Energy Choice Matters
August 7, 2009

Just Energy Margins Higher on Customer Growth, Renewables, Reduced Balancing Costs

Adjusted net income at Just Energy Income Fund was down slightly at $24.6 million for the first fiscal quarter of 2010, versus $27.6 million a year ago, as two accounting provisions masked a 20% increase in gross margin. All figures are Canadian, and quarterly results do not reflect any impact of the Universal acquisition which closed July 1.

Adjusted net income was down largely because there was an increase in a non-cash tax provision adjustment of over $4.3 million in the first quarter, as compared to the same period last year. In addition a $4.2 million increase in gross margin which was collected in the first quarter is shown in seasonally adjusted margin but is not included in adjusted net income. GAAP net income, which reflects mark-to-market impacts, was $102.6 million versus $34.2 million a year ago.

Gross margin was higher at $66.1 million versus $55.2 million a year ago, driven by generally higher customer counts, strong sales of high-margin renewable products, and lower commodity prices.

U.S. electric gross margins were $13.0 million for the quarter, reversing the year-ago negative gross margin of $482,000. The year-ago results mainly reflect $5 million in balancing costs from increased spot purchases to serve ERCOT customers during times of high usage and prices. Average gross margin per U.S. electric customer increased to $176 per Residential Customer Equivalent (RCE) compared to $(18)/RCE a year ago. Net U.S. electric customer additions since April 1, 2009 were 28,000, bringing the total count at June 30 to 262,000, on "strong" growth in both New York and Texas. Included in the net growth is a reduction in load following customers in Texas.

U.S. gas gross margin increased to $10.7 million from $6.0 million a year ago. Net customer additions versus April 1, 2009 were 3,000, with the U.S. gas book now standing at 238,000. Higher customer terminations by LDCs offset much of Just Energy's U.S. gross gas acquisitions. Average

Continued P. 6

REPs Raise State, Federal Constitutional Questions on Termination Fee Waiver Petition

The Texas Office of Public Utility Counsel argued that a temporary waiver of REP termination fees would not violate the Texas Constitution, while TXU Energy and Reliant Energy both raised federal constitutional questions about the emergency rule sought by consumer advocates (Matters, 7/21/09).

As an alternative to a summer disconnection moratorium, Rep. Sylvester Turner and several consumer groups petitioned the PUCT to, among other things, waive the imposition of termination fees for customers through the end of September, so customers can switch to lower priced offers without penalty. The PUCT deferred ruling on the petition at its open meeting last week, requesting that parties brief legal issues in the case, including whether the petition would violate Article I, Section 16 of the Texas Constitution, which prohibits bills of attainder, ex post facto laws, retroactive laws, or any law impairing the obligation of contracts.

OPC argued that the prohibition against retroactive laws applies only where there is an impairment or destruction of a vested legal right, citing Cardenas v. State. Nothing in the Constitution, statute, or Commission rule vests a REP with a right to recover a termination fee from a customer, OPC contended, and thus retrospective application of the termination fee waiver would

Continued P. 7

Pa. PUC Approves POR, Other Provisions at PPL

The Pennsylvania PUC, in a 4-1 decision, approved an order designed to remove various barriers to retail electric competition at PPL prior to the expiration of rate caps on January 1, 2010 (Matters, 7/8/09).

A final order was not published as of press time, so the exact mechanics approved by the Commission are not known. However, in general, the measures include:

- Purchase of receivables with little or no discount;
- Bill ready and rate ready options;
- Customer information databases;
- Data access through standardized EDI transactions for post validation, estimation and editing (VEE) data, which, among other items, provide necessary customer account information such as interval usage, transmission and capacity peak load contribution, and meter read cycle information;
- Timely EDI testing;
- Customer awareness and education programs;
- Commitments to a process for development of a uniform supplier tariff; and
- An ombudsman for supplier issues

The Commission also directed that issues such as customer referral programs, provisions for billing services not covered by POR, and customer shopping education efforts by utilities and the Commission will be referred to the Retail Market Working Group for further consideration.

Reiterating concerns first voiced when the Commission issued a Tentative Order, Vice Chairman Tyrone Christy dissented, contending that the Commission decision reflects a, "recklessness in a rush to accommodate electric generation suppliers (EGSs) without regard to the interests of electric distribution companies (EDCs) and their default service customers."

Procedurally, Christy objected to the decision as based on no record evidence, arrived at outside of a formal rulemaking or working group process. Additionally, several measures contradict parts of PPL's post-2010 default service settlement, Christy noted. According to Christy, the order states that the measures will serve as the "template" and "starting point" for similar measures at other utilities.

In particular, Christy objected to the mandated POR program and said an alternative suggested by FirstEnergy Solutions (unbundling a portion of uncollectibles from base rates and moving it into generation rates) should have been explored.

Christy also said that a customer information release provision, which he described as requiring utilities to release customer information to a supplier upon the supplier's oral assurance that the customer has consented to the release, will likely result in slamming and unauthorized release of confidential information.

Chairman James Cawley called the order "very important" for the success of competition at PPL.

Delaware PSC Opens Dynamic Pricing Investigation

The Delaware PSC opened docket 09-311 to further investigate the benefits to ratepayers of dynamic pricing and other options that may become available with the diffusion of advanced meters. Specifically, the Commission will examine:

- Whether retail choice is consistent with Standard Offer Service dynamic pricing;
- Whether dynamic pricing should be mandatory, opt-in, or opt-out;
- Whether there should be an increased charge for usage during critical peaks and/or a credit for a decline in usage during critical peak periods

A workshop will be held September 10.

The investigation is prompted by federal stimulus legislation which links additional grants to energy efficiency measures.

Pepco Energy Services Earnings Lower on Interest, RPM Charges

Pepco Energy Services reported lower net income of $10 million for the quarter, versus $16 million a year ago, on lower generation output, higher Reliability Pricing Model costs, and interest and related charges.

Higher interest and other expenses primarily associated with credit and collateral facilities for the retail energy supply business resulted in a $7 million decrease in earnings versus the prior-year period. Lower generation output and higher RPM charges associated with its power plants accounted for another $7 million decrease.

These decreases were partially offset by a $9 million increase in earnings due to favorable electric supply costs, ancillary and other electric-related wholesale supply costs, and favorable natural gas supply costs; partially offset by less favorable mark-to-market gains on energy contracts.

Pepco Energy Services' gross margin from retail energy supply was $41 million in the second quarter of 2009, compared to $36 million in the second quarter of 2008. Retail electric sales were 4,594 GWhs in the second quarter of 2009, compared to 4,825 GWhs in the second quarter of 2008. The 5% decrease primarily reflects lower commercial and industrial customer loads.

Parent Pepco Holdings said it was continuing to evaluate the retail energy supply business with a view toward a possible restructuring, sale or wind down of the business. PHI said that the previously announced higher capital costs included in Pepco Energy Services' retail rates continue to reduce customer retention levels and levels of new retail customer acquisitions.

Net loss at Conectiv Energy was $14 million versus net income of $21 million a year ago, on lower output, spark spreads and dark spreads.

WGES Expects Favorable Market Climate to Persist

Washington Gas Energy Services expects the currently favorable mass market pricing opportunity to persist into next year, the retailer's President Harry Warren said during an earnings call yesterday.

As only reported by *Matters*, WGES saw higher adjusted operating earnings of $9.6 million for the third fiscal quarter, up from $5.1 million a year ago, on higher margins and customer growth (full story in Matters, 8/6/09). Improved electric margins accounted for a $1.5 million increase in adjusted income.

In Maryland, new mass market SOS pricing will start October 1, but the blend will still reflect some contracts executed at higher power prices before the recession. In Washington, D.C., new SOS pricing (excluding the seasonal adjustment) will not occur until June 1, 2010, and at that point will still include blending from prior years.

Given the "exceptionally favorable" pricing opportunity versus SOS, most of WGES's previously reported 36,000 customer additions have been in the electric mass market. Warren reported that the majority of mass market contracts have been for 12 months, but due to low prices, WGES has seen an increase in two- and three-year deals.

The customer growth more than offset a decline in per-unit electric margins, resulting from higher RTO charges and cooler weather that lowered volumes and led to the sale of excess power in the wholesale market at lower prices.

Growth in residential natural gas customers accounted for higher margins which improved adjusted earnings by $5 million, compared with the prior-year quarter where more volumes were sold to low-margin large industrial customers.

Integrys Targets Late Q3, Early Q4 for Divestiture

Integrys Energy Group is targeting making additional transaction announcements related to its divestiture of Integrys Energy Services by the late third quarter of 2009 or early fourth quarter of 2009, executives said during an earnings call yesterday. Full earnings details were reported in yesterday's issue.

To date, Integrys has announced transactions to divest its Canadian marketing operation, as well as its consulting business. Continued divestitures are expected to be achieved in multiple transactions to maximize shareholder value.

In the interim, Integrys said in a 10-Q that Integrys Energy Services continues to enter into new transactions with customers within certain defined parameters, in order to preserve value while focusing on a successful divestiture of all or portions of its business. The marketer's pricing strategy accounts for the increased collateral requirements, business risks, and potential cash margining impact, which has reduced the flow of new business, thereby reducing future liquidity requirements while also improving the profitability of transactions that are executed.

Including higher capital costs in pricing helped drive the previously reported higher retail electric margins of $22.8 million (pre-tax), with most growth coming in Illinois, New England, and New York (First in Matters, 8/6/09). A 10-Q added further specifics, reporting that those three states accounted for $15.0 million in increased margins. Integrys Energy Services also saw $1.7 million higher margins in the Mid-Atlantic market, which is a newer market for the retailer.

Integrys Energy Services also reported a $4.6 million increase in bad debt expense, resulting primarily from current economic conditions and several small customer bankruptcies.

World Energy Narrows Q2 Loss

World Energy Solutions reported a narrowed net loss for the quarter of $800,000, versus $2.4 million a year ago, on higher revenues and gross profit.

Revenue increased year-over-year to $3.7 million from $2.8 million, while the cost of revenue fell to $980,000 from $1.3 million a year ago. Gross profit was up at $2.7 million versus $1.5 million a year ago.

During an earnings call, executives reported experiencing "strong retail growth" during the quarter on robust electric and natural gas bookings as lower commodity prices drove customers into the market. Healthy organic growth in the retail business came from both direct sales and channel partners. Executives said that their recently managed procurements in Ohio, particularly in the FirstEnergy areas, have "ignited" competition in the state, and also cited Pennsylvania as seeing growth.

World Energy did see some negative impacts from the recession, including lower volumes per customer. Additionally, suppliers are scrutinizing customers more closely, and a few deals were postponed or not executed in the second quarter due to credit concerns from suppliers.

World Energy's contract backlog grew to $9.5 million on an annualized basis, a record level.

Sales and marketing expenses were generally flat at $2.7 million versus $2.8 million a year ago.

DPUC Reviewing Quarterly Reporting Requirement

The Connecticut DPUC issued a draft decision notifying electric suppliers that it intends to change a current quarterly reporting requirement regarding rates, terms, and environmental information.

"As a result of the economic climate combined with an effort to alleviate an administrative burden on the Companies, the Department has determined it appropriate to consider changing the timing of the filing of the [statutory] information from quarterly to annually."

Specifically, the Department currently requires quarterly supplier reports of the information contained in Conn. Gen. Stat. § 16-245p(b). Such information includes: (1) Rates and charges; (2) applicable terms and conditions of a contract for electric generation services; (3) data regarding the fuel type of generation and emissions; and (4) a record of customer complaints.

Pa. PUC Approves PPL Renewable Option

The Pennsylvania PUC approved a voluntary renewable energy option at PPL, over a dissent from Vice Chairman Tyrone Christy, who said that the program appears to be charging well-above market prices for alternative energy credits (AECs).

Under a settlement among several parties (Only in Matters, 6/2/09), PPL will sell AECs in blocks of 100 kWh for $2.50/block. Community Energy will supply the credits.

While the record is not definitive on the split between Tier I and Tier II AECs that will be used, Christy said it appears 58% of AECs will be from large hydropower facilities (Tier II AECs).

Assuming a market price of $25/MWh for a Tier I AEC (42% of the product) and a market price of $5/MWh for Tier II AECs, the combined market prices for AECs would be $13.40/MWh, versus PPL's $25/MWh price which represents an 87% mark-up. Christy noted that the price disparity could be even higher if market prices of AECs are lower, as they have been in recent solicitations and as used for compliance.

Christy noted Community Energy and PPL will receive as much as $8.25 million under the program capped at 330,000 AECs, while the market price appears to be less than $4.5 million. Christy would have remanded the case to develop a record on whether the AEC prices were reasonable.

Hedging Insulates Ameren's Merchant Earnings

Core (non-GAAP) earnings at Ameren's merchant generation unit were down at $73 million for the quarter, versus $77 million a year ago, mainly on the absence of a lump-sum payment received from a coal supplier which benefited the year-ago earnings by $21 million.

As Ameren's merchant unit was substantially hedged at higher-than-market prices for the quarter, the economic downturn did not have a significant impact on results.

GAAP earnings from merchant generation operations in the second quarter of 2009 were $75 million, down from $98 million in the second quarter of 2008, reflecting reduced income from net mark-to-market activity.

For 2010, Ameren's merchant unit has hedged approximately 23 million megawatt-hours of 35 million megawatt-hours of annual forecasted generation at an average price of $48 per megawatt-hour. For 2011, it has hedged approximately 15 million megawatt-hours of 35 million megawatt-hours of annual forecasted generation at an average price of $51 per megawatt-hour.

Capacity sales are approximately 70% hedged in 2010 and approximately 40% hedged in 2011. A significant portion of the hedged capacity sales reflect capacity embedded in full requirements contracts. The revenue from such embedded capacity sales is reflected in the prices provided for hedged power sales. Already hedged capacity-only revenues (excluding those from full requirements service) are expected to be approximately $60 million in 2010 and approximately $45 million in 2011.

Briefly:

Major Energy Services Seeks Pa. Gas License

Major Energy Services has applied for a Pennsylvania natural gas supplier license, for residential and all sizes of commercial customers. Initially, Major plans to market in Northeaster Pennsylvania, then Southeast Pennsylvania. Expansion to the rest of the state would be based on results in those two regions. Major said it has a sleeving agreement for gas procurement with Pacific Summit Energy, a subsidiary of Sumitomo Corporation.

Family Energy Services Seeks Illinois Gas License.

New York ESCO Family Energy Services has applied for an alternative gas supplier license in Illinois.

Pa. PUC Denies Valley Energy POR/Unbundling Waiver Request

The Pennsylvania PUC denied Valley Energy's requested waiver of the POR/unbundling requirement imposed on gas LDCs (Only in Matters, 3/27/09). The Commission requires all LDCs to file either a voluntary POR program, or, in the alternative, file fully allocated cost of service data in their next rate case to permit unbundling of rates. Valley, which has only about 5,000 customers, said both options would be cost prohibitive at this time, and, as only reported by *Matters*, sought a waiver of the requirement. In a 4-1 decision, the Commission denied the request, although a written order with the Commission's rationale was not available at press time. However, in a dissent, Vice Chairman Tyrone Christy said that he agreed with Valley that both options are not cost effective. Christy would have granted the exemption, as both POR and unbundling are "not worth the effort" at the small LDC. Christy noted that Valley was not subject to the competition act, but opted into the program. Christy suggested that Valley should reconsider its decision to participate in the competition act.

PUCT Staff Reschedules Disconnect Workshop

The PUCT Staff's workshop on disconnection protections and related issues has been moved to August 31 (from August 28).

Quorum Business Solutions Signs Mid American Natural Resources, LLC

Backoffice and system vendor Quorum Business Solutions said it has entered into an agreement with Appalachian natural gas marketer Mid American Natural Resources, LLC, a subsidiary of Norse Energy Holdings, Inc., to license its Quorum Gas Marketing and Quorum Query & Reporting products which manage gas marketing activities, fair value mark-to-market accounting, and gas scheduling activities. Mid American Natural Resources aggregates and sells local gas supplies to commercial, industrial, and wholesale customers, and has offices in Erie and Pittsburgh, Pa.

Comverge Reports Flat Loss

Comverge reported a net loss for the quarter of $9.1 million, versus $9.6 million a year ago, after the market closed yesterday. Adjusted EBITDA was negative $6.3 million compared to negative $6.8 million for the second quarter of 2008. Revenue was up at $13.3 million from $9.5 million a year ago. Gross profit was $5.8 million versus $3.8 million a year ago. Comverge said that it secured 683 megawatts of demand response capacity in the PJM 2012/13 Base Residual Auction. Total megawatts at quarter-end were 2,794 MW. Of that total, 879 MW were under long-term contracts, while 1,158 MW were under open market programs. Since the end of the quarter, Comverge said megawatts under long-term capacity contracts have grown to 1,036 MW.

Just Energy ... from 1

U.S. gas gross margin in the quarter was $274/RCE, versus $179/RCE a year ago.

During an earnings call, CEO Ken Hartwick said Just Energy would not actively renew gas customers in markets such as Georgia and Florida where the retailer does not believe there are long-term profits. The customers were originally part of the Commerce book acquired as part of Universal. Customers in such low-profit markets are not in excess of 20,000 to 30,000, Hartwick said, and most are on variable products.

Instead, Just Energy will accelerate its growth and entry into Michigan, Pennsylvania, New Jersey, Ohio, Maryland and California, where it now has licenses under the Commerce or Universal brands.

Canadian electric gross margin was flat at $19.6 million despite unfavorable Alberta weather and a 2% year-over-year decline in customer count, as higher prices for new customers and margins from renewable sales offset these factors. Average gross margin per customer was $141/RCE, up from $131/RCE a year ago. Canadian electric customer count is down at 574,000 versus 578,000 as of April 1, 2009.

Seasonally adjusted gross margin from Canadian gas operations was $31.4 million, down from $34.6 million a year ago, due to sales of excess volume at a loss and lower margins from former CEG Energy Options customers. Average gross margin per Canadian gas customer was $195/RCE, down from $216/RCE a year ago. Canadian gas customer count fell 16,000 since April 1 to 727,000.

In aggregate, customer count was up 1% versus April 1, at 1.801 million, representing net growth of 11,000 customers on 97,000 gross additions.

U.S. gas attrition for the trailing 12 months was 31%, above management's annual target of 20% but lower than the 34% noted in the fourth quarter of fiscal 2009. As noted previously, attrition is being driven by increased levels of LDC service terminations, which Just Energy described as the highest it has ever seen. Electricity attrition in the United States was 17% over the last twelve months, below management's target of 20%.

The trailing 12-month electricity attrition rate in Canada for the year was 10%, consistent with management's target. The trailing 12-month natural gas attrition in Canada was 9% for the quarter, below management's target of 10%.

Margins for new and lost customers are on the next page. The margin figures listed exclude additional margins for customers on a renewable product:

Annual gross margin per customer	Actual Fiscal 2010	Annual Target Fiscal 2010
Customers added in the quarter		
- Canada - gas	$169	$170
- Canada - electricity	$121	$143
- United States - gas	$160	$170
- United States - electricity	$216	$143
Customers lost in the quarter		
- Canada - gas	$195	
- Canada - electricity	$115	
- United States - gas	$259	
- United States - electricity	$102	

Just Energy said an Ontario customer using 100% renewable electricity generates annual margins of approximately $200. The average of renewable content purchased is 71%. About 39% of new customers added in the past year have elected a renewable option.

Marketing expenses, including commissions, were $19.4 million, up 43% from $13.6 million a year ago. Marketing expenses to maintain gross margin were $13.3 million, an increase of 3% from $12.8 million from the prior-year quarter. Marketing expenses to add new gross margin in the first quarter totaled $6.1 million, an increase from $0.8 million in the prior year-period, reflecting the 11,000 net customer additions this year versus a net loss of 22,000 in the year-ago quarter.

The quarterly aggregation costs per customer added were as follows:

	Fiscal 2010	Fiscal 2009
Natural gas		
Canada	$209/RCE	
United States	$199/RCE	
Total gas	$202/RCE	$208/RCE
Electricity		
Canada	$162/RCE	
United States	$161/RCE	
Total electricity	$161/RCE	$172/RCE

General and administrative costs were $15.6 million for the three months ended June 30, 2009, representing a 16% increase from $13.4 million a year ago. The expenses increased primarily due to staffing costs to support growth and an increase in collection costs. Corporate headcount increased by 27 to a total of 712 fulltime employees primarily to enable operations to prepare for the new Alberta customers to be billed internally (starting this fall), for sales support for Just Energy's commercial expansion, and for Customer Service and IT to serve the expanding customer base. Collection costs were up slightly in the first quarter, largely reflecting collection efforts related to the Texas growth.

Bad debt expense for three months ended June 30, 2009 was $3.8 million versus $1.1 million in the prior-year quarter. For the first quarter, the bad debt expense represents 3.4% of the $112.4 million in revenues in markets where Just Energy has collection risk (Illinois, Alberta, Texas, and direct-billed commercial accounts in other markets), slightly above the 2-3% target range.

Termination Fees ... *from 1*

be permissible.

However, TXU cited precedent (Travelers' Ins. Co. v. Marshall, 1934) where the Texas Supreme Court struck down a statute that imposed a moratorium on enforcement of contract terms which gave lenders the right to enforce deeds of trust when borrowers defaulted on loan repayments. The Court concluded that the state's police powers did not justify laws that impaired contracts or enacted moratory legislation, regardless of dire economic emergencies that may have existed at the time the laws were made.

While subsequent Texas courts have affirmed state laws against claims of unconstitutional impairment of contracts, TXU noted that the statutes at issue have typically not been directed at a specific contractual obligation. A number of such cases, instead, involved the state's regulation of professions generally. "Further, several of these cases expressly distinguished laws that would void a specific contractual obligation from laws that affect a contract only incidentally and have indicated that it is the former that are unconstitutional," TXU said.

TXU and Reliant also raised federal constitutional questions. Reliant cited Article 1, Section 10 of the U.S. Constitution which prohibits a state from passing a law impairing the obligation of contracts. "There is no question that requiring the waiver of termination fees impairs the contractual relationship between a REP and its customers," Reliant said.

Although the U.S. Supreme Court has held regulations with significant and legitimate public purpose to be permissible under the contract clause, as the waiver petition pertains to a Commission action, not state legislation, the proposal must be viewed against additional legal hurdles, such as state statutes, to establish whether it is lawful, Reliant said. Citing the preference in PURA §39.001(d) for competitive solutions over regulation, Reliant argued, "Any effort by the Commission to rewrite particular contracts has a considerable impact on competition and therefore is legally questionable."

If the Commission ordered REPs to waive contractually negotiated termination fees, TXU said that REPs would be entitled to just compensation under the takings clauses of the U.S. Constitution and Texas Constitution. Since the viability of the affected term contracts would be undermined by the termination fee waiver, REPs would qualify under the "economic impact" standard employed by courts to determine whether compensation is required, TXU said. REPs would also qualify for compensation under the "investment-backed expectations" test, as a REP's willingness to invest its capital to enter into the Texas competitive retail market is dependent, in material part, on the absence of price regulation for retail electric products.

Furthermore, TXU argued that PURA does not confer upon the Commission the authority to regulate the price, including termination fees, charged by REPs.

OPC countered that the purpose of PURA Chapter 17 is to establish retail customer protection standards and confers on the Commission the authority to adopt and enforce rules to protect retail customers from unfair and anticompetitive practices, including anything specifically implied by PURA that is necessary and convenient to the exercise of that power and jurisdiction.

"Because consumer choice may be restricted by these [termination] fees, REPs in turn may avoid providing the lowest-possible rates and the highest quality service that would otherwise prevail in a highly competitive industry," OPC said. The fees are thus anticompetitive and may be regulated under PURA which empowers the Commission to protect customers from such practices, OPC reasoned.

Furthermore, under PURA § 17.004(b), OPC noted that the Commission has authority to adopt rules relating to, "termination of service." TXU countered that "termination of service" in PURA addresses the logistics of termination rather than the amount of the fee REPs are permitted to charge as a termination fee.

OPC also said that the Uniform Commercial Code provides standards for "liquidated damages clauses" in contracts, which state that liquidated damages can be used to recover actual damages, but they cannot be used as "arbitrary penalties" designed to prevent consumers from switching companies. "Where the REP can prove it has suffered actual economic harm because of any alleged subsidies it may have given to the consumer, early termination fees may be reasonable; however, the early termination fees charged by REPs to consumers, amounting to upwards of $200, are so far and above the value of any alleged subsidy provided to the consumer that they effectively become arbitrary penalties," OPC argued.

Reliant, however, reported that, under current market conditions, "the termination fees are a fraction of the sell-back losses to REPs when a customer terminates a contract."

Addressing a policy question, TXU noted that if REPs could not charge a termination fee, or were faced with a regulatory environment in which the Commission might force waivers of termination fees, rational REPs would weigh discontinuing making term plans available or at least significantly increasing the prices for such plans.

However, should the Commission grant the petition for termination fee waivers, TXU argued that, "the Commission should not reward those companies who have refused to adopt stronger customer protections during the summer months by allowing customers to terminate their term contracts with companies, such as TXU Energy, who have voluntarily adopted summer disconnection moratoriums and other protections."

If granting the petition, TXU said that the Commission should offer REPs the option of (1) implementing heightened summer protections for customers, or (2) the default option of having termination fees waived during the summer by Commission rule.

Reliant said PURA §39.001(c) holds that the Commission, "may not discriminate against any participant or type of participant during the transition to a competitive market and in the competitive market."

Still, Reliant said one possible remedy that may be able to pass the legal hurdles would be for the Commission to adopt a rule requiring that a REP either (a) employ an enhanced summer assistance program, containing specific payment provisions designed to assist customers in need of help during the summer or (b) waive termination fees.