Energy Choice Matters

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DPUC Requires Suppliers to Cease Marketing to Customers Within Conn. Municipal Utilities

In a broadly worded letter to electric suppliers, the Connecticut DPUC has directed suppliers to cease all marketing efforts in Connecticut's municipal electric utilities, but the DPUC's short and generic prohibition leaves many questions for suppliers.

The Connecticut DPUC has learned that some competitive electric suppliers may be marketing to end-use customers within the geographic service territories of Connecticut's municipal electric utilities. None of the municipal utilities have elected to offer retail choice at this time.

In a letter to all licensed Connecticut suppliers and aggregators, the DPUC informed suppliers that it, "requires the immediate cessation of marketing of electric generation services by Suppliers to end-use customers within the geographic service territories of Connecticut's municipal electric utilities." The letter is not docketed as any formal proceeding. The DPUC did not make clear under what authority or statute it was instituting the action, and the letter contains no findings of fact, formal conclusion, or formal ordering language. The letter was signed by the DPUC executive secretary, and not three Commissioners as most formal decisions are.

The DPUC did not elaborate on what type of "marketing" it has learned has occurred at the munis (e.g. door-to-door, outbound telephonic solicitations, direct mail, etc.), nor did it define or specify what the prohibited "marketing" entails -- e.g., is the DPUC concerned with actual solicitations in which an agent interacts with a customer, or is the DPUC extending the prohibition to any form of marketing, including generic brand building and messaging which may diffuse into a municipal

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Md. PSC Rules Allegheny Bill View Access Costs Must Be Included in POR Discount

The costs of Allegheny Energy's interim solution to provide Maryland competitive suppliers with electronic bill view access shall be included in Allegheny's POR discount rate, the Maryland PSC ordered yesterday (Only in Matters, 3/3/10).

The level of Allegheny's discount rate is still unknown, and the Commission said that further direction on the manner in which the calculation of the POR discount rate shall be made and implemented will be provided in a separate order that will be forthcoming regarding Allegheny's POR compliance filing.

As only reported by *Matters*, RM17 requires electric utilities to provide a supplier using utility consolidated billing, "with the same electronic access to customer bill information that it provides to the customer." Allegheny has said that since it does not offer all customers such electronic bill view access, it is already in compliance with the provision. Staff, however, considers that the CheckFree payment option available to Allegheny customers, which is a third party service, amounts to electronic bill view access, and said that Allegheny must develop electronic bill view access for suppliers.

Allegheny said that its new customer information system will provide suppliers with electronic bill view access. However, the new system will not be completed until at least 12 months from early

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PUCT to Examine When Sharyland Will Open Cap Rock to Choice

PUCT Chairman Barry Smitherman has introduced into the acquisition of Cap Rock Energy by Sharyland the question of when Sharyland will open the ERCOT portion of Cap Rock to retail choice, in adding the question of retail choice to the preliminary order in the case (37990).

Hunt Transmission, Sharyland's parent, had previously told *Matters* when the acquisition was announced that it would not make its determination on whether Cap Rock should begin a transition to competition until after regulatory approvals are granted and the sale closes. At that time, customer feedback will determine if Cap Rock wishes to offer retail choice, Hunt Transmission said (Only in Matters, 12/18/09).

In later pre-filed testimony in the merger docket, Sharyland said that, "Because Sharyland currently offers retail competition in its existing service area, should the Commission direct Cap Rock to develop a transition to competition plan, Sharyland would leverage its experience in implementing retail competition to the benefit of Cap Rock customers" (Only in Matters, 2/23/10).

Cap Rock Energy is partially in ERCOT and partially in the Southwest Power Pool. The SPP portion of Cap Rock accounts for 75% of its load. Originally, Cap Rock was a cooperative when retail choice began, and was exempted from retail competition. As it transitioned to an investor-owned utility, legislation prohibited the introduction of retail choice to the service area, but that provision has since expired and the PUCT is free to direct a transition to competition as it sees fit. Cap Rock does not own any generation, and relies on purchased power to serve its load.

In the summer of 2008, there was a small backlash against the lack of choice at Cap Rock, mostly prompted by higher generation costs and an editorial in the *Midland Reporter-Telegram*. The PUCT established docket 36130 to house customer letters asking the Commission to introduce competition to the region; about a dozen customer letters were filed (Only in Matters, 9/12/08).

Any transition to competition at Cap Rock would be governed by PURA § 39.102(d) & (e), which directs the Commission to consider several factors such as the presence of a qualified power region, whether the service area is split among power regions, and any impact on reliability.

Direct, Hess Urge Action on PGW Alternative Default Service Supplier Question

Direct Energy and Hess Corporation have requested that the Pennsylvania PUC address without further delay the status reports submitted in a collaborative process examining whether an alternative supplier should assume the default service responsibility for some or all of Philadelphia Gas Works' customers (R-2008-2073938).

Direct and Hess made the request after an ALJ refused the Retail Energy Supply Association's request to raise issues related to the collaborative status reports in PGW's current rate case.

In November 2008, PGW submitted a request for a expedited base rate increase and extraordinary relief due to its inability to access the credit markets in the wake of the financial meltdown. In that proceeding, Interstate Gas Supply and Dominion Retail had noted that PGW purchases natural gas for its customers in the amount of $600 to $700 million annually. The cash for these purchases comes entirely from borrowed funds. Considering that PGW's level of borrowing had become problematic, the suppliers sponsored testimony recommending that most or all of PGW's load should be transitioned to competitive suppliers.

In response, the PUC ordered PGW to convene a collaborative process to explore options for transitioning some or all of PGW's customers to an alternative default service supplier. The collaborative process began February 5, 2009, with status reports and reply comments filed on October 21, 2009 and November 4, 2009.

In PGW's current rate case, RESA had asked to include in the record consideration of

several issues related to the potential for an alternative default service supplier that were raised during the collaborative -- namely costs that would be incurred by PGW to study proposals made in the collaborative, recovery of such study costs, and legal issues related to alternative default service suppliers. RESA noted that it was PGW's prior base rate proceeding that gave rise to the Commission's concern about PGW continuing the financial burden of providing gas supply for its customers, and thus RESA considered such limited issues appropriate.

Though RESA said that it was not intending to bring the entire collaborative and question of whether PGW should ultimately pursue an alternative default service supplier into the base rate case, the ALJ denied RESA's proposed issues and mischaracterized RESA's request as injecting the collaborative proceeding into the rate case.

Direct and Hess reported that the costs associated with studying the feasibility of transitioning sales customers to competitive supply is an issue where the parties to the collaborative process reached a stalemate in November 2009, which remains unresolved.

As RESA cannot pursue this question in PGW's rate case, absent action by the Commission on the collaborative status reports in docket R-2008-2073938, "the entire collaborative process will be a nullity and the anticipated reduction in PGW's working capital requirements will have failed to be realized," Direct and Hess said.

Ontario Energy Board Limits Universal Gas Licence Renewal to Two Years

The Ontario Energy Board has approved the renewal of the gas marketer licence of Universal Energy Corporation for a limited period of two years, rather than the normal five years, and placed several other reporting obligations on Universal in response to prior investigations and penalties imposed on Universal.

Universal, which is now owned by Just Energy, is not currently soliciting Ontario gas customers, nor does it plan to. The renewal of the licence was sought so that existing customers could be served without requiring a transfer of those customers to the Just Energy licence.

"It has been less than a year since Just Energy acquired Universal. It would be advantageous for the Board to have before it evidence of the effectiveness of Just Energy's management of the customer issues acquired with the Universal gas contracts. That evidence will be available only with the passage of time," the Board said in finding a shorter licencing period was appropriate.

"The shorter term of two years will enable the Board to review the status of Universal's marketing plans when considering a subsequent application for renewal. If marketing will occur under the authority of the licence, the Board may choose to impose conditions related to marketing activity at that time, which are not needed at the present time," the Board added.

Universal had argued against the two-year limitation since many of its existing contracts do not expire for four years, introducing uncertainty regarding a future renewal. "I find that the public interest in maintaining consumer confidence in the gas market, facilitated through the Board's licensing regime, outweighs any commercial uncertainty that may occur for Universal or its customers. I find that some restriction of term is justified for the renewal of the licence of an entity recently penalized for misleading consumers," a Board Counsel said in a delegated order.

Furthermore, the Board required Universal to notify the Board if it intends to resume marketing under the authority of the renewed licence, and with that notification, provide the following information:

- The date marketing will commence;
- A description of all types of marketing that Universal will use; and
- Confirmation that the requisite training of its sales representatives has been undertaken

Additionally, Universal must immediately notify the Board of the transfer or hiring, directly or indirectly, of any of Universal's previous management team as listed in Universal's application. Specifically, the condition relates to persons employed or retained by Universal in the capacity of vice-president or a more senior role during or prior to July 2009.

Board Staff had recommended that Universal be required to file granular complaint reports for a period of 30 days. The Board found such granular reports to be unnecessary and burdensome, but it did direct Universal to file, on a quarterly basis, the following:

- Confirmation that during the preceding quarter, the nature of all complaints received by Universal has been recorded and reviewed;
- A description of any systemic problems that have been identified; and
- A statement of any action taken by Universal to remedy the identified problems

Staff had also argued that the extension of the renewed licence beyond two years should only be granted if the number of complaints relating to Universal's gas contracts is reduced to no more than 10 complaints per quarter.

The Board declined to impose any such other contingencies on future renewal of the licence apart from its initial limit of a two-year renewal. Staff did not justify why a level of 10 complaints per quarter was a reasonable statistic to use as a licencing condition, the Board said. The Board further called the 10-complaint target, "unrealistic at present."

The Board is currently reviewing Universal's application to renew its electricity retailer licence.

PUCT Publishes Deferred Payment Rules for Comment

The PUCT has voted to publish for comment revised rules relating to deferred payment plans, levelized payment plans and critical care customers which would extend eligibility for deferred payment plans, but allow REPs to place a switch hold on customers agreeing to a deferred payment plan, and customers with an inability to pay who agree to a levelized payment plan (36131).

Commissioner Donna Nelson said that the switch hold was not perfect but is acceptable and necessary, since under deferred payment plans REPs are extending credit to customers, and, for 2009, REPs have seen bad debt levels of 1.5% to 8%.

Additionally, though not citing any party, Nelson rebutted criticisms that the switch hold was never contemplated when opening the original rulemaking, citing an open meeting transcript showing the switch hold was discussed among the issues prompting the rulemaking (The Office of Public Utility Counsel had criticized the switch hold as a departure from the rulemaking's intent; Matters, 3/26/10).

Nelson also clarified that, with respect to levelized payment plans, the rule would only allow a switch hold for customers who enter the levelized payment plan to avoid disconnection, and not customers who simply elect the levelized payment plan for convenience when in good standing.

Chairman Barry Smitherman expressed concern with the proposed rule's effective date of December 1, 2010 for the expanded customer protections and deferred payment plan eligibility, but June 1, 2011 for the switch hold provision. Smitherman worried that in the time between the two dates, the legislature could withdraw the Commission's authority to allow a switch hold, while leaving the new expanded protections in place without any means for REPs to offset the higher risk, though Nelson said that the legislature could elect to do that even if the switch hold took effect on December 1.

The Commission added to the proposal for publication several questions regarding enforcement and penalty authority suggested by Commission Kenneth Anderson, who recommended that if a REP erroneously places a switch-hold flag on an ESI ID, the REP shall be considered to have committed a Class B Violation.

Additionally, Anderson included in the proposal a question asking whether the switch hold provisions should be subject to a minimum amount such as $500. In other words, for deferred payment plans of less than $500, the REP would not be allowed to impose a switch hold.

"If a threshold amount is not adopted, what are the ramifications to the competitive market if a significant portion of the ESI IDs in the market are subject to a switch-hold at any given time?" Anderson asked.

Anderson further asked if customers entering into a deferred payment plan during extreme weather emergencies or natural disasters should be exempt from the switch hold.

The Commission also published for comment

the proposal to revise the definition of critical care customers (37622).

Conn. DPUC Relieves Suppliers of Negative Accident Reporting Obligation

The Connecticut DPUC has relieved competitive electric suppliers of a new monthly reporting obligation of accidents if no accidents occurred during that month, but declined to exempt non-fatal vehicular accidents involving the supplier's employees or property from being included in the required accident reporting (08-09-02).

As only reported by *Matters*, the new reporting regulations had required suppliers to report, "[a]ny accidents to employees or to members of the public which were or may have been connected with or due to a utility's operation, property or facility, including traffic accidents, resulting in property damage of $50,000 or more, or in personal injury, whether or not hospitalization is required" (Only in Matters, 2/24/10).

As noted by *Matters*, this could implicate electric suppliers to the extent the supplier, or its agents, utilize vehicles for solicitation or promotional efforts (since the regulation applies to any accident resulting from the "operation" of the supplier, which ostensibly would extend to sub-contracted solicitation efforts).

The DPUC declined to modify this rule as it, "considers the reporting of accidents involving a utility's employees or operations necessary for the Department to keep fully informed as to the manner of operation of all public service companies and electric suppliers with respect to the safety of the public and of the employees of such companies."

However, the DPUC has relieved suppliers from filing monthly accident reports if no accidents occurred during a month. Under the original regulations, suppliers would have had to submit reports even if no accidents occurred. Suppliers had called such negative reporting burdensome.

PUCT Declines to Rule on Two Certified Issues in Gexa Variable Complaint

The PUCT declined to issue a ruling on a certified issue relating to whether, under the prior Substantive Rules, proper notice is a condition precedent to a legitimate increase in the price charged to a customer under a variable rate contract, finding that the issue needs to be further briefed and a record developed at SOAH (37569).

The certified issue was one of several before the Commission in the complaint of a customer against Gexa concerning a variable rate contract which the customer alleges compelled Gexa to adjust the retail price in relation to contemporaneous wholesale prices (Only in Matters, 3/4/10).

Commissioner Donna Nelson was prepared to rule that precedent notice was not required under the old rule, and that the rule only required contemporaneous notice, however Chairman Barry Smitherman and Commissioner Kenneth Anderson felt there was enough ambiguity as to whether the certified issue and rules were addressing prior or contemporary notice, and sent the issue back to SOAH for further briefing.

The Commission also declined to rule on a certified question of whether the complainant has a right to a remedy regarding claims of discriminatory pricing. The customer alleged, based on the incorporation of the Uniform Commercial Code in Gexa's contract, that Gexa was required to offer the complainant the same variable rate as Gexa was offering to similarly situated customers at the same time.

While Chairman Barry Smitherman and Commissioner Kenneth Anderson said that as PURA § 17.157b(3) allows the Commission to order refunds for overcharges resulting from the failure of a REP to comply with its contract, and the contract incorporated the UCC, the complainant would have the right for a remedy since the UCC provides for non-discrimination and good faith dealings.

Nelson, however, said that what the UCC actually requires, and how it applies to the claim of discrimination, is not clear from the parties' briefs, and the Commission agreed to set the issue for further briefing.

The Commission ruled on two other certified issues, finding that the complainant is not entitled to relief for any claims relating to allegedly misleading statements, nor is the complainant entitled to relief regarding claims Gexa failed to respond to the complaint in good faith, as both matters are reserved for Commission enforcement action, and do not create a private right of action.

Finally, the Commission ruled that, with respect to any claims for which the complainants have no remedy, such claims should be dismissed from the proceeding.

CL&P Proposes Time-Based Rate Options

Connecticut Light & Power said that it has filed with the Connecticut DPUC proposals for three new pricing options, presumably for Standard Service generation, including time differentiated rates as part of a recommendation for the deployment of advanced meters. A copy of CL&P's filing was not immediately available.

Under CL&P's proposed timeline, smart meter installation would begin in 2012.

According to CL&P, all customers would have the choice to sign up for one of two new pricing options: Peak-Time Pricing, or a four-hour Time of Use rate. A Peak-Time Rebate option would be made available exclusively to limited-income customers.

CL&P would also make hourly usage information available to customers on its website.

Briefly:

BlueStar Energy Services Receives Delaware License

The Delaware PSC has granted BlueStar Energy Services an electric supplier license.

Nelson, Anderson Express Concerns on RPS Carve-Out

While taking a wait and see approach to a potential carve-out in the Texas RPS for non-wind renewables, and perhaps a specific solar carve-out, Commissioner Donna Nelson said at yesterday's open meeting that she has concerns with a solar set aside. Commissioner Kenneth Anderson also expressed concerns about picking technologies while not pre-judging any issue. In a story first reported by *Matters*, Staff has issued a strawman for a 500 MW non-wind carve-out and 50 MW solar carve out (First in Matters, 12/22/09).

PUCT Adopts Switch Hold for Meter Tampering

The PUCT has adopted a meter tampering rule which allows REPs to place a switch hold on accounts that have benefited from meter tampering, and to block non-legitimate Move-Ins for those ESI IDs (37291). The rule also limits the REPs' obligation for back-billed wires charges to six months. Although the rule will take effect July 1, 2010, TDUs have agreed to implement the six-month back billing limit (as it applies to REPs) immediately, shortening the current 12-month back billing period. There were no major changes to the proposal for adoption (see analysis in Matters, 3/12/10, 3/29/10 and 4/1/10). Commissioners did rule that, in cases where the TDU itself pursues collection from the customer of back-billed amounts in excess of six months, any amount in excess of unpaid wires charges will only be shared 50-50 with the current REP of record, and not any prior REP associated with the ESI ID during the time period in which tampering occurred.

Oncor Reports Nearly 2,000 Customers Over-Billed due to Error in Final Mechanical Meter Reading Transcription

Oncor reported during the PUCT open meeting that 1,827 customers receiving advanced meters were overbilled due to an error in transcribing the final mechanical meter reading. The average overbilling from such errors was $127. The PUCT approved its independent meter testing program with Navigant Consulting yesterday, which will include a review of the meter hardware itself as well as communications and backoffice systems/software plus comparisons of historic customer usage versus current recordings. Results are expected to be reported in June.

PUCT Publishes TCRF Rule for Comments

The PUCT voted to publish for comment Staff's proposed Transmission Cost Recovery Factor rule with Commissioner Donna Nelson's additional question (37909, see Matters, 3/31/10).

Just Energy Lowers Guidance

Just Energy Income Fund lowered its previous guidance for year ending March 31, 2010, citing warmer than normal temperatures in the fourth quarter. Previous guidance had been a year-over-year per unit increase in gross margin in excess of the previous target of 5% to 10% and distributable cash after margin replacement at the lower end of the 5% to 10% per unit growth range. Growth in distributable cash after margin replacement for the year ending March 31, 2010 is now expected to be approximately 2% per unit rather than the lower end of the 5% to 10% target range. The gross margin increase is still expected to be above the 5% to 10% target.

Macquarie Completes Purchase of Integrys Energy Services Wholesale Electric Book

Macquarie Group has completed its acquisition of substantially all of the wholesale electric marketing and trading portfolio of Integrys Energy Services. The electric portfolio of Integrys Energy Services has had an average total volume in excess of 125 million megawatt-hours over the past 3 years, Macquarie said.

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service area if broadly applied (e.g. various media advertisements).

The quoted direction above is the only guidance the DPUC gave to suppliers, and it raises several issues due to its lack of specificity.

First, while with door-to-door sales it should be straightforward for a supplier to refrain from sending agents to solicit in municipalities, it may not always be clear in which utility area a customer resides when performing outbound telesales (in which the supplier may only have a phone number and no address) or direct mail (which, even though the supplier will have an address, will be burdensome for suppliers to scrub to check each address's utility area, due to zip codes, and perhaps even address place-names, straddling both investor-owned and municipal utility areas). For example, the Borough of Jewett City within the town of Griswold has a municipal Department of Public Utilities, but other parts of Griswold are served by Connecticut Light & Power, and it's unclear whether there are areas with a "Griswold" address line served by the muni, with other parts of Griswold served by CL&P.

Additionally, as noted above, the DPUC's order is so broadly worded (prohibiting all "marketing" within a municipal utility), that it could cover broad, non-solicitation marketing efforts aimed at brand building which happen to reach some municipal utility customers. For example, Interstate 395 runs near Jewett City, and perhaps may cross through its territory. However, obviously thousands of drivers pass through I-395 daily who are not Jewett City residents, and a supplier could decide to begin a billboard campaign along several areas of I-395, perhaps one of which is located in Jewett City. Based on the rather broad language in the DPUC's letter, it is not apparent that such marketing by a supplier would be permissible. Taking it to its extreme, the quoted language in the DPUC's letter could be interpreted as requiring suppliers not to place ads in any publication sold, or on any broadcast transmitted to, the geographic area of a municipal utility.

The broadly worded prohibition also ignores the fact that end use customers within a municipal utility may not necessarily buy exclusively from the muni, and the prohibition is not limited to prohibiting marketing against the muni's specific customers. For example, a franchisee or retailer with several Connecticut locations may have its home office "within the geographic service territor[y]" of a Connecticut municipal utility, but from that location, conduct business to purchase electric supply for all of Connecticut locations at CL&P and United Illuminating. The DPUC's prohibition could be interpreted as prohibiting marketing to this end use customer.

Moreover, a certain city which happens to have a municipal utility might also have a major attraction which draws crowds -- sports field, mall, concert venue, etc., at which a supplier

may wish to set up a booth/exhibit to market to customers who will be coming from areas outside of the municipal utility. This behavior may not be permissible under the DPUC's language.

Though ambiguous, suppliers could argue that the inclusion of the phrase "to end-use customers" in describing the marketing prohibition in the geographic service territories of Connecticut's municipal electric utilities grants them some leeway in broader brand-building marketing efforts. Put simply, if a Connecticut supplier engages in a marketing effort within the geographic service territory of a Connecticut municipal electric utility, but such marketing efforts are not directed to the end-use customers in that area, is the marketing still prohibited? Is any marketing within a municipal service area seen by a municipal customer considered to actually be marketing to that end-use customer, or, since that end user is not actually the target audience, is the marketing not considered prohibited marketing by the DPUC?

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March (now 11 months). An interim solution will cost $50,000 to implement.

As of January 2010, only 9,800 customers at Allegheny are on competitive supply. Of that total, only 3,000 residential customers are shopping. Staff has noted that the electronic bill view measure will most likely be helpful to suppliers serving small volume customers who are less sophisticated when it comes to energy purchasing.

Moreover, as previously noted by *Matters*, POR, which suppliers feel is necessary to serve Allegheny residential customers in large quantities, may not even be in place prior to end of the interim bill view solution (making the need for the interim bill view solution moot, yet placing its costs into the POR discount rate). The interim solution may only be in place for as little as eight months (subtracting three months implementation from the best-case scenario of the new customer information system being completed 11 months from now).

Staff had recommended including the interim bill view access costs in base rates (Matters, 3/10/10), but the Commission rejected this recommendation.

"The Commission disagrees with Staff's recommendation that all ratepayers in the Company's service territory should shoulder the implementation costs of the interim solution. Those costs will be incurred for the benefit of competitive electricity suppliers and customers who choose those suppliers. They should be borne, therefore, by the suppliers," the PSC said in a letter order.

"Staff's assertion that the 'proposed $50,000 programming costs would result in a charge of roughly $7 per customer if directly allocated to the customers benefitting most directly from the bill view function' assumes that suppliers will pass on this component of the POR Discount, dollar-for-dollar, to residential and small commercial customers currently exercising choice. Staff cites no support for this assumption. Through the POR Discount, the Company's recovery of this implementation cost from suppliers will occur over a period of time. And the extent, if any, to which suppliers ultimately might recover this cost from current or future choice customers in the Company's service territory or elsewhere is unknown," the Commission added.

Aside from directing that costs be recovered in the POR discount rate and not base rates, the Commission approved as filed Allegheny's compliance plan for bill view access, including the interim process and use of the upgrade of its customer information system as a long-term solution.