

# Energy Choice

# Matters

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## Md. PSC Opens Investigation of Electric Price to Compare

The Maryland PSC has opened a proceeding (Case 9228) in order to conduct a "comprehensive review" of the "Price To Compare" that appears on the Maryland investor-owned electric utilities' monthly customer bills and is published on the utilities' websites.

The Price To Compare, the PSC noted, is intended to assist customers in making an informed decision when shopping for a competitive electric supplier. "With the recent implementation of new Competitive Electric Supply regulations (COMAR 20.53), the Commission believes that it is an opportune time to investigate whether the 'price to compare,' as calculated by the IOUs and set forth on a customer's monthly bill, is an effective tool that facilitates or influences a customer's decision regarding whether to select a competitive electric supplier and provides sufficient and accurate information to make the comparison between the competitive offers and Standard Offer Service ('SOS') provided by the customer's IOU," the Commission said.

Though not addressed in the Commission's order initiating the proceeding, the Maryland Price to Compare is not simply the bypassable charges a shopping customer may avoid in a particular month, as is the case in many other jurisdictions. Rather, the Maryland Price to Compare is calculated by taking the total kilowatt-hour usage for all customers within a specific rate class for a 12-month period and multiplying that amount by the actual generation and transmission rates. This total amount is then divided by the total 12-month kilowatt-hour usage, which provides an average per

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## Staff Says PUCT Has Authority to Address Claims Relating to UCC

The PUCT has "implied power" to exercise jurisdiction over electric contracts which incorporate the Uniform Commercial Code, PUCT Staff said in a brief on a certified issue in a complaint regarding a Gexa variable rate contract (37569, Only in Matters, 4/2/10).

The UCC is relevant with respect to two claims in the complaint; first, the complainant's allegation that Gexa engaged in price discrimination among similarly situated customers (which is prohibited by the UCC); and second, the complainant's allegation that Gexa breached its promise to set the variable rate so that it bears a reasonable relationship to contemporaneous changes in wholesale market prices for electricity (invoking the UCC's provision for fair dealing).

"[I]t is apparent that while the Legislature has not expressly conferred jurisdiction on the Commission to grant a remedy where a REP has incorporated the UCC into a terms of service agreement, it has provided the Commission with the implied power to exercise such jurisdiction. There is no provision in the Public Utility Regulatory Act, nor in the relevant portions of the Texas Uniform Commercial Code, which expressly delegates jurisdiction over UCC claims to the Commission. However, the Commission does have the implied power to assert jurisdiction over UCC claims because that power is reasonably necessary to carry out its express duty under PURA § 17.157 to resolve disputes between a customer and a REP," Staff said.

Specifically, Staff noted that PURA § 17.157(b)(3) gives the Commission the authority to require

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## **Briefly:**

### **DTE Energy Supply Receives Illinois Electric License**

The Illinois Commerce Commission has granted DTE Energy Supply, Inc. an alternative retail electric supplier license to serve non-residential customers with annual consumption greater than 15,000 kWh at the Ameren companies and Commonwealth Edison (Only in Matters, 2/18/10).

### **Respond Power Seeks Pa. Electric License**

Respond Power LLC has applied for a Pennsylvania electric supplier license to serve all sizes of residential and commercial customers in all service areas, though it will initially focus on PPL and then PECO. Respond Power LLC was formerly known as United Energy Group LLC and is affiliated with Major Energy Services. Saul Horowitz is listed as the CEO of Respond Power, who has developed several suppliers including Major Energy. Other principals include David Sobel, Asher Fried, and Stuart Naftel, all of whom are also of Major Energy. Respond Power LLC previously filed for a Maryland natural gas license, but its application was dismissed without prejudice in August 2009 for an incomplete application (Only in Matters, 8/28/09).

### **inCharge Registers as N.H. Electric Aggregator**

inCharge LLC has registered as a New Hampshire electric aggregator serving customers in all service areas. inCharge said that it will soon be expanding into Connecticut, Maine and New York, and is currently active in Massachusetts and Rhode Island.

### **O&M Resources Seeks Texas Aggregation Certificate**

O&M Resources applied for a Texas electric aggregation certificate to serve residential, commercial and industrial customers.

### **Paul Maffa Joins Skipping Stone**

Paul Maffa has joined energy consultant Skipping Stone in a business development and consulting role focused on the company's natural gas practice area. Maffa will also be

responsible for new client development for the company's subsidiary Capacity Center, an interstate gas pipeline real time information system. Maffa has 25 years of natural gas experience in sales, purchases, market research, transportation optimization, pipeline capacity management and asset origination, with positions at Integrys Energy, BP Energy, US Generating, and Citizens Gas Supply.

### **PUCT to Hold Electric Vehicle Workshop**

PUCT Staff will hold a workshop regarding issues related to electric vehicles on May 12 (37953). Among other things, the workshop will address, "competitive market policy issues as they relate to the charging of vehicles."

### **Michigan PSC Closes Universal Energy Compliance Docket**

The Michigan PSC has closed a docket which had remained open to monitor the compliance of Universal Energy (now owned by Just Energy) with a settlement regarding marketing entered into between the supplier and the Commission, as the Commission is satisfied that all terms of the settlement agreement have been met (U-15509). "The Staff also believes that the company has taken appropriate actions to correct faulty marketing practices that were at the root of the Staff's complaint. Furthermore, the Staff reports that Just Energy has established a positive relationship with the Staff to constructively work toward resolution of customer issues and complaints. According to the Staff, complaints from customers of Just Energy are currently quite low relative to other alternative gas suppliers," the Commission said.

### **NRG Energy Wins N.Y. RPS Contract**

NRG Energy has received a 10-year contract from the New York State Energy Research and Development Authority for power generated using renewable biomass fuel at its Dunkirk Generating Station in western New York. The project, which is expected to come online by the end of 2011, will produce up to 15 MW of the station's total output by co-firing with clean wood biomass. The contract was awarded via the RPS competitive procurement. NRG is also planning to use biomass as a primary fuel at its Montville Generating Station after repowering

one of the facility's existing units to produce up to 40 MW of electricity.

### **PUCT Approves Luminant ET Services Company's Change to Option 2 REP**

The PUCT granted Luminant ET Services Company's request to change its REP certificate from an Option 1 REP to an Option 2 REP, under which it will serve a limited number of specified customers (Only in Matters, 3/30/10).

### **Michigan PSC Grants Gas License to New Integrys Energy Services Subsidiary**

The Michigan PSC granted Integrys Energy Services - Natural Gas, LLC an alternative natural gas supplier license. As previously reported by *Matters*, the Integrys Energy Services Limited Liability Company is replacing Integrys Energy Services' existing Michigan-licensed supplier, Integrys Energy Services Inc., as part of an internal reorganization.

### **PUCT Staff Recommends Civil Penalty Against dPi Energy**

PUCT Enforcement and Oversight Staff have recommended that dPi Energy be fined \$73,250 based on the results of an audit concerning compliance with the Commission's customer protection rules, dPi disclosed in response to a Staff interrogatory in its application for a REP certificate amendment to recognize new ownership (Only in Matters, 3/25/10).

There has been no formal Notice of Violation docketed by Staff as of yet, and dPi said that, after being presented with Staff's findings, it is currently preparing a response based on, "certain disagreements with, and errors in, the [Staff] report." dPi also said that it will soon be meeting with Staff to pursue settlement.

dPi stressed that the actions under investigation occurred before the purchase of dPi by Amvensys Telecom Holdings LLC.

Last fall Staff initiated a series of audits examining REPs' compliance with various consumer protection provisions.

### **Mass. DPU Approves Recovery of Until Smart Grid Costs in Basic Service Rates**

The Massachusetts DPU approved Fitchburg Gas and Electric's request to recover all of the costs of its smart grid pilot via basic service rates (09-31).

The Until subsidiary has proposed a smart grid pilot program consisting of two components: (1) a Demand Reduction program that will evaluate the demand reduction impacts of different combinations of time-of-use rates and enabling technologies; and (2) a Distribution Automation program that will address distribution capacitor bank control, power quality monitoring, and Supervisory Control and Data Acquisition (SCADA) system development. Until is only seeking cost recovery of the dynamic pricing Demand Reduction pilot.

As this pilot will only be available to customers taking basic service from Until, the DPU agreed that such costs are related to basic service and should be recovered solely from basic service customers. Previously, the DPU had denied Nstar's request to recover several smart grid pilot costs in basic service rates, as contemplated in the Green Communities Act, because the DPU said that those Nstar pilots benefited all distribution customers and not only basic service customers (see Matters, 3/18/10).

The Massachusetts component of Until's Demand Response smart grid pilot will cost about \$200,000, though the DPU has ordered that some costs (such as consulting and meter interface systems), which were proposed to be split 50/50 with a New Hampshire Until pilot, shall instead be allocated based on customer participation in each state, with Massachusetts accounting for only one-third of the pilot participants. Re-allocating these costs so that Massachusetts customers only pay one-third of such costs, and removing contingencies as directed by the DPU, Until is authorized to collect about \$162,000 through basic service rates, though recovery is not automatic and Until must justify recovery in a future filing.

## Michigan PSC Clarifies That Issue of Decoupling Cost Recovery Remains Open

The Michigan PSC has clarified in a rehearing order that the question of whether adjustments due to the decoupling mechanism at Detroit Edison will be made on a total company basis or on a per rate class basis will be decided in the first decoupling reconciliation proceeding, and was not decided in the Commission's January order (U-15768).

Energy Michigan had noted that in the January 11 order, the Commission stated that Energy Michigan's proposals regarding decoupling cost recovery should be addressed in the decoupling reconciliation proceeding, but shortly thereafter the order stated that any future surcharge adjustments would, "be applied separately for each customer class," leading to confusion of whether the issue had been decided.

Energy Michigan favors settling surcharges or credits stemming from decoupling on a total company basis, rather than separately for each customer class (Only in Matters, 1/12/10).

### ***Md. ... from 1***

kilowatt-hour rate for generation and transmission for the rate class, which is the Price to Compare. The Price to Compare is thus designed to give an average price for bypassable charges for the entire year (combining, for mass market customers, two distinct SOS pricing periods), rather than providing a customer with an apples to apples comparison of their bypassable charges under SOS for a given month, and the rate they would pay for competitive supply.

This makes it confusing for customers attempting to evaluate a competitive electric offer against their actual bypassable charges.

The Commission directed the utilities to file comments regarding:

- How are you calculating the price to compare?
- How is the price to compare displayed on the bill?
- Does any explanation accompany the price to compare number on the bill? If so, what is that

explanation?

- Where is the price to compare found and how is it displayed on your website?
- How often does the price to compare get updated?
- What are the costs and other implications of listing more than one price to compare, e.g., the current and next Standard Offer Service price along with the applicable dates of each?

The PSC invited other stakeholders to file comments on what calculation and display of the price to compare would be of most use to customers, and why? Comments are due May 7.

On June 1, 2010, the Commission will hold a legislative-type hearing regarding the Price to Compare.

### ***UCC ... from 1***

a REP to refund or credit an overcharge if a REP has failed to comply with the Commission's rules or its contract with a customer. "If the Commission did not have jurisdiction over a UCC claim, then its ability to resolve disputes and to award a refund or credit for an overcharge based on a REP's failure to comply with its contract with a customer would be thwarted. The Commission's jurisdiction over UCC claims is thus reasonably necessary to carry out its express duties under PURA § 17.157(a) and (b)(3)," Staff said.

The complainant argued that under the UCC, a price-fixing seller's duty of good faith cannot be waived, even by agreement, and requires that in raising or otherwise setting the price, the seller must be "honest[] in fact" and observe "reasonable commercial standards of fair dealing."

"Therefore, if a price-fixing REP raises or otherwise sets the price in a manner inconsistent with these 'reasonable commercial standards of fair dealing,' the price charged represents a compensable overcharge," the complainant said.

However, Gexa said that even if the Commission were to find a violation of the UCC, the complainant is without relief, since the Commission cannot fix a price on which to base the refund of any overcharges.

Gexa noted that the complainant, in pursuing his claims regarding price discrimination, will have to ask the Commission to determine what price he should have been charged -- if not the price provided in his contract.

However, "[s]ince Texas law prevents the Commission from setting such a price, Gexa asserts there is no remedy the Commission can afford Complainant if the Commission were to agree with his contract interpretation and that this claim should, therefore, be dismissed," Gexa said.

"The Commission may interpret its rules and the contract between the Complainant and Gexa to determine whether Gexa has met its obligations under the rules and the contract and order refunds or credits if it finds a rule or contract violation but it may not set the price Gexa should have charged, so no remedy is available," Gexa added.

The Commission might, in an enforcement action, decide to levy an administrative penalty for any violation of its rules, "but it cannot set a price different than that prescribed by the contract," Gexa stressed.

"In exercising its powers under PURA and its rules in this matter, the Commission may interpret the price provisions in the retail contract in question, but it cannot set a price different from that in the retail contract and then declare a refund or credit based on that different price," Gexa added.

In an amicus brief, Reliant Energy said that the Commission only has authority to grant a remedy as set forth in PURA § 17.157 (namely the refund of overcharges related to the contract). "However, based on the doctrine of Primary Jurisdiction the Commission is not the appropriate forum to determine whether the contract has violated the UCC," Reliant continued.

"The question is a difficult one because the Commission has jurisdiction to review the REP-retail customer contract dispute, but the Commission does not have any expertise to interpret or analyze the UCC, which is referenced in the contract," Reliant said.

"Under the doctrine of primary jurisdiction ... the certified question does not require the Commission's special knowledge, experience and services to determine a technical and

intricate matter of fact. To the contrary, the issue presented would require the Commission to render an opinion on a subject matter that is not addressed in its statute delegating the Commission authority and over which it has no technical expertise. Moreover, the issues in this case deal specifically with Gexa's contract terms and conditions and the Complainant's contract. Any decision resulting from interpreting the relevant information should be limited to this particular set of facts and should have no bearing on the rules or regulations of the Commission, although an answer to the certified issue as framed could be general enough to affect other REPs and their contracts," Reliant added.