

Energy Choice

Matters

October 7, 2009

PUCT Auditing All Residential REPs for Compliance with Subchapter R

Anderson on Compliance: "Forewarned is forearmed"

PUCT Staff is auditing all 48 REPs serving residential customers for compliance with the Commission's customer protection regulations under Subchapter R of the Substantive Rules, PUCT Commissioner Kenneth Anderson told a Gulf Coast Power Association fall conference in Austin.

Notices have already been sent to the first six REPs to be audited, Anderson said.

New small customer disclosure requirements took effect in August, though as previously reported, some additional revisions regarding certain provisions will likely be required due to statutory mandates regarding common billing terms and contract expiration notices.

Anderson told market participants that compliance is a "high priority" for the Commission. As directed by Anderson, Staff has also been investigating REPs' compliance with eligibility and notice requirements related to levelized billing plans.

Aside from the nature of any violation, Anderson said that a REP's response to any violations found, including speed and corrective actions, will likely determine what action the Commission ultimately takes.

With the Commission imposing stricter disclosure and consumer protection standards on REPs, *Matters* asked Anderson if similar customer protection concerns require that agents, brokers and consultants should be licensed by the Commission, as REPs and aggregators currently are. Anderson said that he was disinclined to impose a certification requirement on brokers, stating that REPs are ultimately responsible and liable for marketing activities of their agents, ensuring customer protection.

Md. PSC Rejects Surcharge to Fund Allegheny POR, Orders Discount Rate

The Maryland PSC, "is not willing to impose the cost of implementing customer choice on ratepayers, especially in a manner that absolves suppliers of all cost and risk," the Commission said in denying Allegheny Power's proposal to recover POR implementation costs and supplier uncollectibles from all customers through a distribution surcharge (Only in Matters, 5/22/09). Rather, the Commission ordered Allegheny to negotiate a discount rate to be applied uniformly by rate classes to all retail suppliers.

"Suppliers should bear an appropriate share of the cost and risk of their business - risks already mitigated by the new regulatory requirement that the utilities purchase their receivables," the PSC said.

The Commission ruled that Allegheny's discount rate should include: (1) commodity-related bad-debt collections; (2) program development and operation costs associated with implementation of new COMAR provisions, including administrative and collection costs; and (3) the risk associated with the continuation of the supplier-customer relationship. Allegheny may develop a methodology that permits it to review the factors on an annual basis, and may propose changes in the discount percentage based on its historical data related to POR.

Continued P. 7

United Illuminating Reports September Migration Data

Supplier Accounts	Sept. '09	Sept. '09	Sept. '09	% of	Change vs.
	Residential	Business	Total	Migrated Customers	Aug. '09 Total
Clearview Electric, Inc.	410	62	472	0.80%	84
Consolidated Edison Solutions	4,631	1,205	5,836	9.90%	423
Constellation New Energy, Inc.	428	3,129	3,557	6.00%	115
Direct Energy Business (Strategic)	9	745	754	1.30%	(2)
Direct Energy Services, LLC	16,142	2,298	18,440	31.20%	2,805
Dominion Retail, Inc.	15,624	1,283	16,907	28.60%	(242)
Gexa Energy Connecticut, LLC	3	202	205	0.30%	19
Glacial Energy of New England	22	343	365	0.60%	7
Hess Corporation	53	481	534	0.90%	(1)
Integrus Energy Services, Inc.	3	1,733	1,736	2.90%	4
Liberty Power Holdings, LLC	0	22	22	0.00%	17
MX Energy	1,158	587	1,745	3.00%	(22)
Public Power & Utility, Inc.	4,731	1,223	5,954	10.10%	213
Sempra Energy Solutions	32	688	720	1.20%	(2)
Suez Energy Resources NA	2	198	200	0.30%	(4)
TransCanada	8	454	462	0.80%	(1)
Energy Plus	601	19	620	1.00%	469
Viridian Energy	510	28	538	0.90%	499
Total	44,367	14,700	59,067	100.00%	4,381

Aggregate Data

Customer Load - Suppliers and UI (MWh)

	Residential - SS		Business - SS		Business - LRS		Total UI Territory	
	MWh	% of Class	MWh	% of Class	MWh	% of Class	MWh	% of Total
Suppliers	27,281	16.5%	114,395	66.0%	105,207	94.3%	246,883	54.9%
UI	137,664	83.5%	58,807	34.0%	6,310	5.7%	202,781	45.1%
Total	164,945		173,202		111,517		449,664	

Customer Count - Suppliers and UI

	Residential - SS		Business - SS		Business - LRS		Total UI Territory	
	Customers	% of Class	Customers	% of Class	Customers	% of Class	Customers	% of Total
Suppliers	44,367	15.4%	14,449	38%	251	90.3%	59,067	18.1%
UI	244,043	84.6%	23,236	62%	27	9.7%	267,306	81.9%
Total	288,410		37,685		278		326,373	

SS = Standard Service
LRS = Last Resort Service

Data as reported by UI

PUCT to Address Meter Tampering

PUCT Staff is working on a meter tampering rule with possible discussion at Thursday's open meeting, Commissioner Kenneth Anderson told market participants at the Gulf Coast Power Association's fall conference.

As TDUs have been replacing legacy meters with advanced meters, TDUs have been encountering a higher number of meters that have been tampered with compared with the detection of tampering in the normal course of operations. REPs have also reported that certain websites show how to bypass a meter, under the guise of an "energy efficiency" measure.

Speaking separately, PUCT Chairman Barry Smitherman confirmed that tampering has become a problem in a large way, and said that the Commission will likely address the tampering rules quickly.

The current meter tampering rules were codified in 1998, and place the burden of proving tampering on the TDU. Anderson said that he would be disinclined to shift the burden of proof absent a showing of compelling evidence that such a change is required. Still, Anderson said that other aspects of the rule should be updated to reflect the competitive market in ERCOT.

The Commission will likely hold a special open meeting regarding tampering in early November (rather than a workshop so all Commissioners may attend), and may invite representatives from the state attorney general's office as well.

Smitherman: Calls for Capacity Payment, Administrative Scarcity Pricing are Rent-Seeking Behavior

Those generators in the ERCOT market seeking a capacity payment or administratively determined scarcity pricing are seeking to protect their specific investment against competitive forces, PUCT Chairman Barry Smitherman said in an address to the Gulf Coast Power Association yesterday.

Smitherman suggested that certain generators have called for either of the administrative processes because they invested in a certain paradigm, but their investment is not

earning the expected return, either due choice of location, fuel, or simply due to other new entrants into the market.

Smitherman also labeled calls for priority dispatch, sought by some renewable generators, a similar form of rent-seeking behavior that seeks to gain a competitive advantage from a non-market process. Utilities and generators that favor carbon cap-and-trade because it will benefit their bottom line are also rent seekers, Smitherman added.

All such types of rent-seeking behavior risk the current "Goldilocks" state of ERCOT, Smitherman said, in which ample resource adequacy, low prices, wind build-out, smart meters, and energy efficiency make things "just right."

Also endangering this balance is opposition to the competitive framework from consumer advocates, certain legislators, attorneys, and the press – even in the face of retail rates than are lower than rates in 2001 prior to the start of competition, and rates at numerous munis and cooperatives. For these groups, rates will never be low enough, and these groups will never be satisfied until electricity is given away for free, Smitherman said. Such groups, Smitherman added, are more comfortable in a regulated environment where persuasion and influence prevail, rather than innovation and technology as in a competitive market.

Smitherman called the federal government the biggest threat to the favorable conditions in ERCOT currently, both from massive carbon regulation costs and from the interaction of NERC reliability rules with a grid integrating more and more intermittent resources. NERC, Smitherman said, must provide grid operators with flexibility in managing the grid in integrating such resources, and said that the reliance on solutions such as Load Acting as a Resource (LaaRs) should not result in penalties for grid operators, Smitherman argued.

Ballard Suggests Electricity Risk Pool in Place of POLR Service

Texas REPs should create a "risk pool" to serve customers with poor credit or payment histories which REPs do not wish to serve, Don Ballard, Public Counsel to the Office of Public Utility

Counsel, said at a Gulf Coast Power Association conference.

Risk pools are commonly used in the insurance industry as a safety net for the uninsurable. Ballard suggested that an electric risk pool would preclude the need for POLR service.

Ballard cited the creation of a risk pool as one of the areas where REPs need to step up and offer market solutions to problems instead of forcing regulators to offer administrative fixes. The use of common billing terms, now required by statute, is another area where the industry should have coalesced around a market-driven solution, Ballard added. REPs noted that anti-trust concerns can prevent them from collaborating on such endeavors, though some said a risk pool may be appropriate if developed by policymakers.

The revised Electricity Facts Label is also not simple enough for Ballard, who called disclosure labels used in the credit card industry more easily understandable.

CL&P Seeks Clarification on Confidentiality of Supplier Load Data

Connecticut Light and Power has requested that the Connecticut DPUC revisit its decision to provide confidential protection to the amount of electrical load that each competitive retail supplier served in 2007, and each retail supplier's market share of such load in 2007, in connection with the DPUC's review of LSEs' compliance with the RPS for the calendar year 2007.

The data is currently under a confidential seal ordered in a May 2009 ruling.

"Since the Department's May 13, 2009 ruling, however, it has become apparent that it may not be possible to have a complete discussion of the relevant issues in this case in a Draft Decision unless the 2007 Data is made public," CL&P said in a DPUC filing yesterday, without further elaboration.

In its review of 2007 RPS compliance, the Department has probed through interrogatories how CL&P met its Class III REC obligation, and the extent to which its wholesale default service suppliers provided the required RECs, or failed

to fulfill their obligations. As part of its investigation, the DPUC directed CL&P to provide the total load requirement data for each electric supplier and wholesale supplier that served load in 2007. CL&P was also directed to separately identify losses and the amount delivered to customers.

FERC Staff Says Late Intervention Appropriate in NYISO Rebilling Case Despite 10-Month Notice for ESCOs

Although New York ESCOs have been on notice since December 2008 that they could bear costs from a potential rebilling related to NYSEG and National Grid (NiMo) metering errors, FERC Staff agreed that ESCOs should be allowed to file for late intervention for the limited purpose of briefing a proposed partial settlement among NYSEG, Grid, and the New York Municipal Power Agency (Only in *Matters*, 12/31/08).

As only reported in *Matters*, NYSEG petitioned FERC in December 2008 for a declaratory order to require the New York ISO to rebill certain charges dating back to 1999 to correct for metering errors which have resulted in NYSEG being incorrectly invoiced for purchases of energy totaling just over \$20 million (EL09-26). The metering errors, discovered only recently, have resulted in a windfall to National Grid in the same amount, NYSEG said, and involve interchange points between NYSEG's and National Grid's transmission facilities.

NYSEG's petition for a declaratory order, combined with the Commission's December 30, 2008 notice and the Commission's March 30, 2009 order, "were legally sufficient to notify NYISO's market participants that they may be rebilled as a result of this case," FERC Staff said. "Specifically, the notice stated that the petition asked the Commission to require NYISO to 'rebill certain charges, resulting from metering errors, dating back to the inception of the NYISO in 1999, to correct incorrect invoices to NYSEG for purchases of energy totaling approximately \$20 million dollars.' Presumably, NYISO's market participants understand the working of the NYISO well enough to know that the money

ultimately used to repay NYSEG would not come from the NYISO but would have to come from other market participants," Staff argued.

"NYISO confirmed the obvious in its January 22, 2009 comments in this case (at p. 3), by pointing out that Commission action on the petition could require energy service companies (ESCOs) in National Grid's Service territory that were 'not involved in any way with the metering errors' to bear unexpected costs for finalized invoices," Staff noted (*As only reported by Matters, 1/23/09: "NYISO Says NYSEG's Requested Market Rebilling Could Harm ESCOs"*).

NYSEG, Grid, and NYMPA subsequently entered into a partial settlement stipulating to certain facts regarding the Unaccounted for Energy (UFE) in certain NYSEG and National Grid subzones, and the methodology for calculations to be used should FERC order any rebilling. However, the settlement reserves for litigation the policy question of whether FERC should order rebilling.

The settling parties further agreed that later interventions and additional notices should be provided to New York LSEs potentially affected by the settlement.

While FERC Staff said that ESCOs and other LSEs have been properly noticed of the proceeding, Staff agreed that granting late interventions is appropriate under the circumstances, and out of an abundance of caution.

"Some of these businesses may be relatively small businesses and have little or no experience with Commission proceedings. In addition, because the billing errors were incurred over a long period of time, the ESCO's liability could be large relative to their size. Whether the Commission requires rebilling may involve balancing these types of equities and the Commission may want the ESCO's input on that balancing," Staff said.

However, Staff said that any late intervenors should be limited to commenting on the settlement and briefing the litigated rebilling issue. Late intervenors should not have the right to request a hearing or further negotiations, Staff argued. "Their right to comment on the settlement should not be confused with their initial opportunity to participate in the negotiation

process and the development of the settlement record. They willingly gave up that opportunity and that time has therefore passed," Staff noted.

If FERC decides to order rebilling, the stipulation provides that the rebilling to correct for the metering errors will be limited to energy markets in the affected subzones. If this results in changes to Stations Service load buses, then a simplifying assumption that considers the additional load as "self supplied" will be employed.

The NYISO would use the NYISO's manual adjustment process for each month in question, and the NYISO would include interest, if any, as ordered by FERC.

Under the settlement methodology, the NYISO would apply the NYISO zonal integrated real time LBMPs that are applicable to the affected subzones to the corrected energy in National Grid subzones. In the case of East Springfield, which is both a subzone tie line and location based marginal price zone tie, the LBMP zone price of the affected NYSEG subzone will be used. Any changes in station service load will be billed at the zonal time weighted/integrated real time LBMPs.

Corrections in National Grid subzone energy costs would be allocated only to those LSEs in National Grid subzones that have historically been subject to UFE using a simplified monthly allocation approach. For December 1999 through April 2005, corrections to National Grid monthly subzone energy costs shall be allocated only to those LSEs that have historically been subject to UFE located within the affected subzone based on their monthly pro-rata share of final settled UFE within the affected subzone.

For the period May 2005 forward, corrections to National Grid monthly subzone energy costs will be allocated only to those LSEs that have been historically subject to UFE, with the exception of National Grid and NYPA, serving National Grid subzone load based on their monthly pro-rata share of final settled UFE of all National Grid subzones. National Grid and NYPA UFE allocations will remain the same as the prior period and will be based on their monthly pro-rata share of final settled UFE within the affected subzone. This cost allocation method is required to be consistent with the

treatment of UFE under National Grid's retail tariffs over the settlement time period, the stipulation says.

Conn. Draft Would Accept MXenergy Complaint Settlement

A draft Connecticut DPUC decision would approve a settlement among MXenergy, DPUC Staff and consumer advocates under which MXenergy would make several changes in its internal processes, but pay no fine, in response to a series of complaints in the summer of 2008 resulting from delayed renewal notices and ambiguous welcome letters received by customers (First in Matters, 6/23/09).

The settlement, first reported in *Matters*, would also require MXenergy to revise its third-party verifications (TPVs) and file various reports with the DPUC.

As previously reported, 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 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.

The DPUC draft would conclude that the settlement is in the public interest, finding that MXenergy has undertaken a series of actions to make up for the notice deficiencies. First, MXenergy has offered all affected customers rate relief payments, special discounted rates, or an extension of the initial, lower introductory rate. A total of 8,822 customers at both UI and CL&P received rate relief payments accumulating to \$2.1 million, the DPUC said.

"The Company has also undertaken a series of actions to improve its customer service operations including adding staff, evaluating customer service practices, procedures and

policies, and utilizing another call center to handle customer calls. It appears that MXenergy has taken the appropriate corrective measures and remedied the customer concerns," the draft states.

Under the settlement, 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 stipulation requires MXenergy to report monthly customer service performance metrics for 12 months. The supplier will also submit reports on high priority complaints to the DPUC, Office of Consumer Counsel and other parties.

Briefly:

Anderson Drafts Rule to Require PUCT Approval of REP Certificate Transfers

PUCT Commissioner Kenneth Anderson has drafted a rule that would require any change of control of a REP certificate to receive prior Commission consent. Anderson said that his rule, which will soon be proposed, would hold that a REP must obtain Commission approval before consummating any transfer of a REP certificate, including a merger, acquisition, consolidation or any other transaction resulting in a change of control of the certificate.

Reliant Submits RMGRR to Eliminate Weekly DNP Forecast

Reliant Energy has proposed Retail Market Guide Revision Request 082 to eliminate the requirement that Competitive Retailers provide on a weekly basis their forecasted volume of Disconnects for Non Pay to the Transmission and Distribution Service Providers and the municipals and cooperatives. Reliant said that the antiquated DNP forecast was only necessary when transaction processing was immature. Today's mature market makes the requirement unnecessary, Reliant said, noting the elimination will reduce a burden on Competitive Retailers.

Allegheny ... from 1

Allegheny initially estimated that POR implementation costs would be \$354,450, representing 4,170 developmental hours.

The requirement for purchase of receivables relates to only the commodity charges levied by suppliers, and not additional charges, the Commission affirmed. The Commission, however, reserved the right to revisit that determination in the future.

Agreeing with Allegheny's statements regarding the required implementation time, the Commission accepted Allegheny's proposal to commence POR on December 15, 2009. The Commission will not require Allegheny to purchase any receivable retroactive to the date on which the POR billing system is implemented, and will not look favorably on any request from Allegheny for an extension of time to implement the POR billing system. Allegheny, which had filed its plan in May, had requested that the plan be addressed at the June 17 administrative meeting. It's not clear what impact, if any, the Commission's four-month review of the compliance filing (during which time utilities said it would be imprudent to work on systems which might later be rejected by the Commission) will have on Allegheny's ability to meet its originally projected December 15 start date.

The PSC granted Allegheny a temporary waiver of the new COMAR provision requiring electric distribution utilities to provide retail suppliers with electronic bill view access to the customer's bill in the same manner the customer

can view their bill electronically. Allegheny said that its use of a third-party vendor prevents it from implementing bill view access at this time. As the use of third-party vendors was not originally contemplated in RM 17, the Commission directed Allegheny to submit, within 30 days, a proposal to comply with the bill view access requirements.

In its tariff filing, Allegheny proposed to delete the provision governing the supplier consolidated billing option. The Commission denied that request, stating that the language should be retained. The PSC noted that in Order No. 74561 dated September 10, 1998 in Case No. 8738, the Commission concluded that the choice of receiving a single bill should be that of the customer. The Commission later reaffirmed its basic principle of allowing the customer a choice of billing options in Order No. 75722 dated October 29, 1999, but further clarified that the electricity supplier is not required to offer any specific billing option to customers.

Although the supplier consolidated billing language will be retained, the Commission said that the issues of purchase of receivables and the supplier's qualifications to provide a billing service have not been determined. In Case No. 8738, the suppliers recommended, generally, that the biller would be required to purchase the receivables of the non-biller for all billings. At that time, the Commission decided that the purchase of all receivables is an option open to discussions between the parties, except as discussed in Order No. 75722. New COMAR 20.53.05.06 only addresses the utilities' purchase of receivables in the event of the supplier electing utility consolidated billing. "Currently, the Commission is unaware of any supplier electing supplier consolidated billing, and should any supplier wish to do so, the Commission believes that the issues of purchase of receivables and the qualifications of the supplier to provide consolidated billing must be considered prior to any supplier consolidated billing being implemented," the PSC held.

Although Allegheny (unlike Baltimore Gas & Electric) did not request to earn a profit in providing POR, the Commission's letter order to Allegheny still stated that, "the Commission declines to allow the utilities to collect a return or

profit from the purchase of receivables - to the extent the utilities end up realizing some 'return' from the difference between the discount and their actual collections, that is acceptable."

As previously reported, Allegheny's POR will be non-recourse, and will not impose an all-in/all-out requirement.