

Energy Choice

Matters

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D.C. PSC Denies Revisions to WGL Interruptible Tariff Citing Impacts on Competitive Supply

The District of Columbia PSC denied as deficient Washington Gas Light's proposed changes to Rate Schedules 3 (Interruptible Sales Services), 3A (Interruptible Delivery Services), and 6 (Small Commercial Aggregation Pilot), raising concerns about the impact on competitive supply (GT97-3).

As only reported by *Matters*, WGL's application is mostly related to implementing interruptible daily balancing, with daily nomination and delivery requirements for all interruptible delivery volumes, to reduce the cost subsidization that benefits competitive suppliers absent interruptible daily balancing (Only in *Matters*, 7/13/09).

The PSC's order was not chiefly concerned with interruptible daily balancing, but rather additional tariff language changes which were not fully explained in WGL's petition.

Specifically, WGL's pro forma tariff provides that, "the Company shall have the right to curtail or interrupt delivery of gas whenever, in the sole judgment of the Company, such interruption is required to maintain the safe and reliable operation of its system or some portion of its system, regardless of whether or not the customer, designated agent, or supplier, or supplier [sic] has delivered gas to a Company city-gate."

The PSC said that the proposed change appears to permit WGL to impose "interruptions" of delivery service not necessarily related to "emergency" purposes (which was the purpose contained in the original tariff language) and to consume the delivery of gas that was delivered to the city-gate

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DPUC to Fine Clearview Electric \$27,500 for Alleged Slamming, Compliance Violations

The Connecticut DPUC has issued a Notice Of Violation and assessment of civil penalty in the amount of \$27,500 against Clearview Electric for alleged unauthorized enrollments as well as a host of alleged compliance reporting-related violations.

Clearview has 20 days to request a hearing before the department regarding the notice (09-11-12).

As only reported by *Matters*, the DPUC opened an investigation into Clearview due a rise in customer complaints, including alleged slamming complaints, against the company, and Clearview's alleged failure to timely respond to the Department's requests for information (Only in *Matters*, 11/16/2009).

"In general, Clearview's multiple violations of regulatory requirements as set forth in this notice indicate a broad and intentional disregard for regulatory, public policy, protection and disclosure measures. Clearview's failure to comply is so extensive that the Department can only conclude that it never had an intention of observing any consumer protection, regulatory or market discipline measures," the Department alleged.

However, since responding to the DPUC's investigation in November 2009, the DPUC concluded that, "[i]t appears that Clearview has instituted staffing and policy changes responsive to the matters investigated in this proceeding."

"Complaints against Clearview have decreased; it has taken efforts to more closely comply with

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Pepco, Delmarva File Updated Md. SOS Rates

Pepco and Delmarva filed updated Type II SOS generation service charges for the period beginning June 1, 2010, and residential and Type I SOS GSCs for the period beginning October 1, 2010. Rates do not include transmission or other adjustments (PCA, etc.).

Pepco Residential/Type I SOS

(10/1/10 - 5/31/11)

Rate	¢/kWh
R	9.885
R-TM	
On Peak	10.302
Intermediate	10.167
Off Peak	9.544
GS, EV, T	9.853
SL	8.960
TN, SL-TN	9.607

Pepco Type II SOS (6/1/10 - 8/31/10)

Rate	¢/kWh
MGT LV II	
On Peak	8.841
Intermediate	8.157
Off Peak	7.866
MGT 3A II	
On Peak	8.717
Intermediate	8.044
Off Peak	7.757

Delmarva Residential/Type I SOS

(10/1/10 - 5/31/11)

R	9.0277
R-TOU-ND	
On Peak	9.0277
Off Peak	9.0277
SGS-S, TN, OL, ORL, Separately Metered Space Heating (SGS-S, LGS-S)	9.2516
Separately Metered Water Heating (SGS-S, LGS-S)	9.1710

Delmarva Type II SOS (6/1/10 - 8/31/10)

SGS-S	7.9680
LGS-S, GS-P	
On Peak & Off Peak	7.9680

Md. PSC Directs WGL to Further Detail Desired Hedging Authority

The Maryland PSC directed Washington Gas Light to file a detailed proposal for an interim hedging program for the 2010 summer storage injection season and the winter 2010-2011 heating season by May 7, 2010, after concluding that the Commission does not have enough information to rule on WGL's request for continued hedging authority (Case 9224).

Earlier this year, the Commission had concluded that, unlike last year, directing the utilities to follow any new purchasing parameters for the 2010 summer storage injection season would not be in ratepayers' best interest. Commission Staff had cited the above-market costs imposed on customers as a result of last year's hedges, as well as the utilities' historical experiences with hedges (Only in Matters, 3/29/10).

In response, WGL, stating that it believes continued hedging would be in the public interest, requested that the Commission authorize a hedging program that does, "not have any limits on when the company would exercise it or any price strikes on how the company should exercise it." Absent a Commission order, WGL would not have explicit authority to conduct any hedging programs for the summer storage injection season or for the winter 2010-2011 heating season.

The PSC said that it would like to have additional information prior to a decision on whether or not to authorize an interim hedging program for WGL for the summer storage injection season of 2010 and the winter 2010-2011 heating season. Accordingly, WGL was directed to submit a proposal for a hedging program for that time period, with a specific explanation of the company's preferred parameters regarding timing, pricing, and the utilization of financial instruments. WGL, "should explain why, if it believes a hedging program to be in the public interest, it will not proceed with a hedging program unless it receives explicit Commission authorization to do so," the Commission said. WGL is to file its proposal by May 7, and the Commission will accept comments from interested parties through May 14.

Separately, in speaking before the National Energy Marketers Association Annual Restructuring Conference, Calvin Timmerman, the PSC's Assistant Executive Director, said that he thinks that LDC hedging "may be over" in Maryland, citing the Commissioners' reaction at the March 29 hearing on hedging for the 2010 summer storage injection season and subsequent decision not to order such hedging. Given recent experiences with hedges, Timmerman said that the PSC appears to be "extremely skeptical" of continued hedging by gas utilities. Timmerman was not speaking on behalf of the Commission.

DPUC Re-opens Starion Energy Licensing Docket for Investigation of PPU Complaint

The Connecticut DPUC has re-opened Starion Energy's licensing docket, 09-10-10, to house an investigation initiated by the DPUC into certain allegations that have been made against Starion by Public Power & Utility concerning the enrollment of electric customers (Only in Matters, 4/1/10).

The docket has been re-opened notwithstanding an April 23 letter from PPU CEO Bob Gries informing the Department that after thorough discussion with Starion, PPU wished to withdraw its complaint as it said, "we have resolved our business differences on all topics of concern."

Gries further wrote that, "PPU and Starion are companies of integrity with the utmost respect for their obligations to Connecticut's consumers. Furthermore, PPU and Starion are confident they will move forward in a healthy competitive nature. As both entities have clarified their obligations with respect to one another and taken steps to ensure compliance with applicable law, we trust this constitutes a satisfactory resolution of this matter."

In re-opening the Starion docket, the DPUC has made public correspondence from Starion in response to the complaint that had not been previously docketed.

As only reported in *Matters*, one of PPU's principal claims regarded an email sent from Mark Thomas, an independent contractor but

identified in the email as Business Development Manager for Starion, to the Hispanic Health Council, a PPU customer. Specifically, PPU had alleged, and included with its letter an email dated March 5 purporting to show that, Mark Thomas 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." Thomas had previously brokered HHC for PPU, and PPU alleged that the email implied that PPU had a new name.

Starion informed that DPUC that upon notification from PPU of this email, it sent a letter to Mr. Thomas, dated April 6, 2010, which: (1) directed Mr. Thomas to explain the basis for his statements to Mr. Bouchard as quoted above; (2) stated that Starion would not tolerate any illegal or unethical business practices; and (3) cited the pertinent provisions of the Independent Sales Operator Agreement by and between Starion and Mr. Thomas, which Agreement states that Mr. Thomas could be terminated for violating the law, including prohibitions against slamming, and making misrepresentations to customers.

In a letter dated April 12, 2010 addressed to Starion, Mr. Thomas responded to the PPU allegations in which Mr. Thomas explained that the reference to "we" in his email to Mr. Bouchard refers to the group of independent sales consultants with whom Mr. Thomas was working, and his intent was to inform the Council that the group was now marketing a new name - Starion.

"Notwithstanding Mr. Thomas' stated intent, Starion is concerned that the Council may have misconstrued Mr. Thomas' communications. To avoid any future misunderstandings with customers, Starion has sternly warned Mr. Thomas and other consultants working on the Company's behalf to refrain from making any statements that could even remotely be construed to mean that PP&U is now Starion or that could confuse or mislead a customer on any aspect of the Company's business," Starion told the DPUC.

Starion also informed the DPUC that, contrary to PPU's allegation, HHC was never switched to Starion. Similarly, Starion said that it never enrolled the Community Renewal Team, which PPU had claimed was also slammed.

Starion also sent a letter to its various sales channels that, "any mass solicitation (mail, email, web, etc.) referencing or representing Starion Energy requires expressed and advanced written approval." In the same letter, Starion reminded its channels to, "always keep your respective customers' personal information such as account numbers, telephone numbers, etc. confidential and certainly do not transmit via email or share with any other party without the customer's consent."

Starion also provided information regarding its relationship with the Green Energy Team of Woodstock, Conn., an aggregation which was formerly supplied by PPU. According to the Green Energy Team's website, the Green Energy Team, in consultation with broker 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." Based on this statement, PPU alleged that customers were being switched without proper authorization.

Starion informed the DPUC that on March 17, 2010, Jim Stratos, chair of the Green Team, provided Starion with written consent to switch the electricity accounts of approximately 30 Green Team members to Starion's service. Mr. Stratos represented to Starion in an email that he obtained the consent of all 30 customers to switch their service to Starion and has maintained a record of such consents. Mr. Stratos also provided Starion an email, dated March 17, 2010, from Allan Walker, First Selectman of Woodstock, Connecticut, to Mr. Stratos confirming that the Green Team members did not need to vote on the appointment of Starion as the Green Team's preferred electricity supplier.

What is still unclear is under what authority the Green Team is empowered to collect consents itself to authorize a switch in electric supplier, or, as originally indicated on its website, switch accounts without additional consent. While a municipal aggregator could perform either of these functions, Woodstock does not appear on the DPUC's list of registered municipal aggregators, though the list may be

out of date. While not required to be licensed, municipal aggregators must register with the DPUC. Additionally, the Green Team does not appear as a certified non-municipal aggregator either.

Regarding allegations from PPU that it possesses proprietary information obtained from PPU, Starion informed the DPUC that it does not possess any customer information that has not been provided by the customers themselves either to Starion directly or through independent sales brokers who serve as the customers' energy advisors.

"The PP&U Letter rests on the flawed notion that the list of PP&U customers is proprietary and confidential property of PP&U. As PP&U is well aware, companies like Starion, PP&U and other similar suppliers derive a large part of their business through the work of independent sales consultants who operate as brokers on behalf of their customers. It is these brokers who assemble, own and work the customer list. They simply provide the customer's chosen supplier with the information required for enrollment purposes. Thus, the flow of information is from the customer to the broker to the supplier," Starion said.

In an April 6 letter to the DPUC, Starion further alleged that, based on information received from at least two customers, AGR Group, Inc., allegedly acting on behalf of its client, PPU, "is spreading malicious and defamatory falsehoods concerning Starion," via mass telephonic communications to Starion's customers and brokers. Starion alleged that those falsehoods include allegations that Starion is not a licensed energy provider, and that customers have been switched to Starion without their knowledge. Starion alleged that AGR is encouraging customers to lodge complaints against Starion with the DPUC. Starion alleged that such actions are, "false, anticompetitive, tortuous, and unfair," in letters dated April 5 to AGR and PPU demanding a cease-and-desist of such actions.

Starion further provided to the DPUC a letter dated March 19 from broker Energy Savings Group (ESG) to PPU in which Energy Savings Group demanded that PPU cease and desist allegedly improper actions under the companies' broker agreement, including withholding the

account number issued by CL&P or the POD number issued by UI, as well as usage and invoice information needed to measure compensation. Energy Savings Group alleged that such actions were being taken to, "extort new contractual concessions to which it [PPU] is not otherwise entitled."

ESG, through a Starion interrogatory response, said that since GF Power I, LLC assumed control of PPU in the fall of 2009, "relations between ESG and PP&U have become increasingly strained."

As alleged by Energy Savings Group in its March 19 letter, which was produced by Starion in a DPUC interrogatory response, "PP&U has failed to provide the payment detail that ESG needs to pay its consultants. PP&U executives have made numerous calls to ESG's consultants stating that they must work directly for PP&U and not sell for any other company if they wish to receive the commissions due them for working on behalf of ESG to secure customers for PP&U. PP&U has wrongfully withheld payments due ESG and has sought to interfere with ESG's contractual relationships with its consultants."

Briefly:

Draft Would Grant Reliable Power a Conn. Electric License

The Connecticut DPUC would grant Reliable Power, LLC an electric supplier license to serve residential, commercial, and industrial customers under a draft decision (Only in Matters, 2/17/10).

PUCO Declares Force Majeure Waiver of Competitive Suppliers' 2009 Solar Obligations

The Public Utilities Commission of Ohio granted the Retail Energy Supply Association's petition for a force majeure declaration and waiver of compliance with the solar RPS requirement by competitive suppliers for the year 2009, given the lack of certified solar resources as well as a delay in the issuance of final compliance rules. As RESA requested, a supplier's shortfall for the 2009 compliance requirements will be added to and included as part of a supplier's compliance

requirements for 2010 (Only in Matters, 4/5/10).

PUCO Maintains \$45/MWh Non-Solar ACP

The Public Utilities Commission of Ohio maintained the amount of the alternative compliance payment for non-solar renewable energy resources at \$45/MWh for 2010, which is the statutory price floor for compliance. Application a Consumer Price Index-based formula to determine the annual adjustment required of the compliance fee resulted in an amount of \$44.69/MWh, below the price floor.

PPL to Acquire E.ON's U.S. Utilities

PPL Corporation has entered into a definitive agreement under which PPL will acquire E.ON U.S. LLC, the parent company of Louisville Gas & Electric and Kentucky Utilities, for \$6.7 billion in cash, not including assumed debt. The two utilities serve 941,000 electric customers and 321,000 gas customers, principally in Kentucky. Proceeds from the sale of PPL non-core assets may be explored as a potential to fund a portion of the transaction.

Sempra Subsidiaries Settle Calif. Litigation for \$400 Million

Sempra Generation and Sempra Commodities have agreed to pay \$400 million under a settlement with the California Attorney General, Public Utilities Commission, Pacific Gas & Electric and Southern California Edison resolving litigation arising out of the energy crisis of 2000-2001.

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for customers/third-party suppliers. "This change seems inequitable," the Commission concluded.

As the PSC understands the language, "the Company would be permitted 'sole discretion' to curtail or interrupt the delivery of gas even if the gas has been delivered to the city-gate on behalf of a customer/third-party supplier and to not pay for said delivered gas and then at the same time be in a position to impose a penalty if the customer is not in compliance with the balancing requirement."

Notwithstanding the PSC's understanding of

the need for a reliable distribution system, "[the] Commission is still concerned with the proposed language of the tariff revisions which will give WGL carte blanche authority to impose such limitations and possibly reap a benefit from interruptible customers/third-party suppliers. The lack of a balanced approach to address system operations is troubling."

Additionally, the Commission noted that the pro forma tariff language would impose a higher requirement for customer authorization than that imposed in the PSC's residential consumer bill of rights. Specifically, the pro forma tariff would provide that service under Schedule No. 6 (Small Commercial Aggregation Pilot) is available to suppliers executing a consent form with a customer, suppliers obtaining consent via the internet, or suppliers obtaining consent through a "telephone call initiated by the customer."

The PSC noted that the requirement that the phone call be initiated by the customer is a higher standard than that which presently exists in the Commission's consumer bill of rights for residential customers. "[T]his requirement appears misplaced and inappropriate," the PSC said.

The PSC also raised concern with language that it said was ambiguous concerning customers on Rate Schedule No. 3A (Interruptible Delivery Service) who no longer have a third party supplier. The pro forma tariff provides that, "Customers will have a period of 3 months to choose another Supplier or, depending on Company infrastructure capabilities and / or availability, may be switched to Rate Schedule 2 or until which time the customer chooses another Supplier." The Commission said that it was unclear if the ability of WGL to deny interruptible delivery service to a customer losing their supplier is limited to the timeframe in which the customer selects another supplier, or whether WGL can deny interruptible delivery service regardless of the fact that the customer has obtained an alternative supplier.

The Commission also raised concern with WGL's application to eliminate the provision of interruptible sales service, given its historic benefits, and the proposed tariff language's implication that obtaining interruptible service from a competitive supplier may not be readily

available in the future, due to the ambiguous language cited above.

The PSC directed WGL to refile its application and tariff sheets with greater explanation and justification for each proposed change.

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licensing requirements in Connecticut; and the content and timing of its responses to Department inquiries on behalf of complainants has improved significantly," the DPUC said.

"Nevertheless, the violations documented in this proceeding, in their totality, are serious and compel close monitoring of the Company's performance going forward. The Department will not hesitate to take whatever corrective action may be necessary upon a showing that Clearview is not meeting any Connecticut regulatory obligation," the DPUC added.

The initial genesis of the investigation were slamming complaints, and the DPUC alleged that Clearview acknowledged to the Department that it cannot produce required verification of enrollment for at least 12 Connecticut customers. "Customer complaint logs submitted by the Company indicate that the number of slammed customers may total more than the twelve acknowledged by Clearview," the DPUC alleged.

"The Department believes that while unauthorized supplier switches occurred on at least twelve separate occasions, they do not evidence a repeated intent to disregard such that the civil penalty should be assessed on a graduated scale. Rather, the switches occurred because of a lack of supervision and responsibility of necessary oversight over agents. Therefore, the Department will assess a civil penalty of one thousand dollars (\$1,000.00) for each of the admitted twelve unauthorized customer switches," the DPUC said.

More serious, in the DPUC's view, was Clearview's response to the DPUC's initial request to explain the rise in customer complaints in the fall of 2009. The Department alleged that Clearview failed to timely respond to DPUC letters requesting information and a response from the supplier on October 9 and October 29.

For that reason, the DPUC alleged that Clearview has failed to comply with the requirements of Conn. Agencies Regs. § 16-245-2(g)(3), which requires that an electric supplier cooperate with the Department in its investigation of consumer complaints, and comply with any resulting orders.

The DPUC intends to fine Clearview \$7,500 for the alleged violations of § 16-245-2(g)(3), because, "[c]ooperation with the Department, as the licensing authority, is absolutely critical."

"The Department has zero tolerance for failure to comply with this requirement in light of the overall harm to the public interest and the electricity supply marketplace. This is especially obvious when the Department reaches out to a licensed supplier in the wake of consumer complaints and issues. Failure to comply with the Department's investigations is the most grave of Clearview's violations," the DPUC alleged, stating that failure to timely respond to the second request for information, "is viewed by the Department as willful, intentional and bad faith disregard of regulatory requirements."

The DPUC alleged that Clearview failed to comply with the filing requirements contained Conn. Gen. Stat. § 16-245p(a), regarding submittal of quarterly reports containing information on rates and any other information deemed relevant by the Department. The DPUC alleged that Clearview acknowledged that it made no such filings until March 1, 2010, resulting in nine violations of the statute, which the DPUC would fine at \$500 each (\$4,500 total).

Clearview, the Department alleged, failed to comply with filing requirements of Conn. Gen. Stat. § 16-245a-1 regarding submittal of an annual RPS compliance report. The Department alleged that Clearview acknowledged that it should have filed its first annual report no later than October 15, 2008, but did not file reports for 2008 or 2009 until the DPUC commenced its investigation. The DPUC would fine Clearview \$1,000 for both alleged violations (\$500 each).

The Department alleged that Clearview has failed to comply with filing requirements imposed by Conn. Agencies Regs. § 16-245-3(b), regarding electronic data exchange capability. The DPUC alleged that Clearview stated that it was unable to submit evidence showing that it

submitted, as required, a notice affirming its capability to exchange data with the utility at least 20 days prior to first contracting with customers. The DPUC intends to fine Clearview \$500 for this alleged violation.

Clearview, the DPUC alleged, failed to comply with filing requirements imposed by Order No. 5 of its licensing order, requiring maintenance of customer complaint records. The DPUC alleged that Clearview acknowledged that it has no record of numerous complaints, including several that were forwarded by the Department directly to the company. The DPUC would fine Clearview \$500 for the alleged violation of the order.

The DPUC alleged that Clearview failed to comply with the filing requirements imposed by Order No. 2 of the DPUC's Disclosure Label order, alleging that Clearview did not submit its disclosure labels to the DPUC as required by Order No. 2 until questioned in the instant proceeding regarding its compliance. The DPUC would fine Clearview \$500 for the alleged violation of the order.

Furthermore, the DPUC alleged that Clearview failed to comply with filing requirements imposed by Order No. 3 of the Disclosure Label order requiring the submission of pricing data for the DPUC's database, and the Department would impose a fine of \$500 for this alleged violation.

Finally, the Department alleged that Clearview failed to provide timely notice pursuant to Conn. Gen. Stat. § 16-245(i) and Conn. Agencies Regs. § 16-245-2(g)(4), which require electric suppliers to notify the Department within 10 days of any change to their regulatory contact information and customer service plan. Sometime in late 2008 Clearview's regulatory contact ceased to be employed by the company, but the DPUC alleged that Clearview provided no written notice to the Department, which was one of the causes for Clearview's non-responsiveness to the DPUC's request for information regarding complaints, as the requests were not received by Clearview due to outdated contact information. The DPUC would fine Clearview \$500 for this alleged violation.