Energy Choice Matters
April 1, 2010

PUCT Staff Removes Six-Month Limit on Tampering Switch Hold from Latest Proposal

PUCT Staff submitted consensus changes to its prior recommended proposal for adoption concerning meter tampering rules, with the revisions eliminating the previously proposed six-month limit on the period of time during which a REP may place a switch hold on a customer who has benefited from meter tampering (37291, Only in Matters, 3/29/10). The PUCT will address the proposal at its meeting today.

Under Staff's revised proposal, a switch hold would not automatically expire due to the passage of time. Instead, a switch hold would only cease if (i) the REP ends the switch hold upon satisfactory payment, (ii) the REP submits a Move-Out, or (iii) the account is switched to a POLR in a mass transition. Staff's updated proposal makes explicit the requirement that a Move-Out submitted by the REP ends the switch hold. While this was implied under the prior proposal (since the customer would no longer have a REP of record to apply the switch hold), Staff's change removes any ambiguity.

Additionally, Staff proposed that REPs would only be allowed to remove the switch hold if the customer makes satisfactory payment for "the back-billings and meter repair and restoration charges." Staff said that such language is intended to require that the customer make satisfactory payment of, "any back-billed TDU charges to the REP" as a condition precedent for the removal of a switch-hold.

Under the revised draft, energy charges, for the purposes of calculating the TDU's billing of unpaid charges in excess of six months, "shall be determined using the ERCOT-wide bus average

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UGI Seeks to Raise Collateral Threshold in SOS RFP, Waive Group-Specific Load Cap

UGI Utilities, Inc. - Electric Division has petitioned the Pennsylvania PUC to authorize UGI, on an expedited basis, to raise the collateral threshold from $1.5 million to $10 million for counterparties potentially participating in the UGI April default service RFP, and to waive the limit prohibiting any single wholesale supplier from supplying more than one-third of the default service supplies for a default service supply group, in order to ensure robust participation in the April RFP.

UGI has an RFP scheduled to run from April 7, 2010 through April 28, 2010 to acquire default service supplies for Group 1 Customers (less than 100 kW) and Group 2 Customers (100-500 kW).

Currently, UGI's collateral requirements for default service suppliers set the collateral threshold for counterparties either at $1.5 million or $0 depending on (a) their credit rating or (b) whether there is an actual or potential event of default. Essentially, the default service supply contracts provide UGI with the right to demand the provision of collateral or other performance assurance if the market price of power to be delivered exceeds the contract price by $1.5 million for counterparties meeting the minimum credit ratings and who are not otherwise deemed to be in risk of default. In the case of counterparties who have no credit rating or who do not meet the minimum specified credit rating, the credit threshold is zero and UGI can demand the provision of collateral or other performance assurance if the market price of power to be delivered exceeds the contract price by any amount.

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Public Power & Utility Alleges Slamming by Starion in Letter to DPUC

Public Power & Utility, in a letter to the Connecticut DPUC, alleged that Starion Energy has engaged in what PPU regards as, "improper, anti-competitive conduct," including allegations of slamming and misleading tactics. PPU also has filed suit against Starion in Connecticut Superior Court, for the Waterbury district (Public Power & Utili v. Starion Energy, Inc. et al, UWY-CV-10-6004061-S).

An electronic copy of PPU's suit was not immediately available, and PPU said that it did not wish to litigate the matter through the press but would let the suit speak for itself.

In its letter to the DPUC, PPU alleged that it, "has reason to believe that Starion has improperly obtained a confidential and proprietary list of PPU's Connecticut customers and customer information, including account numbers, possibly from a third party, Energy Savings Group." PPU added that it has reason to believe that one or more former PPU investors and principals of broker Energy Savings Group are now investors in Starion.

PPU alleged slamming occurred in the enrollment of the Hispanic Health Council, a former PPU customer, with Starion. Specifically, PPU alleged, and included with its letter an email dated March 5 purporting to show that, Mark Thomas, identified in the email as Business Development Manager for Starion, wrote an email to Bryant Bouchard of the HHC advising him, "We now have a new name. We will be listed on your bill as Starion Energy." According to emails included with PPU's letter, Thomas was previously representing PPU and had enrolled the HHC accounts with PPU in November 2009 (PPU states Thomas was a broker for Energy Savings Group). Thomas, PPU alleges, further informed HHC that he would be sending HHC a form, "... on our new letterhead."

"Obviously, PPU has neither a new name nor a new letterhead, and Starion is not a successor to PPU, " PPU said.

PPU alleged that another customer, the Community Renewal Team, was slammed in a similar manner.

Starion told *Matters* that, "Starion takes its responsibilities to its customers very seriously and continues to work closely with its independent sales representatives to ensure that they comply with all legal requirements and the company's high ethical standards when securing customers on Starion's behalf."

PPU further notified the Department of the actions of the Green Energy Team of Woodstock, Conn. PPU formerly had an affinity-type relationship with the Green Energy Team and acquired customers through it. According to the Green Energy Team's website, the Green Energy Team, in consultation with Energy Savings Group, has elected Starion as its new supplier. However, the website further stated, based on a screen shot submitted by PPU, that "for those households who have joined PPU as members through our efforts, we are going to switch everyone over to STARION ENERGY for even more savings." This language remains on the website, but is now followed by the sentence, "Please contact us only if you do not wish to change generation suppliers."

Based on these statements, PPU alleged that the Green Energy Team, "is taking it upon itself to switch a number of PPU customers to Starion without first obtaining consent of the individual customers." Based on DPUC records, it is not apparent that Woodstock or the Green Energy Team is a registered aggregator that would have the authority to act as the customer's agent in making such a switch on the customer's behalf.

The Green Energy Team website also states that Starion Energy plans to expand its services into Pennsylvania, New Jersey, New York and Massachusetts in the months ahead.

If nothing else, the allegations provide more fodder for the regulation of brokers and other indirect sales channels in Connecticut, which is currently before the legislature.

Trend Towards Variable Rates Leaves Open Questions on Risk of Future Shock

Larger retail electric suppliers downplayed the risks of a repeat of 2008, when five Texas REPs were involved in a POLR transition and several more were sold in distressed sales, in discussing the industry outlook during KEMA's executive forum, arguing that the 2008 experience as well as, in Texas at least, rule changes will mitigate any potential repeat of 2008 the next time prices spike.

A sustained period of low wholesale prices has prompted suppliers, particularly smaller start-ups and boutique retailers, to offer extremely discounted variable rates compared to the long-term fixed rates in the market, which, since the credit crisis, include new credit costs embedded in the fixed rates.

Of particular note is that all of the about half a dozen new start-ups that have entered the Connecticut residential market since 2008 are exclusively offering a monthly variable rate.

Until recently, few, if any, of the established suppliers in the state (e.g. Dominion Retail, Direct, MXenergy, etc.) were offering variable rates (instead offering fixed rates exclusively), though some of them have recently added a variable option likely in response to pressure from the start-ups and market conditions.

These monthly variable rates, which currently are not seeing much volatility, are the first completive rates many first-time Connecticut shoppers are on. That means thousands of new Connecticut shoppers have not yet experienced the potential volatility that can accompany variable rates.

While variable rates are an important choice for customers with greater risk appetites, and a sound product choice in times of low volatility, it is worth noting that many of the Connecticut start-ups offering variable rates currently offer no publicly posted fixed alternative, and it's unclear whether such suppliers have the interest, or capability from a risk management and financing/credit perspective, to quickly and proactively offer a 12-month or longer fixed rate should market prices start rising to convert their variable customer base onto a more secure product, shielding them from volatility which could negatively impact the customer experience with choice, and create political ill-will.

While every crisis presents an opportunity to learn lessons, not all suppliers appreciate such history in executing their strategies. If they did, the 2008 defaults in ERCOT would not have happened, as suppliers would have not engaged in such risks in managing their fixed price books after several post-Katrina defaults and mass transitions that ERCOT saw in 2005. Thus, it seems almost inevitable, as some supplier will try and capitalize on taking more risk in order to win market share against more conservative competitors, that the next retail supplier default, be it in ERCOT or elsewhere, is a matter of when and not if.

TXU Energy CEO Jim Burke conceded that although the PUCT has significantly tightened requirements for REP certification, the barriers are still relatively low (mostly because the PUCT allows lockbox arrangements to meet otherwise fairly strict financial standards). Burke added that such relatively low barriers to entry is how the market should be structured, and noted that the PUCT has addressed the risk of default by mitigating potential harm to customers, through less penal POLR prices, a faster switching process, and other measures.

Still, Burke said that any price shock, especially any that results in a mass transition, leaves the market open to political intervention to mitigate the impacts on customers.

Maura Clark, President of Direct Energy, said that customer education on different product types, as well as greater transparency, is important in ensuring that customers choose products appropriate for their risk appetites. Channel partners must also play a role in steering less sophisticated customers to the proper product type and suppliers with the appropriate risk profile, Clark added.

Jason Few, President of Reliant Energy, agreed, and said that consumers need to ask more questions of their suppliers regarding a product's risks and the supplier's background and risk profile, given how important the customer's decision to choose a supplier is.

PUCO Grants Waiver to Facilitate 2010 NOPEC Aggregation of Additional Customers

The Public Utilities Commission of Ohio granted the Northeast Ohio Public Energy Council and FirstEnergy Solutions' joint request for a waiver of OAC Rules 4901:1-10-01(P) and 4901:1-21-

01(T) to permit NOPEC to offer, on an opt-out basis, electric supply to bundled residential customers at the FirstEnergy utilities taking service under Rider EDR for the rest of 2010 (Only in Matters, 1/27/10).

These bundled service customers, who had taken service under electric heating or other tariffs and are eligible for a credit, are not currently included in the opt-out aggregation because favorable pricing could not be obtained for these customers until FirstEnergy Solutions and NOPEC agreed to a supply contract.

OAC rules require governmental aggregation programs to be at least one year in length, but NOPEC said that a new three-year term for its program with FirstEnergy Solutions will commence on January 1, 2011, which will include Rider EDR customers. Thus, for 2010, the interim Rider EDR customer aggregation would last for less than 12 months. The interim Rider EDR aggregation program will provide Rider EDR customers with a 4% discount off of the bundled supply Price to Compare for 2010.

"Given the benefit to these customers, in combination with the timing of the planned initiation of a new NOPEC aggregation program in January 2011, the Commission finds that Joint Applicants' request for limited waivers to allow the NOPEC aggregation program for Residential EDR Customers to last only during calendar year 2010 is reasonable," PUCO said.

Because the previous NOPEC opt-out notices excluded Residential EDR customers from participation in the aggregation program, PUCO held that a new opt-out notice regarding the eligibility of Residential EDR Customers, the term of the program, and disclosure of the price, terms, and conditions that the government aggregator will charge, including any applicable credits that a participating customer will no longer receive, is necessary.

Briefly:

SAB Power Relinquishes REP Certificate

SAB Power LLC filed at the PUCT to relinquish its REP certificate, stating that it has never served customers.

Md. PSC Fines Coleman Hines, Grants Broker License

The Maryland PSC fined Coleman Hines, Inc. $417.22 for brokering electric service without the requisite license, and granted Coleman Hines an electric broker license to serve commercial and industrial customers at the four investor owned utilities.

PUCT Opens Storage Project

The PUCT opened Project 38118 for an investigation of issues relating to electric energy storage.

Coastal Energy Company Seeks Md. Broker License

Coastal Energy Company, LLC applied for a Maryland electric broker/aggregator license to serve commercial and industrial customers in all service areas. Start-up Coastal Energy is owned by two entrepreneurs, Rob Maricle, who most recently has been vice president at property management firm Mana-Jit, and John Morris, who has started several companies and franchises. Mana-Jit focuses on serving condominiums and, aside from other services, currently offers consulting and contract negotiation for various services and insurance required by condominium boards.

Allied Power Services Seeks Md. Gas Broker License

Ellicott City Investments LLC, d/b/a Allied Power Services, applied for a Maryland natural gas broker license to serve all customer classes at Baltimore Gas & Electric, Washington Gas Light, and Columbia Gas, though it will focus mainly on non-residential customers. Allied Power Services has also applied for an electric broker license (see Matters, 3/31/10).

Taylor Consulting and Contracting Receives Md. Broker License

The Maryland PSC granted Taylor Consulting and Contracting, LLC an electric broker license to serve commercial and industrial customers in all service areas.

Public Power & Utility to Cede Small Volume Marketing Ability in Maine

Public Power & Utility has filed to relinquish its authority to sell to residential and small commercial electric customers in Maine, stating that it will only market to medium and large non-residential customers. PPU requested the return of its $100,000 collateral associated with its prior ability to serve small volume customers.

Evolving Energy Systems Receives Maine Broker License
The Maine PUC granted Evolving Energy Systems LLC a Maine electric aggregator/broker license to serve all sizes of non-residential customers in all service areas (Only in Matters, 3/26/10).

GDF Suez Begins Pricing Deals for Remaining Pa. Territories
GDF Suez Energy Resources NA said that on April 1 it will begin pricing electric supply deals for non-residential customers at PECO, Met-Ed, Penelec, and West Penn Power (Allegheny), for a January 2011 start date. GDF Suez said that it plans to open a Pennsylvania office to support the sales efforts. GDF Suez said that its serves over 50,000 accounts with an estimated peak load totaling over 8,000 MW.

KEMA Notes
The retail energy market could benefit from an intermediary who develops a website dedicated to posting rates for small commercial customers based on several standard load profiles, **Craig Sutter**, Senior Vice President for **GDF Suez Energy Resources NA,** said in discussing sales channels. While several websites offer online auctions or quotes, typically for commercial customers there is no ability to view standing offers (as can be done now for residential service), and customers must wait to receive quotes. Sutter further said that such an intermediary channel could help drive suppliers to adopt a standard contract for small volume commercial customers. Additionally, Sutter said that the market is begging for an intermediary or service provider to develop a holistic solution to retrieving historic load data from the utility, parsing the data, and placing into a usable form. All suppliers currently perform these tasks themselves, and while they likely each have some unique aspects, the bulk of suppliers' efforts are likely the same, Sutter said. Thus, there is an opportunity for an intermediary to step in, establish protocols for data retrieval, and build a clearinghouse which all suppliers could use to quickly obtain usable data.

TXU Energy CEO **Jim Burke** said that surveys done by TXU of customers in municipal/cooperative areas of Texas show that one in three customers would prefer electric choice, though Burke noted translating such sentiment into more munis/co-ops opting into retail choice will take a long time, if possible at all.

Continuing a theme from Tuesday's sessions, **Michael Kagan**, President of **Constellation NewEnergy**, encouraged retail suppliers to get out and speak with their regulators and legislators regarding choice. More importantly, suppliers must convince customers to take the same time and effort to promote and defend choice in front of policymakers, though it's a tall order given the demands on time that end users face in operating their businesses. Noting that the PSC in most states can effectively shut down the retail supply business by fiat (simply by ordering unfavorable default service procurement, for example, which can readily be voted upon), Kagan warned that retail choice does not have much of a chance if regulators do not see and hear customers demanding choice. Kagan, who recently saw Constellation NewEnergy rejoin the Retail Energy Supply Association, said that every supplier in attendance at KEMA should be a RESA member.

Electric Customer Complaints in Texas Fall
Electric consumer complaints filed with the PUCT fell 4% in 2009 versus 2008, Regulatory Compliance Services (RCS) said yesterday in reporting its annual analysis of complaint data. RCS said that the PUCT investigated 9,543 REP complaints in 2009. "While a decrease, these levels remain high, although not as high as the 2003 volumes," RCS said. Billing issues accounted for 5,535 of the REP complaints received related to retail electric service, which is a decrease of over 14% from the 2008 volume.

Constellation Signs NYSE to REC Contract
Constellation NewEnergy has entered into a

two-year agreement to supply the New York Stock Exchange with wind RECs offsetting the approximately 28 million kilowatt-hours of electricity used annually by the NYSE. The deal was brokered by Co-eXprise.

Glacial Announces Calif. Entry

Glacial Energy formally announced its California market entry with a press release yesterday. Glacial's application (Matters, 1/22/10) and licensing award (Matters, 3/23/10) was first reported by *Matters*.

Meter Tampering ... from 1

hub price as calculated by the independent system operator for the applicable time periods," using a more granular definition versus the prior draft.

TDUs, under the updated proposal for adoption, would be required to notify REPs of meter tampering within one business day, rather than on the same day that the TDU determines that tampering has occurred.

Staff's revised proposal includes a new effective date of July 1, 2010. Staff also added language stating that the rules do not limit a TDU's or REP's right to seek redress for meter tampering through civil and criminal proceedings.

UGI ... from 1

UGI reported that, in its default service RFPs conducted to date, UGI has had actual or potential participation by a number of counterparties who had pre-existing EEI agreements in place with differing financial security requirements. UGI said that it has, "met significant resistance from potential creditworthy counterparties," in attempting to impose the $1.5 million threshold called for in the default service plan.

"In particular, a number of counterparties have expressed concern that the $1.5 million collateral threshold amount is too low and could trigger excessive calls for collateral or other performance assurance," UGI said.

"Based on its discussions with potential counterparties to date, UGI is concerned that there may not be a sufficient number of counterparties participating in its RFP scheduled for April 7, 2010 through April 28, 2010 to produce the optimal results," UGI reported.

UGI believes that if the collateral threshold is raised from $1.5 million to $10 million for counterparties meeting the minimum credit rating thresholds, "a number of additional counterparties would execute new EEI agreements in order to participate in UGI's planned April 7-28, 2010 RFP process."

"Additional approved suppliers will assist in fostering a competitive bidding process potentially leading to cost savings for UGI default service customers. Counterparties without credit rating or falling below the minimum credit rating thresholds specified in paragraph 10 to the EEI agreement collateral annex would continue to have a collateral threshold of zero, as would any counterparty in default or experiencing a potential event of default," UGI said.

Additionally, UGI reported that it currently has two wholesale suppliers that are nearing the one-third cap on serving load within a particular Customer Group, and said that the cap could limit competition in the prompt RFP. UGI noted that the PUC had previously granted a waiver of the load cap as it applied to swing service in the December RFP (after only one bid was received prior to the waiver of the cap, which the PUC judged to be a non-competitive result). The waiver did encourage additional bidder participation and the ultimate certification of the RFP results.

If the one-third load cap were waived for the April 7-28 RFP, "additional bids may be received making the RFP process more competitive and robust," UGI said.

UGI requested expedited consideration of its petition on or before the Commission's April 22, 2010 public meeting to facilitate the participation by potential wholesale suppliers in UGI's default service RFP process scheduled to close on April 28, 2010.