

Energy Choice

Matters

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PUCT to Examine if Specific Rules Needed to Govern Prepay Service Without In-Home Device

The PUCT is to open a rulemaking regarding prepaid electric service that is not conducted through the use of an in-home customer device to determine what, if any, specific rules should govern such prepaid service, versus the Substantive Rules applicable to the typical post-pay service.

Recent local media stories concerning prepaid service (without a customer device) and critical care customers prompted an extensive discussion regarding such prepaid service at yesterday's Open Meeting.

Chairman Barry Smitherman noted that under Subst. R. §25.498 (governing prepaid service using a customer device or system), REPs cannot serve critical care customers using the prepaid system absent a waiver from the customer attesting that the customer understands the medical risks associated with the fact that retail electric service can be interrupted. The waiver requirement also applies to customers informing the prepaid REP that interruption of electric service will cause a person residing at the customer's residence to become seriously ill or more seriously ill, even if the customer is not designated critical care.

Smitherman asked whether a similar rule should be imposed on prepay providers who do not use a customer device or system for their prepaid service. Such REPs must follow standard protections (such as the 10-day notice period with applicable critical care protections) when disconnecting a customer for non-payment.

Commissioner Kenneth Anderson noted that any problems could be addressed by requiring that

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PPL Shall Not Include Customer Phone Numbers in Customer Lists

PPL shall not include the customer's telephone number in making customer lists available to competitive suppliers ahead of the expiration of rate caps on December 31, 2009, the Pennsylvania PUC ruled in response to a petition for clarification from PPL.

As only reported in *Matters*, PPL argued there is inconsistency between the Pennsylvania Code (52 Pa. Code § 54.8), which allows the sharing of customer phone numbers, and a subsequent 1999 PUC order which restricted the sharing of phone numbers (Only in *Matters*, 9/24/09).

The PUC ruled that PPL shall update its customer database immediately and release, no less than 30 days before December 31, 2009, the following information for each customer account to electric generation suppliers [EGSs]:

- Customer name;
- Account number;
- Rate class and sub-class;
- Service address; and
- Billing address.

"Customers may restrict the release of all historical billing data consistent with 52 Pa. Code § 54.8(a)(2)," the PUC ruled.

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Gateway Energy Services Seeks Pa. License, Plans Residential Service

Gateway Energy Services applied for a Pennsylvania electric license, stating that it plans to serve residential customers in addition to small and mid-sized commercial customers.

Specifically, it applied as a broker/marketer to serve residential customers, commercial customers under 25 kW, and commercial customers over 25 kW.

Gateway applied to market in all territories except Duquesne Light, Citizens Electric, and Wellsboro Electric.

Gateway said it plans to offer 1-2 year fixed products, variable products, and indexed products.

PPL Announces Rates from Second Procurement of Post-2010 Supply

PPL Electric Utilities announced that its second procurement for post-2010 default service supply produced a winning price of \$98.11 per megawatt-hour for small and mid-sized businesses. Across all classes, thirteen suppliers competed for load in the procurement.

The small commercial procurement was for load following, full requirements contracts equaling about 17% of its supply needs.

PPL purchased several residential supply products. First, it procured about 17% of its required load following, full requirements supply at a price of \$95.95 per megawatt-hour.

Additionally, PPL purchased two 25-megawatt blocks of around-the-clock electricity supply at an average price of \$57.70 per megawatt-hour to serve residential customers from Jan. 1, 2011, to Aug. 31, 2011. PPL also secured most of the alternative energy credits needed for these blocks of supply. The price for these supply blocks is for energy only, and does not include capacity and other charges, which PPL will purchase separately from the PJM market.

PPL said that its solicitation for a small amount of solar alternative energy credits was not approved by the Pennsylvania PUC because of a lack of supplier participation.

Ga. PSC to Hear Scana Energy Marketing Proposal to Expand AGL Mains

The Georgia PSC will hear a petition from Scana Energy Marketing and Atlanta Gas Light to expand AGL's Strategic Infrastructure Development and Enhancement Program (STRIDE) to include the extension of gas mainlines to new areas of the utility's footprint, expanding the base of customers for retailers in the AGL market where there is no incumbent provider.

Scana Energy Marketing and AGL originally filed the proposal late in the PSC's consideration of the STRIDE program, which was approved earlier this month without the Scana/AGL proposal. The STRIDE program is focused on improving the LDC's non-revenue infrastructure to handle load growth and maintain reliability, with expenses recovered through a monthly customer surcharge.

In a procedural order issued earlier this week, the PSC directed Scana Energy Marketing and AGL to file their proposal by today, with supporting testimony due by November 6. The PSC is to consider the proposal at its January 19, 2010 regular session.

Scana Energy Marketing and AGL framed their proposal as an economic development initiative, which would not increase the monthly costs paid by customers. Instead, the recovery period for the monthly surcharge would be extended by three years to 2025.

Scana Energy Marketing noted that since 2006, AGL is only growing its customer base by about 5,000 to 7,000 customers per year. Scana Energy Marketing said that the slow customer growth is due to line extension policies that do not allow for the construction of new mains in some of the fastest growing areas of the service territory, because many customers are required to pay the Contribution in aid of Construction. The STRIDE funding under the Scana/AGL proposal would go toward supporting line extensions where mains are needed but where construction costs exceed the investment that is allowed, and also to the creation of a strategic corridor investment initiative where mains would be installed in areas with the intention of attracting new

development.

Staff opposed the proposal as originally filed, arguing that it will cost ratepayers an additional \$145 million for facilities that will be a net cost to customers. Staff further said that there has been no analysis done to evaluate whether the Scana/AGL "economic development" concerns could be met more efficiently or inexpensively simply by modifying the current Universal Service Fund process for funding expansion of AGL's distribution system, or by modifying the Commission-approved tariffs regarding AGL's line-extension policies.

Md. Energy Contractors Alliance Requests Investigation of BGE-BGE Home Relationship

The Maryland Alliance for Fair Competition, an association of energy contractors and service providers, filed a petition at the Maryland PSC to investigate the current practices of Baltimore Gas & Electric and competitive affiliate BGE Home Products & Services. Although mainly focusing on BGE Home's energy services, the contractors alliance did question whether a residential authorization form for BGE Home's gas commodity supply service available on BGE Home's website is in violation of COMAR.

The authorization form in question can be viewed at:

http://www.bgehome.com/pdf/BGE_Res_Cont_1009.pdf (you may need to temporarily disable any pop-up blocker to view the form). The alliance noted that the top of the second page of the form says:

"To: The Residential Gas Customer
From: BGE"

The language following that heading is apparently taken from BGE's customer education materials regarding supplier choice.

The alliance further alleged that the form contained the words "BGE TERMS AND CONDITIONS," though those words are clearly not included in either the form attached to the alliance's pleading, or the form available online. Rather, the form says "BGE HOME TERMS AND CONDITIONS."

The form also says, at the bottom of page one in italics, "BGE HOME is not the same company as BGE, a regulated utility."

The alliance questions whether the form violated COMAR 20.40.02.03A(2), because it allegedly shows BGE promoting an affiliate.

Regardless of the form itself, the alliance said that COMAR 20.40.02.01(b) prohibits a utility from, "Represent(ing) to a customer or potential customer that any advantage or superior service will accrue because of the relationship between the utility and a core service affiliate or non-core service affiliate."

"However, such representation inherently occurs, albeit indirectly, with the affiliate's use of the utility's trade name, trade mark, and logo," the alliance argued.

Allowing BGE Home to use the trade name and logo of BGE gives it a "huge" competitive advantage over competing contractors, the alliance contended.

The alliance claimed that customers are not aware that BGE and BGE Home are not the same company, and do not realize that BGE Home's rates are not regulated by the PSC.

Noting that a decade has elapsed since the Commission last examined the issue, the alliance that said it is time for the Commission to revisit the question of affiliate-utility relationships.

The alliance recommended that the PSC prohibit a utility from allowing its affiliate to use the utility's corporate name, trademarks, and logos in advertising and marketing. Due to the inherent value in the utility's name and logo, the use of such materials by an affiliate, without compensation, amounts to cross-subsidization, the alliance claimed.

Furthermore, the alliance said that the utility should be prohibited from allowing its affiliate to use the utility's customer accounting, billing and backoffice systems.

The alliance also urged the Commission to investigate the practice of sharing resources, BGE's Cost Allocation Manual, and whether any cross-subsidization has occurred.

The alliance, interestingly, concluded that, "The Commission has been concerned with establishing competitive markets in every deregulated area, recognizing that more competition brings the potential for lower prices to ratepayers."

Briefly:**Mitchell Energy Management Services Seeks Pa. License**

Mitchell Energy Management Services applied for a Pennsylvania electric broker/marketer license to serve commercial customers over 25 kW, industrial customers, and governmental customers, in all service territories. Mitchell Energy Management Services requested an expedited review of its application, if possible.

Tradition Receives Delaware License

The Delaware PSC granted Tradition Energy (TFS Energy Solutions, LLC) an electric broker license.

I.C. Thomasson Receives Delaware License

The Delaware PSC granted I.C. Thomasson Associates, Inc. an electric broker license.

America Approved Energy Receives Maine Broker License

The Maine PUC granted America Approved Energy Services an aggregator/broker license (Only in Matters, 10/19/09).

Reliable Power Alternatives Receives Md. Broker License

The Maryland PSC granted Reliable Power Alternatives Corp. an electric broker license to serve non-residential customers at the four investor-owned utilities, Choptank Electric Cooperative, and the Southern Maryland Electric Cooperative (Only in Matters, 9/10/09).

Power Management Co. Receives Md. Broker License, Fined for Prior Activity

The Maryland PSC granted Power Management Co., LLC, an electric broker license to serve non-residential customers at the four investor-owned utilities as well as the Southern Maryland Electric Cooperative, and a natural gas broker license to serve non-residential customers in all service areas (Only in Matters, 6/9/09). Power Management was directed to pay a penalty of \$117.46 for its prior Maryland electric brokering without a license, and \$100 for its prior Maryland gas brokering. Regarding electric service, Staff had recommended a fine of \$177.46 as listed in a memo to Commissioners; it's unclear if one of

the amounts is a typo or if the Staff amount (based on Power Management's unpaid Commission assessment) was an error subsequently corrected in the letter order granting the license.

Calif. Stipulation Would Allocate Reductions in DWR Reserves

A joint stipulation including all of the major parties has been reached regarding allocation of reductions to the California Department of Water Resources' (DWR) operating reserves for 2010 and beyond. Under the joint stipulation filed with the California PUC (R. 09-06-018), any reduction (including reductions caused by contract novation) in the operating reserves would be returned to utility customers through a reduction in the power charge consistent with the same percentage share as they contributed (i.e., 47.5% to Southern California Edison customers, 42.2% to Pacific Gas & Electric customers, and 10.3% to San Diego Gas & Electric customers). Additionally, consistent with current practice, the investor-owned utilities include a DWR power charge revenue requirement in their total generation portfolio when calculating the Power Charge Indifference Adjustment component of the Cost Responsibility Surcharge. To the extent the DWR power charge has been reduced as a result of returning the operating reserve to the utilities, this reduction will be included in the calculation of the Power Charge Indifference Adjustment. The stipulation was signed by SCE, PG&E, SDG&E, the Alliance for Retail Energy Markets, TURN, and the Division of Ratepayer Advocates.

Cawley Strongly Urges PECO Gas to File POR Plan

Pennsylvania PUC Chairman James Cawley strongly urged PECO Gas to file a Purchase of Receivables program in its next rate case (expected in the near future), as the Commission approved PECO's purchased gas cost adjustment. Cawley noted that PECO filed a cost of service study in the case, but said that the study did not lead to any unbundling of costs. Cawley said that the settlement in the instant case maintains the current inequities regarding collection, procurement, administrative, and

regulatory costs as they relate to competitive supply.

PUCT Staff Urges Commission to Hear Wind Reactive Power Complaint

PUCT Staff urged the Commission to grant the appeal of an order which dismissed a complaint of several wind generators against ERCOT over a reactive power protocol interpretation, as Staff said that completion of alternative dispute resolution is not required to bring the complaint. Staff noted that PUC. PROC. R. 22.251 only requires that an entity must complete one of the following three processes before filing a complaint: the alternative dispute resolution process, the process for Protocol Revision, or "other Applicable ERCOT procedures." Staff said that the informal negotiations between ERCOT and the generators which occurred during a four-month abatement period satisfied the final requirement. Regardless, Staff said that a waiver of the alternative dispute resolution requirement is appropriate since, "the dispute is over a legal interpretation that is not well suited for resolution through ADR." As only reported in *Matters*, the generators have appealed the dismissal of their complaint regarding the interpretation of reactive power requirements imposed on wind generators in the ERCOT Protocols (see *Matters*, 10/20/09).

Parties Nearing Joint Proposal in ConEd Electric Rate Case

Active parties in Consolidated Edison's pending electric rate case have indicated there is a high probability that Staff and ConEd will execute a joint proposal by November 18, two ALJs reported in adjusting the case schedule. Only one party has expressed its intention to oppose the joint proposal, and only if one issue currently outstanding is not resolved. No ESCOs offered testimony in the case to date. One of the few issues in ConEd's initial filing that would implicate retail access is its intention, at the end of the three-year rate plan to be established, to unbundle transmission rates from distribution rates. ConEd only asked that Staff participate in a process to prepare for such unbundling, and not for approval of any rate design. Still, ConEd proposed that once transmission rates are unbundled, the current retail transmission rates

would apply to both sales and retail access customers. Currently the retail transmission rates apply only to retail access customers.

Chesapeake Utilities, Florida Public Utilities Merger Receives Shareholder Approval

Chesapeake Utilities Corporation and Florida Public Utilities announced that their shareholders approved the proposed merger of the companies at separate meetings held yesterday, and that the parties intend to proceed to close the transaction. As previously noted, Florida Public Utilities offers a choice program for its commercial natural gas customers, while Chesapeake's Central Florida Gas LDC has exited the supply function and offers various choice or open enrollment/aggregation programs depending on customer class (Only in *Matters*, 4/21/09). Chesapeake's Maryland and Delaware LDCs also offer choice and/or transportation programs.

Vectren LDC Multimedia Education Website Includes Choice Video

Vectren Energy Delivery launched a new multimedia website (VectrenLiveSmart.com) that serves as a portal for customers to access educational and how-to videos on several energy topics. Among the videos is an overview of the natural gas choice program in Ohio.

Entergy Nuclear Operational Earnings Up Slightly on Availability

Entergy's Nuclear unit recorded earnings of \$200.4 million on an as-reported basis for the third quarter of 2009, compared with as-reported earnings of \$205.3 million a year ago. The as-reported numbers, among other things, reflect a reduction in earnings due to a special item to account for spin-off dis-synergies. Nuclear earnings on an operational basis were \$210.7 million for the third quarter of 2009, versus \$205.3 million a year ago, with the increase attributable to fewer outages. Entergy's Non-Nuclear Wholesale Assets business incurred a loss of \$4.8 million in the third quarter compared to a loss of \$21.0 million a year ago. The narrowed loss was due to lower income tax expense.

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all prepaid service be conducted through the use of an in-home customer device. Anderson is concerned that without the device, customers on prepay plans are not aware of what their current prepaid balance is at any time, and how much credit they have remaining.

Smitherman said that while the Commission could pursue such a requirement as a policy decision, he does not think the Commission has state law behind it that would justify prohibiting prepaid service that does not use an in-home device.

Bob Gaston, acting General Manager at prepaid provider dPi Energy, welcomed a Commission rulemaking to address specific requirements recognizing the unique nature of prepay service without an in-home device. In particular, Gaston said that the standard deferred payment plan requirement essentially allows a prepay customer to become a post-pay customer, exposing prepay providers who do not hold deposits to greater risk of nonpayment. Smitherman, however, doubted that the Commission would be inclined to change the requirement for a deferred payment plan.

Smitherman also said that the Commission should quickly establish a uniform definition for critical care customers throughout ERCOT, as one TDU appears to be applying a stricter standard (although that TDU also does not disconnect critical care customers because of its stricter definition). A uniform critical care definition has been discussed in the PUCT's ongoing proceeding evaluating customer disconnection protections (Only in Matters, 9/1/09).

The Commission also invited Freedom Power (now owned by Penstar Power), dPi Energy, and Bounce Energy, which comprise the bottom three of the PUCT's complaint rankings, to discuss reasons for the complaints and their business models in general. Penstar and dPi are both prepaid providers. Bounce is not a prepay provider but had been offering a no-deposit "fresh start" product aimed at customers with poor billing history. The Commission also asked Stream Energy about a customer complaint regarding a billing error of reportedly \$20,000, which attracted media attention.

Penny Barfield, CEO of Freedom, noted that because many prepaid customers are underbanked and low-income customers struggling to make ends meet, prepaid providers often must issue disconnect for non-pay notices to prompt customer payment, which increases the amount of customer complaints.

Gaston noted that dPi's typical customer is with dPi for about 105 days. dPi also expects to lose 15-20% of its customers per month.

Bounce Energy CEO Robbie Wright attributed Bounce's high number of complaints to its rapid growth in its just under one year of serving load, in which time it has enrolled 20,000 to 30,000 customers. Wright said that Bounce had a significant number of inadvertent disconnects due to internal system problems during this growth, prompting complaints.

Darrin Pfannenstiel, General & Regulatory Counsel for Stream Energy, said that one of the factors missing from the PUCT's complaint rankings is the actual number of violations found by the Commission. Instead, the metric only lists customer complaints, regardless of whether a violation is found.

Commissioner Donna Nelson, however, was unsympathetic to such arguments, noting that the Better Business Bureau uses the same methodology. Nelson said that the model used by the PUCT incents REPs to minimize customer complaints regardless of whether they rise to actual violations. Nelson further noted that as the complaints are a percentage-based metric, the metric does not skew the rankings based on the REP's number of customers, as has been suggested by certain REPs.

Anderson said that in several complaints brought to his attention, customer service representatives handling complaints are either not properly trained, or are otherwise unresponsive. In some instances, Anderson said that it appears REPs are trying to "outlast" customer complaints by refusing to act promptly, with representatives repeatedly asking the customer for additional information to validate the complaint. Accordingly, Anderson said that he will be unsympathetic to REPs if frontline customer service representatives were unresponsive and were not meticulous in addressing the initial complaint.

Anderson reiterated that REPs are

responsible for the action of an errant agent, whether it be a broker, or an outsourced customer service agent who fails to resolve a complaint properly. Smitherman agreed.

As only reported in *Matters*, Staff is currently auditing all residential REPs and recently sent out its first requests for information. After the initial audits, Staff reported that they will continue to periodically audit REPs (Only in *Matters*, 10/7/09).

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"Any other information, with the exception of customer telephone numbers which is addressed below, not restricted by customers shall be made available to EGSs not later than December 31, 2009," the Commission added.

The Commission said its actions were "controlled" by the privacy regulation for electric customers at 52 Pa. Code § 54.8. However, the PUC also said that the 1999 Order, which restricts the sharing of phone numbers, remains in effect, "but it is important to remember that it was intended to govern the transition into a competitive market." For customers at PPL, the PUC said that the transition period ends December 31, 2009, when the last rate cap expires.

Ultimately, the PUC said that customer phone numbers shall be not released by PPL as part of the current refreshed customer lists.

"It would seem possible that an EGS calling a customer who has placed his or her name on the state's 'Do Not Call' list could be in violation of Pennsylvania's Telemarketer Registration Act. The Telemarketer Registration Act prohibits telemarketer calls to persons who have placed their name and telephone number on the Do Not Call list," the PUC noted, as it questioned how the Telemarketer Registration Act would apply to an electric supplier calling the telephone number of someone who is on the list. In particular, the Commission questioned whether a customer who fails to affirmatively opt-out of allowing PPL to share their phone number with suppliers, but is still on the state's Do Not Call list, would be deemed to have agreed to receive calls from competitive suppliers.

The Attorney General is charged with administering the Do Not Call list.

"Therefore, prior to approving procedures for the release of customer telephone numbers, we will direct our Chief Counsel to obtain a legal opinion from the Attorney General regarding this ambiguity. Moreover, we are concerned whether PPL, or any EDC, should be authorized to release the telephone numbers of customers who are covered by a court issued protection from abuse order. We will address that issue as well prior to approving any final procedures for the release of customer telephone numbers to EGS firms," the PUC said.