Energy Choice Matters
March 29, 2010

PUCT's Nelson Files Revised Deferred Payment Plan Draft

PUCT Commissioner Donna Nelson posted a revised draft proposal for publication concerning deferred payment plan rules which would retain the requirement for REPs to offer deferred payment plans to customers with good payment histories, a provision which had been omitted from an earlier Staff draft (36131). The proposed switch hold for customers on deferred payment plans or levelized payment plans is also maintained.

Nelson's proposal still requires REPs, in cases outside of a weather emergency or disaster, to offer a deferred payment plan to certain vulnerable customers regardless of the customer's payment history in the months of July, August and September (regardless of weather conditions), and in the months of January and February, if the previous month set an ERCOT peak higher than the winter peak which existed prior to the 2009-10 winter. Nelson defines such vulnerable customers as those receiving, or eligible to receive, the Lite-Up discount, critical care customers, and chronic condition customers. Nelson's proposal removes other proposed criteria for eligibility regardless of payment history such as customers 200% below the federal poverty line and customers suffering a catastrophic event (see Matters, 3/3/10).

However, Nelson's proposal would preserve the eligibility of good paying customers who express an inability to pay to receive a deferred payment plan. This provision was dropped from Staff's draft, but re-inserted at the request of Commissioners (Matters, 3/12/10). Specifically, all customers expressing an inability to pay would be eligible for a deferred payment plan unless the customer:

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Suppliers, TURN Seek Brief Extension of Open Enrollment Window to Facilitate Wait List

Several retail suppliers and customers, along with The Utility Reform Network and Southern California Edison, petitioned the California PUC for a modification of its recent order regarding the implementation of expanded non-residential direct access, because the petitioners argued that the current schedule does not permit the operation of the Open Enrollment Window wait list as called for by the PUC (R. 07-05-025).

Specifically, the petitioners asked that the PUC allow for the Open Enrollment Window to run for 95 days, instead of the 80 days currently allotted. Petitioners included The Utility Reform Network, Southern California Edison, the California Alliance for Choice in Energy Solutions, the Alliance for Retail Energy Markets, the California State Universities, the Direct Access Customer Coalition, the Silicon Valley Leadership Group, and the School Project for Utility Rate Reduction.

The Commission, as part of the Open Enrollment Window, authorized the creation of a wait list to house Notices of Intent (NOI) to switch to direct access which are filed after the choice caps are met, but which may be executed if customers receiving a slot under the caps do not timely file their direct access switch request within 60 days.

Under the PUC's decision the Open Enrollment Window starts April 16, and ends June 30. The joint petitioners asked that the window be extended until July 15, 2010, with a corresponding delay

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Md. Staff Recommends Against Storage Injection Hedging

Maryland PSC Staff have recommended that no hedging of storage gas injection volumes should be ordered for the 2010 summer season, citing losses experienced by the Maryland LDCs associated with last season's hedging of injection volumes.

Staff said that absent an unusually active hurricane season, it appears that natural gas prices will follow last year's trend, which resulted in the LDCs hedging at a loss (the total amount of which was redacted in Staff's comments) versus the estimates of unhedged market prices.

Baltimore Gas & Electric has reported that hedging from the period 2001 through the spring of 2010 has resulted in above-market costs of about $31 million. For the 2009-10 season, the cost of hedging was $7.8 million.

Washington Gas Light, at the direction of the Commission, entered into what turned out to be above-market hedges last season, Staff noted, as Staff recommended that WGL's request to continue some limited hedging not be granted.

Staff further reported that Columbia Gas, under an existing year-round hedging program, has recorded, in every instance except for 2005, higher costs from hedging versus contemporaneous market prices.

However, Staff did recommended that the Commission consider opening a generic proceeding to examine the issue of a prospective gas procurement policy for each LDC that may or may not include hedging.

The Office of People's Counsel echoed this recommendation, suggesting that a comprehensive proceeding should be initiated by the Commission to examine the overall use of hedging programs and all variety of hedging strategies by the utilities. The conduct of such a proceeding could be undertaken in the context of a working group after an initial information gathering proceeding, OPC said.

Liberty Says Obligation to Update Conn. Bond "Ambiguous"

Sec. 16-245-4(b) of the Regulations of Connecticut State Agencies, "does not impose an affirmative obligation on an electric supplier to automatically increase its security in the absence of a Department order," Liberty Power Holdings, LLC (Liberty) said in exceptions to a draft decision by the Connecticut DPUC to re-open Liberty's licensing docket to review its compliance with the bonding regulations (Only in Matters, 3/24/10).

Sec. 16-245-4(a) of the Regulations states that, "An electric supplier shall maintain security in an amount that will ensure its financial responsibility and its supply of electricity to end use customers in accordance with contracts, agreements or arrangements. An electric supplier may elect to maintain security in the amount of $250,000 or five per cent of its estimated gross receipts for its first full year of operation."

Liberty cited Sec. 16-245-4(b) as stating, "Security based on an electric supplier's gross receipts shall be subject to annual adjustment. The department *may* require an increase in the amount of the security if the electric supplier's annual gross receipts increase more than ten percent from the gross receipts amount previously used by the department to determine the level of security required, except in no event shall the department require security in excess of $250,000" (emphasis added by Liberty).

"This provision does not impose an affirmative obligation on an electric supplier to automatically increase its security in the absence of a Department order. Rather, it contemplates that the Department will review a supplier's gross receipts report and make orders, as appropriate, directing such supplier to increase security when its gross receipts rise more than ten percent above its prior gross receipts estimate," Liberty argued. Liberty said that it received no such order.

Liberty's interpretation, however, renders meaningless the use of the word "shall" in the first sentence of Sec. 16-245-4(b), which implies that an annual *adjustment* (and not simply a review) is always required. In light of the use of the word "shall," the second sentence, rather than only requiring an adjustment at the direction of the DPUC, may be taken to mean that the DPUC retains authority to require security in excess of 5% of annual gross receipts in cases where gross receipts increase more than 10% from the gross receipt amount previously used by the Department to determine the level of security required. Such discretion would allow the DPUC to protect customers in cases of rapid supplier growth, where a collateralization of more than 5% of gross receipts is in the public interest because otherwise, during the course of the year, the supplier's rapid growth in sales would render the security on file ineffective at protecting against any potential losses from a market exit, creating potential exposure for customers prior to the next annual security update.

This reading also ensures that the second sentence is neither superfluous nor repetitive. First, Sec. 16-245-4(b) establishes that a security based on annual sales shall be adjusted annually, meaning there must be some change in security. Given that there must already be a change in the level of security required, the reference to "amount of security" in the second sentence is not a reference to the absolute dollar value of the security (which would be repetitive), but rather, the level of security as a percent of receipts addressed in subsection (a). Importantly, subsection (a) does not provide that a supplier is entitled to always meet the security requirement using 5% of annual gross receipts, rather, the subsection explicitly states that the supplier "may" initially use 5% of its expected first-year sales, with subsection (b) further providing this security is subject to annual adjustment. The second sentence of subsection (b) preserves the Department's right to change the percentage level of security as conditions warrant.

Thus, in cases of great annual revenue changes for a supplier (e.g. above 10%), the DPUC may decide that 5% of gross receipts is inadequate protection, since the value of the percentage, due to expected sales growth, will be reduced over the next 12 months. The discretion provided to the Department through the use of the word "may" in this sentence is not the discretion to adjust the absolute value of the security itself as Liberty suggests (an authority the Department already received in the first sentence), but rather, the discretion to change the percent level of security to take into account the supplier's past and likely continued growth.

Indeed, later in its exceptions, Liberty goes on to state that Sec. 16-245-4 is "unclear" as to whether a supplier must automatically increase its security upon an increase in its gross receipts estimate in the absence of a Department order, versus Liberty's earlier contention that Sec. 16-245-4 contains no such affirmative obligation.

Liberty also took exception to several recitals in the draft decision which Liberty said were not accurate. Most egregious among these is a statement in the draft which said that the DPUC sent Liberty a letter on March 10 concerning the security issue, and that it was sent by certified mail. Liberty said that it received no such letter, and reported that DPUC Staff has conceded that the March 10 letter was not sent by mail at all, let alone certified mail. Staff said that the letter was emailed to a Liberty Power contact, but Liberty said that it had no record of receiving this email. Liberty similarly said that it had no record of receiving an October 26 letter from the DPUC referenced in the draft.

Liberty further reported that its compliance staff had been in discussions with DPUC Staff regarding language changes to Liberty's bond on record with the Department (which was for less than 5% of its updated gross receipts) during the time period Staff claims to have sent correspondence regarding the bond amount to Liberty. In discussing the language changes with Staff, Liberty said that Staff never asked nor directed Liberty to file a bond with an increased amount, though, in one exchange, Staff "suggested" that the Department might require the bond to be increased to $250,000. As a result, Liberty said that it was not aware until the March 23 draft decision that the DPUC was directing it to increase its bond amount. As indicated in our earlier story, Liberty has filed an updated bond for $250,000 with the DPUC, with a hard copy filed on Friday.

Given the factual inaccuracies of the draft, and what Liberty termed ambiguities in the bond regulations, Liberty requested that the DPUC postpone its scheduled March 26 decision on the draft in order to review the exceptions. The Department granted the motion and is to address the issue March 31.

Briefly:

Md. PSC Delays Pepco POR Plan

The Maryland PSC granted Pepco's request to indefinitely delay the filing of its revised purchase of receivables compliance plan, and associated implementation date, until the Commission adjudicates issues raised in the application of affiliate Delmarva Power (Only in Matters, 3/10/10). As only reported by *Matters*, Pepco said that its POR program will substantially follow what is adopted by the Commission at Delmarva, and the PSC agreed that a delay would be administratively efficient in light of the pending Delmarva POR plan. Originally, Pepco was to implement POR on April 1, 2010.

PUCT Staff Updates Meter Tampering Proposal for Adoption

PUCT Staff have file an updated proposal for adoption regarding meter tampering rules that prescribes a 50% sharing between the TDU and REP for charges in excess of wires charges that the TDU collects for back billings beyond six months (37291, see Matters, 3/12/10). As directed by the Commissioners, Staff also removed the prior draft provision which would have required the TDU to stop billing wires charges for an ESI ID subject to a switch hold once the REP sends a disconnect for non-pay for the account. Staff's recommended preamble states, "[t]he commission does not agree with the REP Coalition that language should be included to require the cessation of TDU charges upon completion of a disconnection for non-payment for an ESI ID for which a switch-hold is placed. Because the commission is adopting a switch-hold mechanism, the commission finds that the REP should have significant leverage to demand payment from the customer." An ESI ID would only cease to accrue wires charges upon issuance of a Move-Out. Additionally, Staff's language regarding sharing of receipts for back-billing beyond six months provides, "[t]he TDU shall retain the wires charges, and shall retain 50% of the energy charges collected, and shall pay the remaining 50% to the current REP. The TDU shall provide the energy charges to the REP pursuant to a method agreed to by the REP and the TDU." Otherwise, the proposal for adoption is substantially similar to the proposal presented at the March 11 open meeting (see full analysis, Matters, 3/8/10).

Texas ALJ Denies Complainants' Motion for Summary Judgment in Gexa Variable Rate Case

A Texas ALJ has denied a motion for summary judgment from the variable rate complainants against Gexa Energy, as the judge concluded that Gexa has demonstrated that disputed facts exist on all issues raised in the complainants' motion (37569). "Although legal issues may exist (contract law issues), the ALJ sees this case as fact intensive, requiring not only fact witnesses but possibly expert witnesses (and potentially substantial documentary evidence)," the ALJ said. As has only been reported in *Matters*, the complainants have alleged that the variable rate contract offered by Gexa committed Gexa to change its retail price contemporaneous to wholesale market price changes (see Matters, 3/4/10).

Duke Energy Ohio Seeks Delay in Filing of Forecast, Resource Plan due to Migration

Citing the impact of increased customer migration, Duke Energy Ohio requested from the Public Utilities Commission of Ohio a waiver of the April 15 annual filing date for its long-term forecast report (O.A.C. 4901:5-1-02) and resource plan (O.A.C. 4901:5-5-06), asking that it be permitted to file both analyses by June 15. Both the forecast and the resource plan mandated by the Commission's rules require detailed analyses of load and resource data. "Although Duke Energy Ohio has historically filed its long-term forecast reports as required, this year is unique. Due to a very weak economy and the decrease in demand, market prices have combined to create more activity with respect to competition in Duke Energy Ohio's service territory and elsewhere," Duke said. Duke also cited statutory requirements for advanced energy and energy efficiency as creating challenges in forecasting and prompting a more deliberate and thorough evaluation. Duke said that the proposed June 15 filing date would allow it to provide current data for the Commission to review.

Dynegy Power Marketing Receives Maine License

The Maine PUC granted Dynegy Power Marketing Inc. a competitive electricity supplier license to self-serve its affiliate Casco Bay Energy Company (Only in Matters, 3/21/10).

ConEd Rate Order Confirms Retail Access Provisions

A written order issued Friday in Consolidated Edison's three-year electric rate plan confirms that provisions in a joint proposal related to retail access (rate ready collaborative, working capital, transmission unbundling, etc.) were accepted without modification (see Matters 3/26/10 and 11/25/09 for full analysis).

Deferred Payment ... from 1

(I) has been disconnected during the preceding 12 months (instead of the current more than two disconnect notices standard);

(II) has submitted more than two payments during the preceding 12 months that were found to have insufficient funds available; or

(III) has received service from the REP for less than three months, and the customer lacks:

(a) sufficient credit; or

(b) a satisfactory history of payment for electric service from a previous REP or utility.

Nelson said that defining good payment history should based on actual disconnection, versus the sending of a disconnect notice (as done currently) since REPs issue an average of 900,000 disconnection notices every month but TDUs only process approximately 100,000 actual disconnections. "That means the other 800,000 customers actually pay their bills. While late payment should not be encouraged, the time between receiving a bill and the issuance of a disconnection order is often quite short," Nelson noted.

Nelson's draft would require payment of 50% of the outstanding balance to initiate a deferred payment plan, versus the current 25%. Deferred payment plans shall extend over at least five billing cycles (versus the current three), absent customer consent to a shorter period.

Additionally, customers (according to the same eligibility criteria above) would be entitled to enter into a levelized payment plan as an alternative to a deferred payment plan. Levelized payment plans would be required to be trued-up every six months, versus the current 12 months.

REPs would be permitted to place a switch hold on ESI IDs entering into deferred payment or levelized payment plans. REPs would be required to notify customers of the switch hold, and the amount that the customer would have to pay in order to remove the switch hold (either through a bill message or 24-7 telephonic option). Nelson's proposal, unlike an earlier draft, explicitly includes a section authorizing REPs to execute a switch hold (prior language only committed customers not to switch REPs during a deferred payment plan but did not authorize REPs to prevent switches). The switch hold would continue even after a disconnection for non-payment, and similar to the meter tampering rule, would also block Move-In transactions absent documentation of their legitimacy. A switch hold would be removed in cases of a mass transition.

The switch hold provision would not take effect until June 1, 2011, as Nelson said that there is inadequate experience with the switch hold procedure in the market. However, all other revisions under the deferred payment plan rules, such as the expansion of eligible customers, would take effect December 1, 2010.

If a customer's obligation to the REP is satisfied by 2:00 PM on a business day, the REP shall send a request to the TDU to remove the switch hold by 6:00 PM of that same business day, and would face enforcement action for non-compliance with this schedule.

Nelson recommended adding a metric that requires REPs to report the total number of customers who had a switch hold applied during a given year, but would not require a metric listing the number of Lite Up customers enrolling on a deferred payment plan versus those who default on the plan (as proposed by consumer advocates).

Critical Care

Separately, Nelson offered draft changes to the critical care rule, including the creation of a chronic condition category separate from critical care (37622).

A critical care residential customer would be defined as a customer or person who currently resides and has been in residence with that customer for the most recent three months who has been diagnosed by a physician as being dependent upon an electric-powered medical device to sustain life. If a battery backup is available, the device is not considered to require electric service.

A chronic condition residential customer would be a customer or person who currently resides and has been in residence with that customer for the most recent three consecutive months who has been diagnosed by a physician with a serious medical condition that requires an electric-powered medical device or electric heating or cooling to prevent the impairment of a major life function through a significant deterioration or exacerbation of the person's medical condition.

REPs would be required to provide 21 days notice prior to disconnecting a critical care/chronic condition customer, and must also send such notice to a secondary contact which will be required of all such customers.

If the TDU refuses to disconnect a critical care residential customer as requested by the REP, the TDU shall cease charging all transmission and distribution charges and surcharges for that premise to the REP.

Designations of critical/chronic status would be determined by the customer's physician and sent to the TDU for review and approval. TDUs will notify the customer's REP of the designation status. While customers would be instructed to send the eligibility form to the TDU, REPs must forward any such forms received from a customer to the TDU electronically or by expedited mail, no later than two business days from receipt of the form.

A REP would be required to notify each residential applicant for service of the right to apply for critical care or chronic condition designation, which shall be included in the terms of service documents. All REPs that serve residential customers would be required to provide information about critical care and chronic condition designation to each residential customer three times a year. The REP may include the information related to the low income rate reduction program in the same notification.

Calif. Window ... *from 1*

in the start of the Year 2 direct access allocation process (initiated by customers submitting six-month advanced notices to take direct access).

The petitioners explained that since the period of time between the first date for submission of NOIs and the close of the Open Enrollment Window is only 75 days, the timeline provided in the Commission's decision, with a maximum 80-day period from notice of NOI acceptance to direct access switch request submission, likely will not allow for the wait list to be used to backfill room that becomes available during the Open Enrollment Window. In other words, after accounting for processing and confirmation of an NOI by the utility, the clock for the initial 60-day enrollment period for submitting a direct access switch request will be May 5, 2010. This means that the initial customers submitting NOIs will have until July 5 (60 days) to submit their direct access switch requests --- or five days after the scheduled end of the Open Enrollment Window. Put simply, "the implementation of the wait-list will be frustrated because it will expire before the utilities can accept any customer NOIs off the wait-list," petitioners noted.

"As a result, a significant amount of room under the cap may go unused in the first year even while there have been numerous requests for service," petitioners said.

Expanding the Open Enrollment Window to 95 days (expiring July 15) would provide sufficient time for any wait-list customers, after being informed that space has been made available due to other customers not executing a direct access switch request for their reserved space, to submit their NOIs to the utility before the Open Enrollment Window period expires.