

# Energy Choice Matters

*April 15, 2010*

## **Pepco Proposes Making Critical Peak Rebate the Default SOS Option in D.C.**

Pepco has proposed defaulting all SOS customers in the District of Columbia to a Critical Peak Rebate by 2014, in a filing regarding dynamic pricing options under its advanced metering system (FC 1056, 1070).

Customers would also have the option of electing Critical Peak Pricing, or the current SOS rate structure.

Pepco proposed phasing in its dynamic pricing options, first to residential customers. Pepco recommended introducing dynamic pricing to 5,000 randomly selected residential customers in 2012 (presumably with the June 1, 2012 start of the delivery year, though Pepco was not explicit), after advanced metering installation is complete. These 5,000 customers would be defaulted onto the Critical Peak Rebate SOS option, with the opportunity to elect Critical Peak Pricing or the current SOS rate structure.

All eligible SOS residential customers would be defaulted to the Critical Peak Rebate SOS option in 2013, Pepco said. Pepco's gradual phase-in of dynamic rates is intended to ensure that the necessary billing systems revisions operate smoothly and that required customer communications are carefully tested and refined.

For non-residential SOS customers, the migration to the default Critical Peak Rebate SOS option would begin with 2,000 customers in 2013, followed by the migration of all SOS customers onto the

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## **ICC Fines Just Energy \$90,000 in CUB Complaint Case, Orders Marketing Changes**

The Illinois Commerce Commission has fined Just Energy \$90,000 and ordered the gas supplier to modify its contract verification procedures and marketing materials in adjudicating a natural gas complaint proceeding initiated by the Citizens' Utility Board and several other consumer groups (08-0175). The final order reduces a proposed order's recommended fine (\$178,500); does not find that Just Energy lacked managerial competency (as the proposed order did); and reverses an ALJ's conclusions regarding the ICC's ability to directly enforce the provisions of the Illinois Consumer Fraud Act and Illinois Deceptive Trade Practices Act, a finding that impacts all gas suppliers (Only in Matters, 1/15/10).

The Commission ordered Just Energy to undergo an independent audit of its door-to-door sales program for mass market customers, with a focus on hiring, training, solicitation procedures and performance, targeting of specific communities and demographics (including but not limited to socioeconomic status, household language, and race), compensation, sales verification, complaint tracking and reporting, discipline, and other compliance practices.

Furthermore, the ICC is requiring Just Energy to use additional measures in its mass market, door-to-door third-party sales verification procedures. Among other things, Just Energy will be precluded from conducting verification of a contract if the sales agent is in the customer's presence. Just Energy's verification script must now include a confirmation that the call is made in the language

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## **DPUC Urges Positive Energy to be More Vigilant in Agent Oversight**

The Connecticut DPUC urged Positive Energy Electricity Supply, LLC to, "be more vigilant in its oversight of agents acting on its behalf," in a letter memorializing a substantiated complaint recently filed with the Department against the aggregator.

According to the DPUC's letter, Positive Energy confirmed to DPUC Staff that a broker acting on Positive Energy's behalf, "has identified itself to a Connecticut consumer as calling 'on behalf of the Connecticut Energy Assistance Program,' and to recommend Positive Energy as an electric supplier." Positive informed the DPUC that it has counseled the broker regarding his sale scripts and, "characterized the broker's misrepresentation as unethical and deceptive."

The DPUC said that it takes such complaints "seriously" and said that, pursuant to Connecticut General Statutes Section 16-245u(a), it will continue to monitor the electric supplier market and will initiate necessary action to prevent unfair or deceptive trade practices.

## **Md. Staff Supports Comprehensive Review of BGE SOS Administrative Charge**

The Maryland PSC should address the entire SOS Administrative Charge in response to Baltimore Gas & Electric's request to raise the allowance for cash working capital (CWC) included in the SOS Administrative Charge, Maryland PSC Staff said (Case 9221).

As only reported by *Matters*, BGE is seeking to increase its recovery of cash working capital costs for all customer classes due to the move from monthly to weekly billing in PJM (Only in *Matters*, 3/31/10).

The residential Administrative Charge is 4 mills/kWh, comprised of a rate of return component of 1.5 mills; an incremental cost component of 0.5 mills; and an SOS uncollectibles component and administrative adjustment component, which are both covered by the remaining balance of 2 mills.

Staff noted that the Administrative Charge was designed as a package as part of a negotiated settlement in Case 8908, in which the SOS design was developed. "The return, CWC and other components of the administrative charge were among the most heavily contested and carefully negotiated portion of the SOS settlement. The give and take among parties created a finely crafted balance in the administrative charge, and BGE's request to alter the CWC cost recovery will change that balance," Staff said.

"Since that is the case, Staff, OPC and other interested parties should have the ability to address all elements of the administrative charge to devise and advocate for what they believe to be appropriate readjustments," Staff argued.

Staff further noted that recovery for residential cash working capital costs is accomplished through the return component of BGE's Administrative Charge, and thus if the residential cash working capital costs are increased, "the increase could technically be considered an increase in BGE's return for providing SOS." The settlement provides that any adjustment to the return component may not cause the return to drop below 1.25 mills/kWh or increase above 1.75 mills/kWh, Staff noted.

The Office of People's Counsel also argued that any examination of cash working capital cost recovery should include a review of all components of the Administrative Charge, but said that, under legislation, BGE is prohibited from collecting the residential return component, which expressly includes cash working capital costs, until December 31, 2016.

OPC cited legislation in the 2006 Special Session which held that for a period of 10 years, BGE shall suspend the collection of the residential return component of the Administrative Charge. Subsequent legislation briefly lifted this prohibition, but only through June 1, 2010, OPC said.

OPC contended that in adopting the legislation, "the General Assembly understood and intended that it was suspending BGE's right to collect the return component of Residential SOS, inclusive of the CWC revenue requirement."

OPC further said that its preliminary analysis shows that the 0.5 mill/kWh incremental cost

component in the residential Administrative Charge results in BGE collecting approximately \$6.3 million from its residential customers per year. According to BGE's incremental cost report filed with the Commission on September 11, 2009, in Case No. 8908, BGE's incremental cost for providing SOS for all non-residential customer classes was \$0.2 million. BGE did not report its incremental costs for providing SOS to residential customers, but OPC said that, "it would be unreasonable to assume that it is many times higher than the cost for providing the service to the non-residential classes."

"[I]t therefore appears that the Company would be collecting more than its 'verifiable, prudently incurred costs' for providing SOS if those rates are not adjusted," OPC argued.

Additionally, the current return component of SOS rates, 1.5 mills/kWh, results in BGE collecting approximately \$18.9 million per year from its residential customers, OPC said. "Given the experience that has been gained in providing SOS, the level of direction and review of the procurement process provided by the Commission, and the fact that the utilities pass through all wholesale power costs to customers, OPC submits that these levels of return are excessive," OPC contended.

OPC further objected to the administrative adjustment within the Administrative Charge, which is collected from SOS customers and paid out to all distribution customers in a particular rate class. "This accomplishes a transfer of money from SOS customers to customers who have switched suppliers," OPC said.

"OPC also submits that the Administrative Adjustment, and the transfer of funds from SOS customers to customers who have switched suppliers associated with the collection and return of the Administrative Adjustment, is inequitable to SOS customers. This mechanism is not mandated by the PUC Article; it is a creation of the Settlement Agreement and the Commission order adopting that agreement. This provision should also be reviewed to determine if it is justified," OPC said.

## Calif. PUC Opens Investigation of Constellation NewEnergy for Alleged Short RA Position

The California PUC has initiated a proceeding in order to consider whether to penalize Constellation NewEnergy based on the Consumer Protection and Safety Division's (CPSD) allegation that Constellation was 180 MW short in its January 2009 resource adequacy showing (I.10-04-010).

According to CPSD, Constellation was required to have 739 MW under contract when it reported on November 26, 2008 for use in January 2009. However, CPSD alleged that Constellation's November 26, 2008, Month-Ahead System Resource Adequacy (RA) Compliance Filing secured inadequate resources for January 2009. The alleged deficiencies stem from three contracts listed as supplying capacity for January 2009 when in fact the contracts were not valid in January 2009. Two of the contracts were in place from May through September of 2009, and the third contract from October through December of 2009.

One of the contracts was with Sempra Generation for 130 MW and the other two contracts were with Shell Energy for 25 MW each. Constellation, CPSD alleged, thus only had 559 MW of valid capacity for January 2009. Accordingly, CPSD alleged Constellation had a total deficiency of 180 MW for the month of January, which resulted in a system-wide deficiency.

Based on the formula in D.05-10-042, the penalty for a resource adequacy requirement deficiency of 180 MW would be \$1.8 million.

### ***Briefly:***

#### **Eisenbach Consulting Receives Connecticut Aggregation License**

The Connecticut DPUC has granted Eisenbach Consulting, LLC an electric aggregator certificate to serve residential, commercial, industrial, municipal and governmental customers in all service areas (Only in Matters, 2/19/10).

**VeriServ Corporation Receives Connecticut Aggregation License**

The Connecticut DPUC has granted VeriServ Corporation an electric aggregator certificate to serve commercial, industrial, municipal and governmental customers in all service areas (Only in Matters, 1/14/10).

**Summit Energy Services Seeks D.C. Broker License**

Summit Energy Services has applied for a District of Columbia electric broker license to serve commercial and industrial customers.

**Utility Management Services Receives Ohio Broker License**

Utility Management Services has received an Ohio electric broker/aggregator license to serve commercial, mercantile and industrial customers in all service areas (Only in Matters, 3/15/10).

**Direct Energy Business Signs Electric Contract with PowerOptions**

Direct Energy Business has signed a four-year agreement worth \$500 million with PowerOptions to supply electricity to PowerOptions' 500 members. The agreement with Direct Energy provides PowerOptions' members with the ability to purchase directly from the wholesale market. Members can also opt for a fixed all-in price for budget certainty. PowerOptions is a Massachusetts energy purchasing consortium for non-profits, with \$220 million of annual energy commodity purchases and a combined demand of approximately 200 megawatts of electricity and 11 Bcf of natural gas usage. Of its 500 members, about 350 currently buy electricity through the PowerOptions program. Direct currently supplies PowerOptions with electricity, and the new contract extends that relationship through May 31, 2015.

**First Choice Power Names Jeff Schiefelbein VP of Sales**

First Choice Power has promoted Jeff Schiefelbein to vice president of sales. Schiefelbein, most recently director of sales, has been on the First Choice Power leadership team for more than three years, and built the retail electric provider's broker channel from scratch

when he started at the company as manager of indirect sales. "This year will be a growth year for commercial sales," Schiefelbein said. "We have new sales representatives across the state, renewed relationships with brokers and enhanced our product offerings," Schiefelbein added.

**Ambit Notifies PUCT of Intent to Offer CPDS Prepaid Service**

Ambit Energy has officially filed with the PUCT a notice of its intent to offer customers a prepaid product using a Customer Prepayment Device or System (CPDS). Ambit's advanced meter-based prepaid product was first reported by *Matters* last month (Only in Matters, 3/31/10). As previously reported by *Matters*, Ambit expects its prepay prices to be 20-30% lower, and in some cases up to 40% lower, than current non-AMS prepaid rates due to the reduction of bad debt risk associated with the use of 15 minute interval data.

**Bounce Energy Supplying All Customers with Renewable Energy in April**

Bounce Energy said that it will provide all of its customers with renewable energy for the month of April at no additional charge. Additionally, Bounce said that it plans to launch an optional paperless billing program in May.

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Critical Peak Rebate SOS option in 2014, unless the customer opted for either of the two alternate rate options.

Under the Critical Peak Rebate SOS option, customers would be paid \$1.25 per kWh of reduction during Pepco-called peak events (up to 15 per summer). Otherwise, the customer would pay the normally applicable flat SOS rate in all hours. Customers would also not be penalized for not reducing usage during peak times under the Critical Peak Rebate option, and thus there is apparently no economic motivation for customers to leave this default option for the current SOS rate structure, which will have the same rates in all hours, simply minus the rebate.

Under Pepco's pro forma tariffs, customers served under the Critical Peak Pricing Option would pay \$1.50/kWh for SOS during critical

peak events (up to 15 per summer). This price is derived from a Base Critical Peak Price which is the average of the 60 highest PJM LMPs during the summer of 2008, adjusted for line losses to the user level. This Base Critical Peak Price is then updated to reflect the most recently available PJM capacity and energy market prices, and will be adjusted for the prior year's customer response to the price signals.

For the Pepco DC PJM Zone, the energy component of the Base Critical Peak Price is \$0.42/kWh for all the Residential rate schedules (R, AE, RAD-R, RAD-AE and R-TM) and for GS LV ND and GS LV D; \$0.41/kWh for GT-LV; and \$0.40/kWh for schedules GS 3A, GT-3A and GT-3B.

The capacity component of the Base Critical Peak Price is based on the average of the PJM Base Residual Auction Results for years 2011-2012 and 2012-2013, adjusted for line losses to the user level and spread over the 60 hours of potential exercise of Rider DP. This capacity component is \$0.81/kWh for all the Residential rate schedules and for schedules GS LV ND, GS LV D and GT-LV; \$0.79/kWh for schedule GS 3A; \$0.78/kWh for schedule GT-3A; and \$0.77/kWh for schedule GT-3B.

The total Base Critical Peak Price is between \$1.22/kWh and \$1.23/kWh at the low voltage level and ranges from \$1.17/kWh to \$1.19/kWh at the high voltage level. However, for rate simplicity, the minor differences due to voltage levels were disregarded and the same Base Critical Peak Price for all classes would be set at \$1.25/kWh.

Under Critical Peak Pricing, SOS rates for non-peak hours would be discounted from the otherwise applicable rate (varying by class but generally by 2-3¢/kWh) to make the Critical Peak Pricing option revenue neutral.

"Over time as customers modify their electricity use, Critical Peak Pricing is expected to become a preferred dynamic rate for many customers," Pepco said.

For both the Critical Peak Rebate and Critical Peak Pricing options, peak events could be called on non-holiday weekdays during the period from June 1 through October 31, and may last from 2 p.m. through 6 p.m., for a maximum of 4 hours. Critical peak events may be called under conditions including, but not limited to,

higher than normal PJM day-ahead LMPs, or during emergency conditions. Pepco would make a reasonable attempt to notify customers of an anticipated critical peak event by 8 p.m. of the day prior to an event, although unexpected same-day emergency events may occur. Customers will receive an automated phone call, email, or text message, or combination thereof limited to two options, at the customer's option, notifying them that a critical peak event will occur on the following day.

Customers would be permitted change their SOS pricing option once each calendar year by giving notice to Pepco at least 30 days prior to the June billing cycle.

Pepco proposed no immediate changes to SOS procurement as a result of the new rate options. "Over time, it is possible that the SOS procurement process could be modified so that customers are segmented by their pricing option. Requiring non-responders to remain under dynamic pricing rates could lessen supplier pricing benefits to those customers who actively respond," Pepco said.

Pepco has asked the PSC to establish a customer education working group to help familiarize customers with their rate options and to develop customer education materials. Additionally, Pepco said that it would implement a marketing plan for the dynamic rate options, "that will include customer communications tactics, for example, traditional direct mail, development of collateral communications materials, radio and print advertising, and an aggressive social media campaign."

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understood by the customer, and each verification question, "should request verification of a single fact and there should be a sufficient pause for an answer to each question before another question is asked." All substantive revisions to third party verification scripts must be submitted to ICC Staff within 48 hours.

The Commission also mandated additional requirements for mass market, door-to-door sales and marketing materials. In any printed or digital materials provided by Just Energy, directly or indirectly, to customers in Illinois, any price comparison between Just Energy and a

gas utility shall be limited to the utility serving the area in which the consumer's residence or business is located. All depictions of utility prices shall display at least three years of data in no greater than quarterly increments, and shall also display Just Energy's offered price for the same or equivalent product(s) or service(s) for each of the same increments. No future price of any utility shall be visually depicted and nothing shall depict or suggest that a utility's future prices will be higher than the last month for which the price is known, the ICC ordered. Likewise no marketing material may contain language that in general suggests that future prices in the abstract (e.g., national or international price trends) are going to be higher.

The ICC held that no regional distributor or crew coordinator shall retain any commission, bonus or reward based in any way on any act or omission that violates any law, regulation or order enforced by the ICC. "An incentive structure for employees or agents that rewards reduction of complaints and non-compliances is permissible and encouraged," the Commission said.

Customer requests for service cancellations must be forwarded to the utility for cancellation within two business days of Just Energy receiving the request from the customer, and without any barriers beyond normal legal retention efforts, the ICC directed. The ICC also incorporated various provisions from a prior settlement between Just Energy and the Illinois Attorney General into its order.

Just Energy will be required to report complaints promptly to the ICC and also provide monthly complaint reports.

### ICC's Findings

Though the ICC made no formal finding that Just Energy, based on a high number of complaints relative to other suppliers, lacked managerial competency required for licensure, it did make several conclusions regarding complaints and criticized Just Energy's approach to customer complaints.

First, the ICC found that customer complaints correlate with management sufficiency. "A complaining customer is an unsatisfied customer. It is a fundamental management objective to reduce or eliminate

complaints, in order to obtain or retain customers. Rational gas supply managers regard customer complaints as a reflection of their competence, because complaints constrain revenue, thereby jeopardizing the viability of the enterprise," the ICC said.

However, "the Commission is reluctant to determine the significance of [Just Energy's] 1.9% complaint ratio as this Commission has not previously determined what level of complaint ratio is appropriate," the ICC added, stating that it must reserve the flexibility and discretion to make such a determination on a case-by-case basis. As a benchmark for levels of customer complaints does not currently exist, the Commission could not conclude that Just Energy engendered too many consumer complaints compared to other suppliers.

Still, the ICC rebuked Just Energy's handling of complaints, particularly as they increased over 15 months. "It is troubling to the Commission that a supplier would trigger this degree of consumer disapproval, and that the market disturbance goes without correction over many months. While a company's management may need some period of time to recognize the nature and magnitude of the problem, the 15-month duration involved here is far too long," the ICC said.

While Just Energy's defense relied in part on corrective actions taken, the Commission held that, "the company misses the point when it emphasizes its follow-up investigations of purported sales agent misconduct. Complaints need to be reduced, not merely addressed later."

"[T]he effectiveness of an after-the-fact disciplinary scheme lies in the degree to which it reduces violations. If it does not, then it is either insufficient or the misbehavior it addresses is unpreventable. **Given the inherently problematic nature of door-to-door sales, the latter may be true, and the only effective response may be to ban such solicitation,**" the ICC said [emphasis added].

The Commission cited Just Energy's "tolerance" for customer cancellations and drops as another area of concern. For example, 60% of all contracts signed from February 2008 to November 2008 were cancelled or dropped by the customer, the company, or the utility that would have delivered gas. Approximately 20%

of total sign-ups were cancelled at the customer's behest within 70 days of sign-up in both 2007 and 2008. Given that Just Energy's internal policies require the immediate wholesale disbursement of its prepaid gas supplies, even at a loss (which must be included in public reporting), if it cannot enroll sufficient customers, the ICC said that a high level of terminations creates pressure to sign new customers.

"The Commission is also concerned with the intrinsic tension between what its sales contractors can lawfully say about its product and the characteristics of the product itself. [Just Energy] touts its gas service as a price stability product, because it does not vary over the contract's life. To make that a value proposition for customers, the salesperson must emphasize the volatile nature of the utility's competing price, which fluctuates over time. Inherently, the contractor ... will have to emphasize the prospect of upward fluctuation - the customer has little incentive to sign a contract to avoid downward fluctuation of the utility's price. That is a slippery slope for a salesperson on commission. In fact, a [Just Energy] salesperson's service agreement is 'considered terminated without notice' when no customer contracts are submitted for Respondent's approval in any three consecutive weeks. The temptation to suggest, or even predict, rising future utility gas prices - and corresponding savings for a customer on [Just Energy's] fixed price - is patent," the ICC said.

The ICC found eight violations of subsection 19-115(c) of the Alternative Gas Supplier Law, which requires valid customer authorization. "We do not view this as a trivial number. Indeed, each of these offenses caused aggravation and disruption for the affected customer and is, for that reason, actionable and punishable under the statute," the ICC said. The ICC did not find violations of subsection 19-115(c) in two of the four instances cited by complainants in prefiled testimony.

The Commission did not find a "practice" of unauthorized switching as alleged by complainants but stressed that there is no minimum number of non-compliances needed to affront 19-115(c)

The ICC found a single violation of

subsection 19-115(f) of the Alternative Gas Supplier Law (plain language price disclosure) due to Just Energy's July 2008 welcome letter. The ICC found that the letter, which lists Just Energy's price, also "purports to depict an increase in future Nicor gas commodity prices ... [which] substantially distorts the price disclosure the law requires, by presenting the consumer with an unsupportable price comparison."

The ICC noted that had Just Energy not presented a distorted price comparison involving its own price, but simply depicted the utility's price, it would not have affronted subsection 19-115(f), since that provision only governs supplier pricing, not utility pricing.

The \$90,000 fine represents a \$10,000 penalty for each finding of a violation.

Regarding alleged violations of the Consumer Fraud and Deceptive Business Practices Act, the ICC found that there was not sufficient evidence to sustain the complaint. Moreover, the Commission found that it lacks the authority to directly enforce provisions of the Consumer Fraud Act. The jurisdiction for a determination of whether a Illinois Consumer Fraud Act violation occurred, "resides in the circuit court, and once such a determination is found, then the Commission has the authority to determine that the AGS is not in compliance with all other applicable laws and is in violation of the PUA [Public Utilities Act]," the ICC said.

For the same reasons, the ICC concluded that it lacks jurisdiction to determine any violations of the Illinois Deceptive Trade Practices Act. Such jurisdiction resides in the circuit court.

The ICC further found that the complainants did not meet their burden of proving that the specific cents-per-therm termination charges in Just Energy's contract are unenforceable penalties. The Commission noted that since Just Energy has agreed in other settlements to waive the fees, and since legislation now caps termination fees at \$50 for mass market customers, the termination fee count of the complaint is, "a solution in search of a problem." Given this, the ICC said that it does not view the complaint proceeding as an appropriate vehicle for rendering a comprehensive decision on the nature and scope of termination provisions in customer contracts.

## Criticism of CUB

The ICC criticized CUB and other parties for inserting themselves as arbiters of complaints.

"The Commission notes at the outset that Complainants have attempted to perform many of the same functions our own Consumer Services Division ('CSD') would have performed had these parties not interjected themselves between the customer and the ICC. The Complainants, as noted in the record in this proceeding, actively sought customer complaints against [Just Energy] and, in many cases, settled these complaints before they could make their way through our regulatory process for Commission decision," the ICC said.

"While this interventionist practice may serve the pecuniary interest of Complainants, and serve to elevate them in the eyes of the few consumers for which they are able to resolve complaints, this is a disturbing trend. We believe that such conduct severely limits this Commission in its ability to determine the level and severity of complaints and determine proper and timely regulatory solutions. Indeed, we find it quite disingenuous for Complainants to argue that this Commission should consider [Just Energy's] prior complaint history when this is the first time the Commission officially has been made aware of any of these alleged violations through its regulatory process, because the Complainant's tactic of settling these complaints with no admission of guilt keep these complaints from our regulatory purview," the Commission chastised.

"By settling these issues outside of the Commission, Complainants have left the Commission essentially blind with regard to any facts, alleged misconduct or resolutions of a Company actively in business in Illinois. This conduct legally hobbled the Commission's ability to take any appropriate and timely corrective measures. To put it squarely, we submit such a scheme, in fact, harms the overall competitive gas market and its consumers because the Commission is stymied in its ability to address and correct any issues when warranted. Most importantly, the Commission believes this practice is harmful to the very people who the Complainants suggest they are trying to serve and protect, Illinois Consumers," the ICC said.