilities' interactive voice response systems. Jointly submitting the proposal were the Retail Energy Supply Association, Dominion Retail, Consolidated Edison Solutions, and Direct Energy Services ("Suppliers").

The distribution utilities have proposed a referral program that would only inform customers of the names and contact information of competitive suppliers, but not specific electricity offers. Suppliers have said that such a program would not meet statutory requirements for distribution companies to inform customers of "offers available" from suppliers (Only in Matters, 7/24/09).

Under the Suppliers' proposal, the referral program would list, via the utilities' interactive voice response systems, qualifying electric offers in ascending order of price after listing the Basic Service rate. A qualifying offer is defined by the Suppliers as an offer to provide full requirements commodity electric service and all other generation-related charges to residential and small business customers at a fixed price per kilowatt-hour for a term of no less than six months, or such other term as may be

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## OCC: New State, Utility Generation is One Solution for Lower Capacity Prices

"[A] primary solution for improving bilateral markets is increased competition, which can be achieved by building new generation by state authorities and utilities, or through expanded use of demand resources and energy efficiency," the Ohio Consumers' Counsel said in reply comments regarding the value of Ohio's participation in RTOs (Matters, 5/26/09).

OCC credited such increased competition as a major factor in the recent low clearing price in the 2012/13 Base Residual Capacity Auction in PJM, "which should provide a signal to generators that they should look to bilateral contracts to cure their own exposure to price volatility."

"For this dynamic to take its course, however, PJM must not respond to lower prices by finding a new means of artificially inflating capacity prices and price expectations," OCC added.

OCC continued to criticize the RPM market in its reply, citing two primary reasons for high costs in prior auctions, "(1) the single clearing-price auction for capacity, which means that even fully amortized resources that are highly profitable in energy markets receive subsidy [sic] for capacity as resources that would be otherwise uneconomic; and (2) PJM's unwarranted faith in its administrative determination of net CONE [Cost of New Entry], despite clear market evidence that it is far too high."

Noting that the RPM market cannot pass the three-pivotal supplier test in any region, OCC said, "experience shows that RPM exists in an environment in which a truly competitive market is impossible." With all RPM bids mitigated as a result of the three-pivotal supplier test, OCC argued that, "The efforts to make RPM look like a market, while consistently returning PJM's desired market clearing price, have resulted in a set of market rules so convoluted and contorted as to make it difficult to accept the idea that auction outcomes reflect actual market forces."

"In addition, RPM has probably had a chilling effect on long-term contracting for capacity because [sic] the uncertainty and complexity of RPM. This is exactly the opposite of what the

market should be designed to support. RPM was created because PJM's LMP electricity pricing construct produces insufficient energy market revenues to support the small number of MW of capacity that are needed only a few hours each year during peak load conditions. Some economists propound a theory that this represents 'missing money' for all resources, despite the fact that the vast majority of resources are more than adequately compensated for their fixed and variable costs through LMP," OCC added.

"The questionable premise behind RPM - that all capacity requires the same amount of subsidy on a per-MW basis as capacity-only resources - has cost customers - including Ohio retail customers in PJM - billions of dollars each year of the RPM auctions," OCC said.

OCC further cited another "questionable" premise underlying RPM -- that CONE should be determined by PJM's administrative estimate of the cost of a new gas-fired peaking unit to the exclusion of any other type of generating unit. "If there is any benefit at all to a market construct, it should be that it allows the market to find the most efficient resource to meet consumer needs - in this case, the optimal resource to meet reliability needs at the lowest cost. At most, only a small proportion of the capacity retained or produced by RPM has been new gas peaking units similar to PJM's proxy peaker used to define Net CONE. PJM's reliability requirements can clearly be met with lower cost resources, so it is hard to understand why PJM insists on using such a high-cost resource for its administrative price-setting approach," OCC said.

Duke Energy, however, stressed the importance of a capacity market by stating, "the lack of significant demand response capabilities makes it unwise to pursue an energy-only market structure where scarcity pricing solely provides the impetus for longer-term contracting."

OCC opposed the AEP companies' suggestion, made in initial comments as well as several other state and federal proceedings, that customers on regulated retail generation rates should not be permitted to participate in RTO demand response programs.

"AEP's comments regarding demand response exaggerate the potential costs and

ignore the benefits that the PJM demand response programs can provide to Ohio retail customers. At their core, AEP's proposals would eliminate the growing industry of curtailment service providers ('CSPs') that have worked directly with customers to provide demand response resources to the wholesale markets. The impact of expanded participation of demand response in wholesale markets has been lower real-time energy prices in RTO wholesale markets. AEP wrongly focuses on small cost shifts among a large base of retail customers as a justification for preventing retail customer participation in wholesale markets as 'demand resources,'" OOC said.

The FirstEnergy companies, in countering claims from industrials and consumer groups that RTOs have led to higher prices, noted its customer bills have remained stable over the past decade (rising more slowly than the rate of inflation), though FirstEnergy made no mention of generation-related deferrals customers will pay off via nonbypassable surcharges over the coming years.

Also addressing the question of rates, PJM said that, "in the final analysis, *retail* rates are established by *retail* regulatory authorities, subject to the body of state law authorizing the scope and substance of their actions," though PJM did not address the inability of state regulators to disallow or block the pass-through of purchased power costs approved as just and reasonable by FERC to retail customers.

"With due respect, PJM suggests that stakeholders - some of whom blatantly seek to serve their private interests by undermining the foundation of the nation's competitive wholesale electricity markets - instead explore alternatives in the retail ratemaking arena for equitably allocating the benefits of increased efficiency in wholesale markets," PJM said.

## **Briefly:**

### **Reliant Withdraws as Volunteer POLR**

Reliant Energy Retail Services, LLC requested that it be removed from the PUCT's Volunteer Retail Electric Provider (POLR) list in all areas where it is currently designated as a volunteer POLR (residential class at AEP-TCC, AEP-TNC, CenterPoint, Oncor, and TNMP).

### **Md. Politicians from Pepco Areas Urge Re-regulation**

Twenty-eight Maryland state legislators from Montgomery and Prince George's counties, all Democrats, sent a letter to the PSC urging Commissioners to look for, "opportunities in the Pepco service area to reduce our constituents' electric bills by re-regulating their rates," similar to proposals being debated in the PSC's review of the Constellation-EDF transaction. Lawmakers cited the Commission's 2008 report to lawmakers that showed "re-regulation" would save customers \$1.6 billion, and encouraged the Commission to take whatever steps it can prior to the next legislative session, where the lawmakers said they would again seek legislation governing new ratebased capacity and long-term planning.

### **Reliant Energy Texas Retail Adds Trade Names**

The PUCT granted Reliant Energy Texas Retail's (REP #10178) request to add the following trade names to its certificate: Reliant Energy Commercial/Industrial Services; and Reliant Energy C&I Services.

### **PG&E Signs PPA with Sempra Generation for More Solar Power**

Pacific Gas and Electric said it has entered into a second contract with EI Dorado Energy, LLC, a subsidiary of Sempra Generation, for the purchase of 48 MW of photovoltaic solar power produced at the Copper Mountain Solar facility. PG&E had previously signed a PPA for the entire 10 MW output of Sempra Generation's existing EI Dorado Energy Solar power plant.

## **Database ... from 1**

information mandatory for REPs. TXU Energy agreed that the Commission is likely authorized to create the database under its general powers to do what is reasonable and necessary to exercise its designated and implied powers under PURA, and that with such authority comes the power to make reporting mandatory for all REPs.

The REP Coalition further noted that HB 412 of the 79th regular session, which called for Commission studies of a payment database,

held that a database was not prohibited or prevented by the act. However, HB 412 qualified that provision by stating a database was not prohibited so long as it, "does not otherwise violate the Public Utility Regulatory Act."

The REP Coalition said that all Option 1 REPs should be required to provide the following information on all current accounts for the database:

- Billing name
- Billing address
- Service address
- ESI ID
- Primary telephone number
- Social Security Number, Tax ID, or Driver's License (or other Government ID), if available
- Service start and end dates
- Prepay Status - whether the customer receives or received service pursuant to P.U.C. SUBST. R. §25.498

• Existence and cure of any bona-fide debt (date)

- Existence and date of any late payments

Additionally, the REP Coalition said that the following information would provide useful information for deposit waiver and deferred payment plan eligibility:

- Existence and date of any disconnections for non-payment
- Issuance and date of disconnect notices
- Critical Care Status
- Low Income Status

The REP Coalition believes that participation of all REPs in the database should be mandatory in order to ensure that a sufficient amount of accurate information is available to make the database viable, "and because only a mandatory database will satisfy the statutory directives to enhance the competitive market and the public interest inherent in that market."

Among several benefits the REP Coalition cited from a payment history database is the potential to reduce the need for POLR deposits. While customers dropped to POLR service may by rule avoid a deposit with satisfactory payment history, because their old provider is exiting the market (often in an unorganized fashion), customers may be unable to verify their payment history to the POLR, requiring them to pay the

deposit even when they have a good payment history. A customer payment database would avoid this scenario, the REP Coalition noted, as customers would no longer have to rely on their former REP providing verification of their payment history.

The database would also encourage "fair competition" among all providers of electricity by removing the residual discriminatory effect created by Affiliated-REPs' (AREPs) exclusive access to the payment histories of customers they inherited at market-open, the REP Coalition added.

The REP Coalition noted additional benefits would include:

- Reduced requests for deposits, based on REPs' ability to easily and timely access customer payment histories;
- Enhancing the ability of unbanked customers to establish creditworthiness and obtain extension of electric service without deposits, and
- Inquiries to the database, unlike multiple inquiries to a person's credit history, would not negatively impact a person's credit score.

Furthermore, the REP Coalition noted that the database would facilitate the implementation of a consistent "hard disconnect" policy. "A 'hard disconnect' policy benefits all customers by ensuring that the retail rates of REPs are not unnecessarily inflated because of bad debt associated with non-paying customers who habitually build up unpaid balances and switch providers as a means of avoiding disconnection of electric service and payment for service they have consumed," the REP Coalition said.

The REP Coalition favors introduction of a mandatory hard disconnect policy, arguing that the Commission has authority to implement a hard disconnect rule under PURA §39.101(e). That subsection grants the Commission the authority to adopt and enforce rules including those necessary to implement the enumerated customer safeguards, "which it should be noted does not include the right to free electric service, and specifically includes the authority to adopt and enforce rules relating to the extension of credit and termination of service," the REP Coalition said.

"A hard disconnect rule would be a rule related to the extension of credit and termination

of service. As such, the Commission has the authority to adopt a hard disconnect rule," the REP Coalition noted.

Additionally, the REP Coalition said that a hard disconnect policy should be mandatory, not voluntary. A "voluntary" policy would not require REPs to extend service to disconnected customers in arrears with another REP, but would give them discretion to serve such customers. A mandatory hard disconnect rule would prohibit any REP from enrolling a disconnected customer until the customer's past due balance is paid off to their former REP.

"The REP Coalition favors a mandatory hard disconnect policy to prevent the anticompetitive outcome that would ensue if the acquiring REP could elect to accept a customer switching and leaving the losing REP with an undisputed bona fide debt or deferred payment plan balance. This form of voluntary hard disconnect would encourage larger REPs to take the chance on customers who are not credit-worthy as a means of driving smaller REPs from the market," the REP Coalition said.

However, Reliant and TXU both expressed concern that a hard disconnect policy could result in more customers taking POLR service.

"PURA §39.106 supports the entitlement of choice by requiring the Provider of Last Resort (POLR) to 'provide the standard retail service package to any requesting customer.' Because POLR service must be available to any requesting customer, a hard disconnect policy may provide no ultimate benefit to the REPs supporting such a policy," Reliant noted. TXU likewise observed that under PURA a POLR "shall" provide service to any requesting customer in the territory for which it is the POLR, while PURA also provides that, "[a] customer is entitled to be served by a provider of last resort."

Furthermore, "[w]hatever form hard disconnect may take, mandatory implementation of that concept directly contravenes PURA §39.101(b)(2), which provides that 'a customer is entitled to choose the customer's retail electric provider consistent with this chapter [and] to have that choice honored...' There are no exceptions to this entitlement," Reliant added.

Such a view is shared by the Texas Legal Services Center, Texas Ratepayers

Organization to Save Energy, and AARP, which said a hard disconnect policy would make Texas the most anti-competitive market in the world by denying customers the right to initiate service with a new REP.

The consumer groups argued that REPs face little bad debt risk given their authority to impose deposits, collect late fees, and set their own credit requirements (for non-POLRs). The groups questioned whether late fees, in particular, are mitigating actual bad debt, or merely supplementing REPs' revenues. With no disconnect moratorium, increasingly large deposits, and termination fees, the consumer advocates questioned why another "hammer" in the form of hard disconnects is required to aid REPs. The rise in the level of disconnects in the market makes it "increasingly clear" that disconnection is being used as REPs' only collection tool, the groups said.

TLSC, ROSE and AARP further opposed a bill payment history database, worrying that it could lead to the cherry-picking of high-usage customers. Reliant expressed concerns about the vulnerability of a centralized bill payment data repository to data loss/theft, while TIEC also stressed confidentiality concerns, noting customers' rate and usage information is competitively sensitive. If a customer's current rate information is accessed by a customer's prospective REP, that disclosure could harm the customer in negotiations, TIEC said, asking that any database exclude large customers.

While proponents of the database agreed the information should not be used for marketing purposes, Reliant said such a provision would be hard to police. "For example, PURA allows refusal of service based on bill payment history. Some REPs may have marketing plans based on serving only customers with pristine bill payment history, in which case a database would serve as a vehicle to fulfill the goals of that marketing plan. This argument can be extended to include any type of electric bill payment-based marketing plan," Reliant said.

The Office of Public Utility Counsel did not support any payment database until it is certain that introduction of the mechanism will lead to customer savings. OPC also linked creation of the database to reduced late fees and disconnect/reconnect fees, and the ability of all

customers to receive levelized or deferred payment options.

The REP Coalition suggested that the database be financed through a per inquiry fee charged to REPs accessing the database.

## ***Mass. Referral ... from 1***

set by the DPU.

A minimum six-month term would dovetail with the semiannual pricing of Basic Service, and would also provide more flexibility for both suppliers and customers to respond to price changes, thereby creating a more robust competitive electricity market in the Commonwealth, Suppliers said.

Customers receiving service under the referral program could return to basic service, or elect another supplier, without the imposition of a termination or switching fee during the term of the program or at the end of the referral product's term.

Prices would be rounded to the second decimal place. Participating suppliers would be required to report the next month's referral program price by the 25th day of every month.

Offers would also be listed in quarterly bill inserts.

The utilities' phone systems would be required to allow customers expressing interest in a supplier's referral product to be immediately transferred to that supplier's customer service center.

Utilities would be required to inform customers that suppliers may offer additional products with different terms and prices than the referral program product, but would not be required to provide any additional details on such products.

The Suppliers' suggested that utilities may charge competitive suppliers for incremental costs of the program. The proposed language does not explicitly limit any fee to only those suppliers participating in the referral program.