

Energy Choice Matters

February 2, 2010

TDUs Cite PURA Provisions Permitting Switch Hold for Meter Tampering

The PUCT is authorized under PURA to impose a switch hold on customers determined to have engaged in meter tampering, the joint TDUs argued in reply comments in Project 37291. The joint TDUs included Oncor, CenterPoint, AEP Texas and Texas-New Mexico Power.

As only reported by *Matters*, several consumer advocates have argued that a switch hold provision would be contrary to various provisions in PURA requiring that a customer's choice of electric provider be honored (Only in *Matters*, 1/25/10).

The joint TDUs first noted that PURA §39.101(b)(2) stresses that a customer is entitled "to choose the customer's retail electric provider *consistent with this chapter ...* (emphasis added)." TDUs cited several current instances where a customer's choice may not be honored as consistent with PURA, such as when ERCOT initiates a mass transition moving the customer to a POLR, or when the customer's chosen REP disconnects the customer for non-payment.

The TDUs further noted that PURA §39.101(a) lists priorities that may limit or condition the customer's right to choose. Specifically, §39.101(a) imposes duties on the Commission to ensure that customers have:

- (1) ... safe, reliable, and reasonably priced electricity; and
- (9) ... other ... protections necessary to ensure high-quality service to customers.

"When tampering is allowed to occur with no consequences on the tamperer, it will impair the right of all customers to 'safe, reliable and reasonably priced' electricity, and will interfere with the provision of 'high-quality service' to all," the joint TDUs said, arguing that a switch hold is a permissible mechanism to promote safe, reliable and reasonably priced electricity.

Moreover, the TDUs noted that PURA § 17.004(a) provides that, "[a]ll *buyers* of ... retail electric services," are entitled to the choice of an electricity provider (emphasis added). Customers engaged

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Direct Energy Says Duke Ohio POR Discount Increase Not Justified

Direct Energy protested Duke Energy Ohio's petition to increase its electric purchase of receivables discount rate to 2.02% from 1.87% (09-1026-EL-ATA).

As only reported by *Matters*, Duke said that the higher discount rate is needed due to an increase in the Collection Experience Component, and a higher number for Days Sales Outstanding (DSO), which in turn increased the Carrying Cost Discount Factor (Only in *Matters*, 11/3/09).

Direct first noted that the current rate of 1.87% was the initial rate from the start of electric restructuring, and, as such, it was not the subject of rehearing. In other words, as an initial rate, Duke did not have to validate its actual cost of purchasing receivables with data.

A cursory review of the formula Duke has proposed in raising the discount rate raises four major issues, Direct said. First, Direct said that Duke has not shown in lead / lag fashion when payments to the suppliers are booked and when payments from the customers are received to justify an increase in the Days Sales Outstanding. If Duke is collecting late payment fees, such fees should

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Pepco Files Updated D.C. SOS Rates

Pepco filed with the District of Columbia PSC updated SOS rates for the delivery year beginning June 1, 2010.

2010-11 Pepco Generation Service Charge

| Rate R | <u>June-Oct.</u> | <u>Nov.-May</u> |
|----------------------|------------------|-----------------|
| Minimum charge | \$3.34 | \$3.17 |
| In excess of 30 kWh | \$0.11147 | \$0.10581 |
| Rate AE | <u>June-Oct.</u> | <u>Nov.-May</u> |
| Minimum charge | \$3.29 | \$3.04 |
| In excess of 30 kWh | \$0.10960 | \$0.10119 |
| Rate RTM | <u>June-Oct.</u> | <u>Nov.-May</u> |
| On Peak | \$0.13351 | \$0.11381 |
| Intermediate | \$0.11396 | \$0.11021 |
| Off Peak | \$0.10143 | \$0.10226 |
| Rate GSLV ND | <u>June-Oct.</u> | <u>Nov.-May</u> |
| All kWh | \$0.11242 | \$0.10404 |
| Rate GSLV | <u>June-Oct.</u> | <u>Nov.-May</u> |
| All kWh [^] | \$0.10906 | \$0.10486 |
| Rate GS3A | <u>June-Oct.</u> | <u>Nov.-May</u> |
| All kWh [^] | \$0.14675 | \$0.14483 |
| Rate GT LV | <u>June-Oct.</u> | <u>Nov.-May</u> |
| All kWh, all hours# | \$0.10906 | \$0.10486 |
| Rate GT 3A | <u>June-Oct.</u> | <u>Nov.-May</u> |
| All kWh, all hours# | \$0.10906 | \$0.10486 |
| Rate GT 3B | <u>June-Oct.</u> | <u>Nov.-May</u> |
| All kWh, all hours# | \$0.14675 | \$0.14483 |

* All prices in \$/kWh except minimum charge, which is a monthly flat fee

[^] Rate did not produce price differential for kWh in excess of 6,000 kWh; Demand charge equals \$0/kWh

Rate did not produce price differential based on peak usage; Demand charge equals \$0/kWh

BGE Files Updated Type II SOS Rates

Baltimore Gas & Electric posted updated Type II SOS rates for the three-month period beginning March 1, 2010.

Type II Generation Market-Priced Service

(Excludes Rider 8 - Energy Cost Adjustment)
March 1, 2010 - May 31, 2010

| | |
|-----------------------|-------------|
| Schedule G | 9.218¢/kWh |
| Schedule GS | |
| Peak | 10.396¢/kWh |
| Intermediate-Peak | 10.172¢/kWh |
| Off-Peak | 8.166¢/kWh |
| Schedule GL, P | |
| Peak | 10.341¢/kWh |
| Intermediate-Peak | 10.278¢/kWh |
| Off-Peak | 8.347¢/kWh |

REPs Urge Adoption of NPRR 091 as "Guardrail" to Protect Against Unforeseen Nodal Issues

Several REPs strongly endorsed the intent of Nodal Protocol Revision Request 091 which would require that the System-Wide Offer Cap (SWCAP) be set to the higher of \$180/MWh or 18 mmBtu per MWh times the Fuel Index Price (FIP) during an initial 45 Operating Day period beginning with the Texas Nodal Market Implementation Date.

The NPRR would also establish an Energy Offer Curve floor adjusted to -\$50 per MWh, and hold that all transmission constraints are to be treated as non-competitive constraints during an initial 30 Operating Day period, beginning with the Texas Nodal Market Implementation Date.

The REP Nodal Group, consisting of Accent Energy, Direct Energy, Green Mountain Energy, and StarTex Power, said that NPRR 091, "is a key protection mechanism to limit the impact of unforeseen pricing results as we transition from the current zonal market to the nodal market."

"We believe that it is absolutely critical to have this protection during the first stages of this immense change to the ERCOT market [since] systems as market simulations cannot predict all scenarios that may lead to improper price

determination," the REPs said.

The Protocol Revision Subcommittee approved the NPRR in 2008, and it has since been pending at TAC, which will again take it up on Feb. 4, with a Q&A discussion conference call on Feb. 3.

The REPs noted that various ideas have been floated by market participants to amend the language of NPRR 091 as approved by PRS. "Some of these ideas perhaps have merit, such as extending the 45 day period, but the REP Nodal Group is concerned with any further discussions that lead us away from a solution that is amenable to all parties as we are now dealing with a limited amount of time before the Nodal Go-Live date. In the absence of quick consensus of a new amended methodology, the REP Nodal Group supports NPRR091 as approved by PRS in 2008," the REPs said.

Chaparral Steel, Nucor Steel, and others were among those supporting extension of the mitigation protections afforded by NPRR 091 beyond 45 days. "Specifically, the mitigation period should be extended until after both of the following occur: (1) ERCOT begins publishing 5-minute settlement quality prices in real-time in advance of the interval at the zone, node and hub levels, and (2) the ERCOT Board determines that the protections afforded by NPRR 091 are no longer necessary. This extension should apply to the treatment of TAC-approved Competitive Constraints as non-competitive constraints as well as to the Scarcity Pricing and Mitigated Offer Cap provisions of NPRR 091," the Steel Group said.

Milagro Power Confirms President Was Subject of SEC Consent Order

In response to a PUCT Staff interrogatory, Milagro Power Company (formerly TexRep3) said that Milagro President William G. Wydler, is the same person as Guillermo Wydler, the subject of the Security Exchange Commission's Administrative Proceeding File No. 3-10989.

As only reported in *Matters*, an SEC complaint had alleged that a broker-dealer and investment advisor under the control of Guillermo Wydler and another principal sold

nearly \$70 million in interests in two affiliated offshore funds whose prospectuses represented that the funds would invest in safe investments and that the return of customers' principal was guaranteed (Only in Matters, 1/8/10). However, according to the SEC complaint, the two funds instead engaged in a highly risky investment strategy, by investing in volatile emerging markets debt instruments from countries such as Russia, Venezuela, Brazil, Argentina and Mexico.

As part of a 2002 settlement, the SEC barred Guillermo Wydler from association with any broker, dealer, or investment adviser, with the right to reapply for association after five years. The SEC's final judgment was entered against Wydler by consent, with Wydler neither admitting nor denying the SEC's findings.

Milagro said that Wydler has completely complied with the SEC's order, and has refrained from any dealings with the securities industry. While the SEC order allowed Wydler to reapply for a trading license after five years, Wydler has voluntarily chosen not to pursue such activity.

Milagro did not previously disclose the SEC's order concerning Wydler because it said that Wydler has, "never been convicted or found liable of fraud or of violating any laws," which it argued is the applicable standard in the REP certification form. As the SEC order, "specifically states that this [settlement] was done without admitting or denying the findings," Milagro said that Wydler, "was not found to be liable for a violation of securities laws."

Briefly:

NiSource Sale of Marketing Unit Stalled, Still Pursuing Exit

During the fourth quarter NiSource determined that the pursued sale of its unregulated natural gas marketing business, "was no longer probable," NiSource disclosed in reporting earnings. As only reported in *Matters*, NiSource had signed a letter of intent to sell the unregulated marketing business in the second quarter of 2009 (Only in Matters, 8/5/09). However, while the contemplated transaction did not materialize, CFO Stephen Smith said during an earnings call that NiSource is still

moving out of the unregulated marketing business. NiSource said that the unregulated marketing business recorded \$10.5 million in revenue for the fourth quarter, with operating expenses of \$4.6 million. NiSource has not yet filed a 10-K.

Detroit Edison, Consumers File Updated 2010 Choice Cap Data

Detroit Edison reported to the Michigan PSC that its actual weather-adjusted retail sales for calendar year 2009 were 45,430,633 MWh, versus an initial forecast of 45,595,725 MWh. If accepted by the PSC, Detroit Edison's choice cap would be 4,543,063 MWh, versus current choice sales of 4,082,891 MWh. Consumers Energy said that its 2009 actual weather normalized & adjusted retail sales were 35,832,320 MWh, versus the initial forecast of 35,729,533 MWh. If accepted by the PSC, Consumers' choice cap would be 3,583,232 MWh, versus current choice sales of 3,750,256 MWh (U-16088, U-16087).

Texas Aggregator New Era Energy Seeks to Change Name

Texas aggregator New Era Energy has applied at the PUCT to change its name to Electric Rate Adjusters. NextEra Energy Power Marketing had filed a complaint about the similarity in the name New Era to its registered name (Only in Matters, 1/25/10).

Blue & Silver Energy Consulting to Add New Trade Name

Texas aggregator Blue & Silver Energy Consulting applied at the PUCT to add the trade name Pro-Star Energy Services, stating that it will discontinue use of the trade name Blue Star Power Consulting.

Dominion Closes Peoples LDC Sale, Clock Starts on POR Decision

Dominion said that it has closed on the sale of its Pennsylvania LDC Dominion Peoples to SteelRiver Infrastructure Fund North America. Peoples Natural Gas is to update the Pennsylvania PUC on whether it will pursue a voluntary POR program, or opt to update its cost of service study, within 30 days (see Matters, 12/23/09). Stating that Dominion will continue to

have a presence in Pennsylvania, CEO Thomas Farrell said that Dominion Retail supplies more than 400,000 customers in the state. Dominion recently said that Dominion Retail supplies some 185,000 customers in PPL alone (Only in Matters, 1/29/10).

Maine PUC Approves CMP AMI Plan

The Maine PUC approved Central Maine Power's territory-wide advanced metering deployment plan. A written order was not available yesterday (docket 2007-215). As proposed, deployment would be completed by 2012. The Commission said that it will initiate a proceeding to consider, and may develop, rates and pricing to maximize the usefulness of the metering investments.

R.I. PUC Adopts Long-Term Renewable Contracting Regulations

The Rhode Island PUC issued a written order adopting regulations to implement legislation requiring National Grid to procure long-term contracts for up to 90 MW of newly developed renewable energy (docket 4069). As the legislation requiring the contracts was prescriptive, the regulations merely codify previously reported policy. One area requiring adjudication by the PUC was an ambiguity regarding whether Grid's obligation to procure renewable long-term contracts is met merely by soliciting contracts, or whether energy must actually be delivered under the contracts. The PUC concluded that the legislation's requirement for Grid to procure long-term contracts contemplates a delivery of energy, and found that, should Grid contract for renewable supplies and the underlying project not be built, Grid would be required to solicit additional renewable contracts to meet its obligations. In a separate proceeding, the PUC confirmed that the RPS obligation for LSEs shall increase, as scheduled, to 5.5% for 2011, after concluding that there is not a shortage of RECs that would warrant suspending the increase.

PUCT Staff Announces Sign-Up for Smart Meter Texas Portal

PUCT Staff announced that sign-up for working sessions for API Testing for the Smart Meter Texas (SMT) Portal is now open (see Matters,

12/16/09). Access to the SMT FTP will be the means for the joint TDSPs in ERCOT to provide the interval data from the advanced meters in the respective TDSPs. In early 2010, the currently available interval data directly from the TDSPs FTP will be replaced by accessing the data from the SMT FTP.

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in tampering are not buyers of electricity, the TDUs said.

The TDUs also opposed several proposals put forth by the REP Coalition in its initial comments. The REP Coalition includes the Alliance for Retail Markets, CPL Retail, Texas Energy Association for Marketers, and WTU Retail.

Among other things, the TDUs objected to the REPs' recommendation that, for switch-hold ESI IDs which are disconnected for non-pay, the TDU should cease imposing wires and other nonbypassable charges on such ESI IDs. The TDUs argued that a disconnect for non-pay does not terminate the TDU's duties and costs associated with that ESI ID, as the customer account remains active and the TDU must still read the meter and process an invoice. "Non-usage related costs will continue to be incurred, and the REP must remain liable for paying those costs," the TDUs said. The TDUs also said that implementing Texas SET changes to accommodate the REPs' proposal would be costly. Additionally, under various PUCT securitization orders, payment of transition charges for active accounts is not discretionary, and any rule that attempts to prevent the invoicing of those transition charges to the REP, "would be violative of those orders," the TDUs argued.

The TDUs reiterated their arguments that back-billing for cases of extraordinary meter tampering should not be limited to six months, as such a limit would encourage customers to engage in tampering since they would not be liable for charges in excess of that timeframe.

The REP Coalition countered that a longer back-billing period, "will increase the REP's risk of bad debt associated with the back-billing," while the TDU does not bear a concomitant risk in extended back-billing. "[A]pplication of the

six-month limitation to all TDU back-billings based on meter tampering will incent the TDU to comprehensively address all of the ways in which meter tampering occurs," the REPs added, since the TDU's ability to collect prior wires charges is limited. The TDUs, however, dismissed REP concerns about an increase in bad debt from longer back-billing by arguing that, due to the switch-hold, bad debt from normal back-billings (under six months) will be reduced, offsetting any increase from the more rare occurrences of extended back-billing.

The TDUs also insisted that the previous REP of record must be charged for meter repair and restoration in cases where tampering has occurred, but the customer has changed REPs. To exempt both the current REP of record (as proposed in the rule), and prior REP of record, would invite customers who engage in tampering to immediately switch REPs, thereby precluding the possibility of being charged the meter repair charge if their tampering is ever discovered, since their REP of record has changed.

The REP Coalition, however, stressed the difficulty a former REP has in collecting charges from a customer, and opposed the TDUs' proposed change that would allow the TDU to back-bill the customer's prior REP of record if the switch in REP of record occurred within 30 days. REPs said that the proposed rule's prohibition against back-billing a REP that no longer serves the ESI ID in question is sound because it, "reasonably takes into account the difficult task of trying to collect a back-billed amount from a former customer, particularly when the former customer is currently receiving retail electric service from another REP."

"As long as the lights are on, the former customer is likely to question why it should pay anything to a company no longer providing its retail electric service, especially when the former customer has fully paid what it believed would be the last electric bill issued by the former REP for such service. Given the inability of the former REP to exert any meaningful leverage under such circumstances - the switch-hold mechanism ... will provide no value in this regard - the back-billed amount owed by the former customer will inevitably be reflected on the company's books as an uncollectible, to the

REP's financial detriment," the REP Coalition said.

The REP Coalition also outlined why the TDU, and not the REP as suggested by the TDUs, should send the meter tampering notice to the customer. "First, it is the TDU that owns the meter in most instances, given the statutory requirement directing TDUs operating in competitive areas of the State to provide metering services to residential customers and non-residential customers that are not otherwise required to use an interval data recorder meter. Second, it is the TDU that has the legal right of exclusive physical access to the meter. Third, it is the TDU that also has access to meter consumption data. Fourth, given its access to the meter and consumption data, it is the TDU that determines whether meter tampering has occurred, including a determination of the approximate date upon which it commenced. Fifth, it is the TDU that calculates the back-billing and any applicable meter repair/restoration charges. Given the integral role of the TDU here, the REP should not be responsible for notifying the customer that the TDU has determined that meter tampering has occurred at the premise and advising the customer that it may be billed for certain charges relating to such a determination," the REPs said.

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be netted out of the discount, since Duke is receiving compensation for the delayed payment, Direct argued.

Direct further said that Duke must justify why its after tax long term carrying cost is the correct factor to evaluate the utility's true cost of money. "It is important to note that the [retailer] is supplying the power and that Duke's only investment is the cost of the working capital between when it pays the [retailer] and when it gets paid by the Customer plus the bad debt. Duke's short term cost of borrowing would appear to be a better measure of the time value of this outlay," Direct said. Short term borrowing rates, "should be substantially lower than the over 12% Duke is both collecting now and seeks to continue collecting when it discounts the payments to [retailers] when buying their receivables," Direct added.

Duke's petition, Direct noted, does not provide any indication of how the "collection experience component" was calculated, and whether it includes all customers, or only shopping customers, or whether it includes Percentage of Income Payment Plan customers.

Direct argued that Duke should provide the collection experience component by class, so that if there is a significant difference among commercial, industrial and residential class bad debt experience, different discount rates by class may be applied.

"Finally, Duke's current purchase of receivables program tariff or program agreement should be amended to include an affirmative indication that suppliers have a preference in any accrued but unpaid receivables. In these days when credit can be a barrier to trade, or increase the cost to retail customers, it is important that suppliers who provide the energy are financially protected prior to payment," Direct said.