

# Energy Choice

# Matters

*December 11, 2009*

## **PUCT Staff Draft Would Place Switch, Move-In Hold on ESI IDs Associated with Tampering**

A draft proposal for publication from PUCT Staff would place a hold on switches and Move-In requests for ESI IDs associated with meter tampering, under new Subst. R. §25.126 (37291).

Under the draft, when a TDU determines that tampering has occurred at a premise, the TDU shall immediately place a switch-hold on the ESI ID, which shall prevent a customer from switching service to another REP. The switch-hold would remain in effect for the lesser of six months or the date that the REP notifies the TDU that the customer has satisfied its payment obligations for back-billings due to tampering. The TDU would be required to create and maintain a secure list of ESI IDs with such switch-hold accounts, which REPs would be able to access. The list would not include any customer information other than the ESI ID and the date on which the switch hold was placed. TDUs would be required to update the list daily.

Per the draft, if a REP submits a Move-In transaction for an ESI ID that has an existing switch-hold due to tampering by a customer, the TDU would be required to notify the selected REP that the Move-In transaction is suspended using an existing ERCOT process such as MarketTrak, until the selected REP provides adequate evidence that the applicant for electric service is a new occupant not associated with the customer for which the switch-hold was imposed. The selected REP would be required use best efforts to promptly obtain adequate evidence. Adequate evidence may include a copy of a signed lease, closing documents, or a certificate of occupancy in the name

***Continued P. 4***

## **PUCT Staff Posts Strawman to Govern Prepay Service Without In-Home Device**

Texas REPs offering prepaid service without use of an in-home device would be not be permitted to charge a deposit in excess of \$50, and would be prohibited from charging certain types of initiation and termination fees, under a PUCT Staff strawman for new Subst. R. §25.479, posted in docket 35533.

The rules would govern retail electric service using an advanced payment arrangement without an in-home device, with prepaid service using an in-home device governed by existing §25.478. The new section is intended to apply to all products that require payment in advance of service and allow payment more frequently than twice per month unless that product is operating under the rules of §25.498.

Per the strawman, REPs offering prepaid service would be allowed to collect a deposit, with the amount of any deposit capped at \$50. Aside from rules relating to calculation of the amount the deposit, prepaid REPs would be subject to the deposit requirements in §25.478.

Additionally, prepaid REPs would not be allowed to charge any fee for initiating service or setting up the account as an advance payment service. REPs would also not be permitted to charge any fee for terminating service, except that the REP could assess a charge for early termination of a service for a fixed term (which shall be consistent with the disclosure in the terms of service documents).

***Continued P. 5***

## IDT Energy Customer Attrition Continues

IDT Energy's income from operations for the first quarter of fiscal 2010 (ending October 31, 2009) declined slightly to \$10.5 million, from \$11.1 million a year ago.

The decrease can be attributed to a 5.1% fall in meters served year-over-year, reflecting slower acquisitions to offset churn under a previously reported restructured sales approach. As only reported in *Matters*, IDT reduced its sales efforts during the fourth quarter of 2009 to focus on a smaller, but better trained, external sales force, in order to concentrate marketing on higher value-generating customers (Only in *Matters*, 10/28/09).

IDT served 372,000 meters as of October 31, 2009, comprised of 159,000 gas and 213,000 electric meters. That's 25,000 fewer meters than the 397,000 total as of July 31, 2009, and compares to 392,000 a year ago.

Gross meter acquisitions for the first quarter of 2010 were 13,600, compared to 92,100 during the year-ago quarter, due to the aforementioned sales restructuring.

While churn slowed significantly during the quarter with IDT's restructured sales efforts, churn still outpaced acquisitions. The rate of churn fell to 2.69% in the first quarter of 2010, versus 6.07% a year ago.

During an earnings call, executives said that they expect growth to improve in the second quarter, aided by the lower churn rate, though growth will not return to levels seen in 2009 due to IDT's strategic shift in marketing efforts.

Gross margin rose to 36.3% from 30.1% during the year-ago period. While IDT's management continued to stress that it does not believe that this level of gross margin is sustainable on a consistent basis going forward, executives noted that IDT has continued to maintain gross margin exceeding 25% over the past several quarters, despite fluctuating market conditions.

Selling, general & administrative expenses fell to \$4.1 million, from \$8.7 million a year ago, due to reduced customer acquisition costs from the sales force restructuring, as well as reductions in purchase of receivables discounts and other utility billing fees.

Executives again mentioned that IDT continues to evaluate entering additional states aside from New York in 2010, though no specific states were cited. As only reported in *Matters*, IDT has received a Pennsylvania gas license, and has a pending Pennsylvania electric license, and pending gas and electric licenses in Maryland (Only in *Matters*, 12/4/09, 11/2/09).

IDT reported that, due to its previously announced supply agreement with BP Energy, collateral comprised of \$57 million in letters of credit outstanding at the close of the 2009 fiscal year on July 31 was reduced to just \$7 million as of October 31, resulting in a \$15 million increase in liquidity.

## MP2 Energy Texas Acquires Altres Energy

MP2 Energy Texas LLC has purchased Texas REP Altres Energy LLC, and sought an amendment to Altres' REP certificate to reflect the new ownership and name.

MP2 was founded by several former principals of the former Mpower Retail Energy and its affiliates, which was sold in 2006 to Champion Energy Services.

Among them is MP2 Co-CEO Jeff Starcher, who was most recently a Senior Vice-President at Lehman Brothers and one of the founders of Mpower Energy Services and Mpower Retail Energy. Co-CEO Brandon Schwertner was most recently Director of Energy Trading & Marketing at Credit Suisse, and had previously held positions at Mpower Energy Services, Calpine, and RWE Trading Americas.

Jim Starcher, who founded Altres Energy in the fall of 2008, serves as one of several managers of MP2, and previously consulted for Mpower Energy Services and several other REPs.

MP2 said that no customers were being served by Altres at the time of the ownership transfer.

MP2 will serve as its own QSE and is certified as a Level 4 QSE.

## **dPi Energy Acquired by Amvensys Technologies**

Amvensys Technologies has acquired prepaid provider dPi Energy from Rent A Center, Inc. Rent A Center's SEC filings dating back to late May make no mention of the sale. Affiliate dPi Teleconnect applied for updated competitive local exchange carrier (CLEC) licenses in several states in August to seek approval of new ownership by an Amvensys subsidiary and another holding company.

Amvensys is an outsourcing and backoffice service provider.

Zahed Lateef is listed as a director of Amvensys Technologies according to Texas Secretary of State records, and is listed as CEO of Amvensys Technologies in several public records, including campaign finance filings. According to regulatory filings regarding dPi Teleconnect's Texas CLEC certificate, Z. Ed Lateef is a director at Amvensys Telecom Holding and became a director at dPi Teleconnect under the sale.

Z. Ed Lateef was formerly a principal at Riverway Power, including during the time of its 2008 default in the ERCOT market which prompted a mass POLR transition. As listed by the Texas Secretary of State, Amvensys Technologies also has the same address, including suite number, as Riverway prior to Riverway's default, though Amvensys' website lists another address.

On November 30, dPi Teleconnect listed a job opening on Monster.com for a CFO to assist in "national expansion" of the telecom and energy company. Aside from undergoing a national expansion, the job listing says that the prepaid provider is pursuing a public listing.

dPi Energy said yesterday that it is offering a 5% discount on its rate each month to members of the military and their families.

dPi also tapped Agency Creative as its advertising agency of record in what will be an expanded marketing push. Agency Creative will be responsible for all television, radio, web and point-of-sale for dPi, as well as various "strategic initiatives." Agency Creative will be developing both English and Hispanic materials to reach dPi's diverse customer base.

## **PUCT Staff Would Allow Non-Material Changes in Standard Letter of Credit, but Not Guaranty**

Texas REPs would be permitted to use a letter of credit substantially similar to a standard form letter of credit developed by the PUCT, under a proposal for adoption filed by PUCT Staff in project 37035.

Staff agreed with several REPs that a letter of credit that is "substantially compliant" with the approved form should be accepted (Only in Matters, 10/26/09). Staff stressed that in future dockets in which REPs submit letters of credit for approval, it intends to recommend that the Commission reject any letter of credit that is materially different from the approved form, or that weakens the ability of the Commission to draw funds from the issuing bank. Additionally, a REP that submits a letter of credit that does not employ the Commission-approved letter of credit form verbatim should delineate all deviations, Staff said.

However, Staff concluded that no deviations should be permitted from the standard form guaranty agreement. While letters of credit are issued by banks which may not accept the standard form language verbatim (thus justifying non-material changes so REPs can access a larger pool of potential creditors on more favorable terms), Staff noted that the guaranty agreement, "will be executed by an affiliate of the REP that is presumably a willing provider of credit support to its REP affiliate that need not be attracted by terms and conditions, and, in the alternative, can choose to provide the documentation required by P.U.C. SUBST. R. 25.107(f)(4)(G)(ii) in lieu of the guaranty agreement."

Staff also said that the language in the guaranty agreement is more sensitive to changes in terms that may affect the enforceability of the guaranty agreement, thus requiring use of a Commission-approved standard.

Staff disagreed with Luminant, who had argued that the guaranty agreement should be limited to \$500,000, because Staff said that the guaranty agreement is meant to demonstrate that the guarantor is providing "pervasive" credit support to the REP to cover a range of

responsibilities under §25.107(f)(4)(G)(ii)-(iv), which Staff believes likely exceed \$500,000.

Staff further rejected REPs' arguments that the standard letter of credit should list the condition precedent under which the Commission may draw upon the letter as enumerated in the Substantive Rules (such as default on ERCOT obligations and an involuntary mass transition). Staff said that REPs are adequately protected by the language in the rule, and cautioned that including the condition precedent language in the letter of credit, "adds a layer of verification to the presentation of written demand that cannot be readily fulfilled by the issuing bank and could delay or inhibit the commission's ability to draw on the letter of credit."

Staff agreed with REPs that the process for amending a letter of credit should be streamlined, and that the certification amendment process is overly cumbersome for a letter of credit amendment. Staff said that it will establish a project for filing letter of credit amendments that are limited to changes in the amount of previously approved letters of credit. P.U.C. SUBST. R. 25.107(i)(3) requires a REP to apply to amend its certification within ten working days of a material change to the information provided as the basis for the Commission's approval of its certification application. However, Staff does not consider an amendment to a letter of credit limited solely to a change in its amount to be a material change necessitating a certification amendment.

## ***Briefly:***

### **ERCOT Launches Financial Settlement Process for Advanced Meters**

ERCOT said that it has launched a system for wholesale settlement of advanced-metered customers based on their 15-minute electricity usage, rather than load profiles. Settling customers on 15-minute usage at the wholesale level, "is the catalyst for retailers to provide incentives and tools for those customers to use their energy more efficiently and lower their electric bills," said Betty Day, ERCOT director of markets.

### **First Choice Power Redesigns Bill**

First Choice Power said that it has redesigned its bill based on customer feedback, moving to a two-side bill printed on recycled paper. With the change, First Choice Power said 93 percent of bills will be on one sheet of paper. First Choice Power said that the new bill, "includes a simple layout, personalized messages, colorful design and usage graph for each location."

### ***Meter Tampering ... from 1***

of the retail applicant for electric service, and shall include a signed statement from the applicant stating that the applicant is a new occupant of the premises and is not associated with the preceding occupant.

Once the selected REP has obtained such information, it would notify the TDU that the information has been obtained, and the TDU would remove the switch-hold and complete the Move-In. The current REP of the customer for whom the switch-hold was imposed may request a copy of the information, which must be provided within 36 hours by the new REP.

Staff asked for stakeholder comment on how holds for Move-Outs could be addressed in the market given the Staff proposal for handling switches and Move-Ins.

Additionally, for a customer whose premises has a switch-hold placed on it, and whose term rate contract expires during the duration of the switch-hold, Staff sought comments on what guidelines or limitations, if any, should be placed on the electric rates or plans offered to, or imposed on, the customer during the remainder of the switch-hold.

For customers who have been determined to have engaged in tampering, REPs would be permitted to disconnect such customers within five days of sending a disconnect notice, rather than the standard 10 days, if the customer has not made satisfactory arrangements for the payment of back-billing and related charges.

Staff's draft would limit back-billing due to meter tampering to six months. The TDU would not be permitted to back-bill for any period in which the current customer was not the customer of record at the time of the tampering, or the current REP was not the REP of record.

Back-billing due to inaccurate meters not the

result of tampering would be limited to three months if the back-billing would result in additional electricity charges. If the TDU discovers an inaccurate meter or has provided incorrect meter readings that would result in a credit to the customer, back-billing would extend to the prior 12 months.

TDUs would not be permitted to invoice the current REP for any under-billed utility charges related to an allegation of meter tampering or for any meter tampering fees until the TDU has collected and prepared the following information in support of an allegation of meter tampering:

(A) Photographs of the premises including close-ups of the meter and/or diversion evidence;

(B) A description of the detection and investigation methodology employed by the TDU;

(C) Documentation of the methodology or rationale used by the TDU to determine the date or approximate date upon which the meter ceased accurately registering consumption at the premises and the detailed calculation and methodology for estimating consumption subject to back-billing;

(D) The affected meter and metering equipment that the TDU removed from the premises and any object used to tamper with or bypass the meter;

(E) Any other reliable and credible information that supports its conclusion that the meter was tampered with;

(F) A sworn affidavit from an employee or other representative of the TDU attesting to the veracity of the information; and

(G) Videotape footage of the premises and the meter, and fingerprints if available, for tampering in excess of 15,000 kilowatt-hours in back-billing.

TDUs would also be required to send a letter to the customer informing them of the determination of meter tampering, and the possibility of disconnection by their REP.

Staff's draft also combined rule changes under Project No. 37624, the rulemaking to amend customer protection rules relating to disconnection and reconnection of service for customers with advanced meters, since both projects implicate the same rules, and the administrative code does not allow action on a

set of rules where there is another open proceeding on the same rules.

Regarding disconnections for premises with active advanced meters with remote disconnect/reconnect capability, the draft would require TDUs to complete a disconnect for non-pay by 5:00 PM Central Prevailing Time (CPT), provided that the request was submitted by the REP no later than 2:00 PM CPT on the requested date (if the date is a business day). Requests after 2:00 PM shall be completed no later than 5:00 PM CPT on the next business day.

Reconnects for premises with advanced meters must be completed within 2 hours of receipt, if the request is received between the hours of 8:00 AM CPT and 7:00 PM CPT on a business day. Reconnects would be required within one hour for premises with an advanced meter in which the customer is taking service via an in-home prepay device.

## ***Prepay ... from 1***

If the prepaid REP has the capability to receive payment and to credit the customer's account for payment at all times (24 hours a day, 7 days a week), then the due date for a payment could be no less than five days after issuance of an account statement, as opposed to 16 days under traditional post-pay service. Prepaid REPs unable to accept and credit a payment on a 24-7 basis would be permitted to establish a due date no less than 10 days after the issuance of the bill. An account statement sent by mail is considered to be issued on the issuance date stated on the bill or the postmark date on the envelope, whichever is later, per the strawman.

Electricity Facts Labels for prepaid products under §25.479 would have several unique features. Per the strawman, the pricing information on the EFL must include the number of days a payment of \$20, \$50, \$100, and \$200 can be expected to last at monthly usage levels of 500 kWh, 1,000 kWh, and 2,000 kWh. The EFL would also be required to state:

- (A) How and when payments may be made;
- (B) How and when account statements will be provided to the customer;
- (C) If the customer may receive a notice requiring the customer to make a payment to

continue receiving service, how such statements will be delivered and how long the customer will have to make the payment after receiving the notice; and

(D) The circumstances in which the customer may receive a disconnection notice.

If the prepaid REP can accept and credit payments on a 24-7 basis, it would be allowed to schedule disconnection of a non-paying customer no less than five days after the notice is issued, as opposed to 10 days for post-pay REPs. Disconnects could not occur on a holiday, weekend, or day that the REP's personnel are not available to take payments. If the REP does not have 24-7 payment capability, disconnects could not occur until seven days after a notice.

Prepaid REPs would be required to offer customers a means to make payments, "at the customer's premises by phone, internet, or other means that can be accomplished in the premises, or at a location near the customer's premises." If the REP or agent collecting the payment charges a payment fee, the fee shall not exceed \$5.00 per payment.

Prepaid REPs would also be required to:

(A) Permit a customer to make payments as required to maintain service, not less frequently than weekly;

(B) Communicate to the customer, on a regular basis but no less than every two weeks, the customer's estimated current balance, the time and date, and estimated number of days of paid electric service remaining based on the customer's most recent usage or estimated usage; and

(C) When a customer makes a payment, provide to the customer in writing or in electronic format, a receipt or confirmation of payment (or a confirmation code that provides access to), the customer's account number or ESI ID, payment amount, and current debit or credit balance.

In lieu of a regular communication to the customer, a REP may communicate the customer's estimated current balance, the time and date, and estimated number of days of paid electric service remaining in response to a request from the customer for this information. A communication provided in response to a customer request shall be made by the REP no later than 5:00 p.m. of the day following the day of the request.

Disclosures required by the prepaid REP in the terms of service, aside from requirements in other parts of the Substantive Rules, would include:

(1) Details of the service requiring payment in advance, including but not limited to:

(A) How and when payments may be made;

(B) How and when account statements will be provided to the customer;

(C) If consumption is estimated for any purpose, how it is estimated;

(D) If the customer may receive a notice requiring the customer to make a payment to continue receiving service, how such statements will be delivered and how long the customer will have to make the payment after receiving the notice;

(E) How and when information on the customer's estimated current balance, the time and date, and estimated number of days of paid electric service remaining will be communicated to the customer; and

(F) The circumstances in which the customer may receive a disconnection notice

(2) A statement of the amount of any deposit required to initiate service, the purpose of the deposit, the circumstances in which a deposit will be returned, whether and when the deposit may be applied to the account, whether interest will be credited or paid on the deposit, and whether any fees will be taken out of the deposit and if so, for what reasons

(3) If the REP quotes the customer a fixed cost for service for any period, it shall provide details on the price per kWh, the number of kWh the fixed cost is based on, and a statement as to whether the cost will change and under what circumstances

(4) A statement of whether interest will be credited or paid to the customer on amounts that have been paid in advance

Under the strawman, the three day rescission period provided in §25.475(f) shall commence for prepaid products when service to the customer is initiated, not when the terms of service document is received by the customer.

The strawman would also affirm that the prepaid rate (including all charges excluding taxes and gross receipts reimbursement) may not be higher than the current rate for provider

of last resort service.

Similar to §25.478, prepaid REPs would not be permitted to serve critical care customers and seriously ill customers unless the customer signs a waiver attesting that the customer understands prepaid service allows disconnection with shorter notices, and understands the medical risks from disconnection.

Staff asked for stakeholder comments on whether prepaid products under the strawman rule should be transitioned to a product with a Home Area Network device under §25.498 once an advanced meter is installed at the customer's premise.