Energy Choice Matters

March 8, 2010

TDUs Would Stop Billing for Delivery Service After DNP of Tampered ESI IDs, Under Staff Proposal

TDUs would be allowed to back-bill customers engaged in meter tampering for a period longer than six months under extraordinary circumstances, but would be required to bill the customer directly for such charges (and not bill the customer's REP), under a proposal for adoption filed by PUCT Staff in Project 37291.

The proposed rule retains the general provisions of Staff's earlier draft, including the imposition of a hold on switches and Move-Ins for ESI IDs associated with meter tampering (Only in Matters, 12/11/09).

Under the proposal for adoption, for underbilling related to tampering, TDUs would normally be allowed to bill the REP for six months of backbilling (with the REP in turn seeking payment from the customer). In instances where the TDU finds "extraordinary efforts to conceal meter tampering," the TDU may back-bill for longer than six months. However, the REP would apparently not be charged for backbilling beyond six months. Instead, the back-billed amount beyond six months shall be sent to the end-use customer directly by the TDU. In such a case, energy charges shall be calculated based on the ERCOT marginal clearing price of energy for the applicable time periods.

The revised proposed rule also removes the 12-month limit on back-billing when back-billing would result in a credit to the customer.

The proposal for adoption holds that in cases where a REP disconnects service to a customer subject to a switch hold, the switch hold shall remain in place.

Furthermore, the proposal for adoption would require that TDUs cease billing all transmission and distribution charges to a premises upon the completion of a disconnection for non-payment for an

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Paetec Entry into Commodity Supply Driven by Desire for Pricing Flexibility, Bundling

Paetec's decision to move from being an energy broker to an electric load serving entity was driven by its desire to bundle its existing telecomm products with electric supply service, said Paetec Chief Operating Officer E.J. Butler, Jr. Paetec acquired U.S. Energy Partners for $3 million last week (Only in Matters, 3/2/10).

While energy procurement consulting, which Paetec entered into in 2008, gave Paetec an ability to add value by providing its communications customers with another service, brokering other electric suppliers' products limited how Paetec could integrate the offerings with its existing suite of telecomm products, Butler said. Paetec lacked the flexibility to customize products for its customers and develop pricing arrangements taking advantage of telecomm and energy bundling so long as it was marketing other suppliers' offerings.

Becoming a load serving entity, through the acquisition of U.S. Energy Partners, allows Paetec to dictate the terms of its electric supply options, and bundle them with its telecomm products to add customer value and increase customer stickiness among its 44,000 commercial telecomm customers.

Butler further said that becoming a load serving entity was a "natural evolution" for Paetec in

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United Illuminating Reports February Migration Data

Supplier Accounts as of 2/28/10	Feb. '10 Residential	Feb. '10 Business	Feb. '10 Total	% of Migrated Customers	Change vs. Jan. '10 Total
Clearview Electric, Inc.	2,520	47	2,567	3.3%	600
ConEdison Solutions	4,412	1,170	5,582	7.1%	(94)
Constellation NewEnergy	407	2,969	3,376	4.3%	(16)
Direct Energy Business	12	801	813	1.0%	8
Direct Energy Services	18,901	2,803	21,704	27.7%	(516)
Discount Power	643	156	799	1.0%	752
Dominion Retail, Inc.	14,768	1,261	16,029	20.5%	36
Energy Plus Holdings LLC	3,158	479	3,637	4.6%	637
Gexa Energy	279	266	545	0.7%	6
Glacial Energy	66	369	435	0.6%	(4)
Hess Corporation	53	464	517	0.7%	(3)
Integrys Energy Services	8	1,554	1,562	2.0%	0
Liberty Power Holdings	0	50	50	0.1%	0
MXenergy	4,570	542	5,112	6.5%	515
Public Power & Utility	6,115	1,309	7,424	9.5%	33
ResCom Energy	683	157	840	1.1%	78
Sempra Energy Solutions	31	698	729	0.9%	(3)
Suez Energy Resources NA	2	199	201	0.3%	16
TransCanada	8	471	479	0.6%	0
Verde Energy	2,472	51	2,523	3.2%	1,888
Viridian Energy	3,026	323	3,349	4.3%	312
Total All Suppliers	**62,134**	**16,139**	**78,273**	100.0%	4,245

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	42,237	23.4%	107,830	66.0%	102,563	92.9%	252,630	55.6%
UI	138,362	76.6%	55,479	34.0%	7,833	7.1%	201,674	44.4%
Total	180,599		163,309		110,396		454,304	

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	62,134	21.4%	15,897	42%	242	90.0%	78,273	23.8%
UI	227,890	78.6%	22,025	58%	27	10.0%	249,942	76.2%
Total	290,024		37,922		269		328,215	

LRS = Last Resort Service; SS = Standard Service *Data as reported by UI*

Illinois AG Seeks $50 Cap on Mass Market Electric Termination Fees

The Illinois Attorney General and Citizens' Utility Board have recommended that alternative retail electric suppliers be limited to charging termination fees of no more than $50 on contracts with residential or small commercial customers, in comments on proposed consumer protection rules (09-0592, Only in Matters, 3/5/10).

The AG noted that such a cap on cancellation fees has been imposed on competitive gas suppliers. "By not capping termination fees for RESs [retail electric suppliers], the [Office of Retail Market Development] is essentially permitting a RES business model that would allow for the farming of cancellation fees: cancellation fees substitute good, quality service and low product price for revenue."

The AG further recommended creating a new section of the rule to govern customer authorization, which would borrow language from the gas consumer protection statute governing authorizations (see Matters, 4/13/09).

"CUB and the AG are very concerned that Staff's proposed rule does not make clear that either a Letter of Agency, signed by the customer, or Third Party Verification is required before a contract between the [supplier] and customer is considered valid," the AG said. The AG's proposed language would prohibit a supplier from submitting or executing a change in a customer's selection of a electric service provider unless and until (i) the supplier first discloses all material terms and conditions of the offer to the customer; (ii) the supplier has obtained the customer's express agreement to accept the offer after the disclosure of all material terms and conditions of the offer; and (iii) the alternative retail electric supplier has confirmed the request for a change in accordance with one of several procedures contained in the rule (e.g. Letter of Agency, TPV, internet, etc.).

Under the AG's proposed TPV and in-bound telephonic enrollment rules, the customer would have to confirm, "the **names** of the providers affected by the change" (emphasis added). The AG's proposed Letter of Agency requirement does not require such a specific confirmation of the current provider's name; the customer must only confirm in the Letter of Agency the customer's decision, "to change the [electric] provider from the current provider to the prospective alternative retail electric supplier."

The AG argued that all products should be expressed on a per kilowatt-hour basis to facilitate comparisons, prohibiting the use of flat fee per month products. "By mandating uniform pricing of power and energy services, consumers would be protected from misinformation or confusion among RES products ... If a RES presents a fixed monthly charge to consumers, again using the example of $30, a consumer could be lead [sic] to believe that delivery charges and taxes are included in that amount, when in fact they are not," the AG claimed.

The AG also said that suppliers should be required to disclose, in the Uniform Disclosure Statement, any instances in which they have declared force majeure within the last ten years with respect to any of their contractual obligations to deliver power and energy service. "Such a disclosure provides the customer with important information regarding the [supplier's] past unsuccessful business dealings," the AG said.

Suppliers affiliated with electric utilities and who are marketing to residential customers should not be permitted to use the utility's name or logo, or similar name or logo, the AG said. "Both CUB and the AG have observed that the use of affiliate names and logos in the natural gas retail market has caused very real confusion for consumers. Not only does affiliate use of the utility name and logo create and fuel customer confusion, it also creates an un-level playing field among suppliers. If Illinois is truly to have a competitive market, the affiliate use of utility name and logo must end," the AG argued.

Again borrowing provisions from the gas consumer protection statutes, the AG recommended requiring suppliers to notify the Illinois Commerce Commission of material changes affecting their license, including (but not limited to):

- Any significant change in ownership (an ownership interest of 5% or more) of the supplier

- Any change in the supplier's name or logo, including without limitation any change in the supplier's legal name, fictitious names, or assumed business names
- Any judgment, finding, or ruling by a court or regulatory agency that could affect the supplier's fitness or ability to provide service in Illinois
- Revocation, restriction, or termination of any interconnection or service agreement with any company relied upon by the supplier to provide power and energy service, but only if such revocation, restriction, or termination creates a situation in which the supplier does not meet the tariffed capacity requirements of the relevant Illinois electric utility or utilities.
- If the supplier has a long-term bond rating from Standard & Poor's, Fitch Ratings, or Moody's Investor Service, and the supplier's long-term bond rating falls below BBB as reported by Standard & Poor's or Fitch Ratings or below Baa3 as reported by Moody's Investors Service
- The supplier has or intends to file for reorganization, protection from creditors, or any other form of bankruptcy with any court

The AG also recommended adopting several call center metrics for electric suppliers, though suppliers (unlike gas suppliers until recent legislation, upon which the AG based its proposal) are already required to submit annual call center performance reports to the ICC (Part 410 of the Administrative Code).

Gexa Complainants Seeking Production of Emails from Other REPs

Complainants against Gexa Energy in PUCT docket 37569 have requested through discovery that Gexa provide any emails sent to or received from other retail electric providers containing the words "variable rate" or similar words (Matters, 3/4/10).

Gexa has objected to the Request for Information on the grounds that it will not lead to admissible evidence, given various scoping orders in the complaint case. "This is a contract dispute between Complainants and Gexa. Email correspondence with other Retail Electric Providers ('REPs') has no bearing on the terms of the contracts between the individual Complainants and Gexa," Gexa said. Gexa also objected because the request is burdensome, and would require $100,000 in costs to search through all the associated emails.

Specifically, the RFI requests that Gexa, "provide a copy of any email, sent or received by any of the Select Gexa Personnel, to or from any other retail electric provider or any association of retail electric providers (including but not limited to the Alliance for Retail Markets) containing anywhere in the email, or any of its attachments, any use of the terms 'variable rate' or 'variable price' if such a communication was sent or received anytime between June 2008 and February 2009 and in any way related to the rulemaking conducted pursuant under Control Number 35768."

As previously reported, the complaint involves variable rate contracts and associated pricing.

Load Interests Push for Marginal Cost/Pricing Comparison in RTO Metrics

Load interests renewed calls for FERC to measure generators' pricing in relation to marginal costs, while generators argued that such reporting would facilitate monopsony buying power, as parties filed comments on proposed RTO performance metrics (AD10-5).

"To more fully understand whether RTOs have provided consumers with meaningful benefits, the RTO performance metrics must include metrics that will allow FERC to determine whether the RTOs have delivered lower prices for electricity consumers. Measurement of wholesale electricity prices relative to the marginal costs of generation and transmission is crucial to this analysis - but the proposed RTO performance metrics omit this type of measure," the Maryland PSC said.

Pennsylvania PUC Vice Chairman Tyrone Christy, in submitting individual comments apart from the PUC, agreed that, "[i]f generators are earning extraordinary profits, the RTO market is not adequately disciplining prices."

The Coalition of Midwest Transmission

Customers and PJM Industrial Customer Coalition said that the metrics should examine:

- Whether RTO markets are performing better than the cost-of-service regulation they were designed to replace
- Whether suppliers' returns in competitive markets are greater than or less than the allowed returns that would exist under cost-of-service regulation
- What market design elements are working and which are not working ("[C]learly, all elements have not yielded customer benefits," industrial said)
- How do trend-lines for retail prices where customers are directly exposed to wholesale market prices stack up against trend-lines for retail prices where customers are not directly exposed to wholesale market prices?
- How do retail prices in RTO regions compare to retail prices in non-RTO regions?
- Does virtual trading help or hurt retail customers?

EPSA, however, countered that, "[t]he release of overly detailed cost and price information raises strong anti-competitive concerns, including by aiding and abetting the exercise of monopsony power by the very advocacy groups suggesting its adoption as an ISO/RTO metric."

Regarding reliability, the Retail Energy Supply Association said that a forward view is needed, such as a metric that measures how well RTO resource adequacy rules drive investment in new generation resources to meet future load, in anticipation of future load. This metric would give the RTO an early warning of any potential supply shortages, as the RTO should not wait until firm load is consistently interrupted to discover that its resource adequacy rules have not been working as intended, RESA said.

RESA noted that LMPs must be viewed in the proper context, including with respect to reliability. While low LMPs will naturally be seen as "good," RESA noted that in the energy-only Midwest ISO, scarcity prices are indicative of a functioning resource adequacy approach that theoretically relies on high, volatile LMPs to incent new supply.

Furthermore, RESA stressed that RTO market designs must not act as a barrier to the migration of retail customers among suppliers, suggesting that performance metrics be designed to evaluate RTO services that facilitate customer migration (efficient modeling of new/revised pricing nodes, speedy market settlements that account for load shifts, etc.).

Briefly:

Texas Customers to Gain Access to AMS Website in Two Weeks

In about two weeks, Oncor customers with smart meters will be able to access a web site to see their usage in 15-minute intervals, which will help them identify when they use the most electricity, and to predict what their bills will be, Oncor said in discussing various measures to address recent high bills which customers have attributed to advanced meters.

ConocoPhillips Seeks D.C. Gas License

ConocoPhillips Company applied for a gas supplier license in the District of Columbia to supply commercial and industrial customers. As only reported in *Matters*, ConocoPhillips also recently filed for a Pennsylvania gas supplier license (Only in Matters, 2/22/10).

Avalon Energy Services Receives D.C. Broker Licenses

The District of Columbia PSC granted Avalon Energy Services both an electric and natural gas broker license to serve non-residential customers (Only in Matters, 1/8/10).

Customers, Suppliers Still Working on Michigan Choice Bill

Large commercial customers and electric suppliers in Michigan are continuing to work on a bill to raise the state's current limit on electric choice. Though Sen. Wayne Kuipers and Sen. Cameron Brown expressed support last year for bringing such legislation before lawmakers in the 2010 session, no formal bill has been raised yet, as customers and suppliers work to attract a strong slate of co-sponsors to the bill before introducing it.

Oncor Files to Waive Meter Testing Fee, Distribute Home Monitors

Oncor submitted in docket 38036 a request for a good cause waiver to allow it to waive the normal meter testing charge for customers (billed through the REP) requesting a test of their advanced meter, and also sought a waiver of Substantive Rules 25.341 and 25.343 to allow Oncor to provide, free of charge, 500 in-home monitors to customers regardless of income (Oncor's smart meter deployment plan authorizes the provision of monitors to low-income customers). Substantive Rules 25.341 and 25.343 generally prohibit a utility from providing competitive energy services, which Oncor said would appear to prohibit the provision of the in-home devices absent a waiver.

APPI Selected by Hanover, Pa. Chamber of Commerce

Affiliated Power Purchasers International has been selected by the Hanover, Pennsylvania, Area Chamber of Commerce to offer the chamber's members its supply procurement consulting services.

Tampering ... from 1

ESI ID for which a switch-hold flag is present. When the REP of record issues a Move-Out request for the flagged ESI ID, the REP of record's relationship with the ESI ID is terminated and the switch-hold shall be removed.

Staff's revised draft also changes the entity responsible for determining when a switch hold may be lifted in cases of a Move-In. Under earlier proposals, the current REP of record (who imposed the switch hold) would review the documentation provided by the customer's newly selected REP to determine if the Move-In is valid (i.e., a different customer). Under the proposal for adoption, the TDU would be given this responsibility for determining the validly of Move-Ins submitted for accounts which are subject to a switch hold.

TDUs would be given four business hours from the receipt of documentation of a valid Move-In from the new REP to make a determination as to whether the switch-hold should be removed by confirming the documentation is adequate and that the applicant does not match the customer that the TDU has currently assigned to the premise.

The proposal for adoption also provides the TDUs with a bit more time in executing various functions under the rule, many of which were proposed to occur "immediately" or within a few hours of a triggering action. For example, under the proposal for adoption, TDUs would be required to impose a switch hold on an account on the same day on which it has made a determination that meter tampering has occurred, rather than "immediately" upon a determination of meter tampering.

As under the earlier draft, the switch hold would remain in place for six months, unless removed by the REP of record, or if other criteria in the rule are met (such as a validated Move-In).

Switch holds would be removed, however, during mass transitions to a POLR. No later than the next business day following the completion of the mass transition, the TDU would be required provide all POLRs a list of ESI IDs previously subject to a switch hold.

The rule provides that once an automated ERCOT process to effect the treatment of switch holds is developed, that process shall be used in lieu of the manual process envisioned by the rule. The proposed rule states that ERCOT shall develop this market transaction as soon as possible.

Paetec ... from 1

expanding its energy product offerings. Paetec is studying the potential for further expanding its offerings to include solar installations, lighting retrofits, and similar efficiency/demand-side options. In the meantime, Paetec will act as an agent for curtailment service provider Virtual Energy (also owned by Robert Kreppel, founder of U.S. Energy Partners who sold the ESCO to Paetec).

Paetec has already started to expand U.S. Energy Partners from its base of western New York, and will enter the Consolidated Edison electric market shortly. New York expansion will be Paetec's main focus for 2010, Butler reported.

While Paetec has designs on some 14 electric markets, growth will be measured, with an initial focus on markets where Paetec has a strong base of telecomm customers. Among the "phase one" electric markets for expansion are Pennsylvania, Massachusetts, the District of Columbia, Texas, New Jersey, and California. Butler cited the metro Philadelphia area (PECO) as a strong opportunity for Paetec, and said that Paetec would file for a Pennsylvania supplier license to market to customers in late 2010 in anticipation of the January 1, 2011 end of rate caps at the remaining utilities.

Paetec's direct sales will focus on commercial and industrial customers using at least 100,000 kWh per month, though it will accept smaller volume commercial customers through its indirect sales channels. While it will not be a residential marketer, Butler said that Paetec will offer its employees electric supply, and will also offer residential electric supply to the employees of its larger telecomm customers under various affinity arrangements.

While certainly open to additional acquisitions on the energy side, Butler said that Paetec is not relying on purchasing customer books to fuel its growth. Paetec, Butler added, is only interested in companies which are the right fit for Paetec and share the same philosophy, describing Paetec's acquisition approach, over its more than a decade of telecomm operations, as conservative. Though Paetec has been involved in 15 mergers or acquisitions, it has over evaluated over 200 opportunities, Butler noted.

Butler said that the U.S. Energy Partners acquisition grew from its earlier acquisition of Varo Technologies in 2008, which brokered for U.S. Energy Partners. Butler said that U.S. Energy Partners' commercial customer focus, conservative approach, as well as its ethical, talented and entrepreneurial leadership mirrored its own culture, making it a good fit.

Paetec, which now has nine employees in its energy division, plans to reach 35 energy employees by the end of the year. Kreppel will serve as a consultant to Paetec.

Paetec has no immediate plans to act as a natural gas commodity supplier, and will instead continue to broker gas supply. That doesn't mean Paetec won't become a natural gas supplier in the future, Butler said.