

# Energy Choice

# Matters

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## Conn. DPUC Opens Docket to Review Supplier/Aggregator Marketing Practices, Conduct

The Connecticut DPUC has opened Docket No. 10-06-24 to review the current status of the competitive electric supplier and aggregator market in Connecticut. "The Department will undertake a review of both the market practices and conduct of Connecticut Suppliers and Aggregators to ensure compliance with applicable statutes, regulations and Department decisions," the DPUC said in opening the docket.

"In addition, the Department will focus on the relationship of Connecticut Suppliers and Aggregators with their customers and suppliers to confirm that the activities undertaken by Connecticut Suppliers and Aggregators are in comportment with their applications for a license or registration, as well as applicable statutes, regulations and Department decisions," the DPUC added.

The review will examine the growth of the market in Connecticut, in order to determine areas of success and failure, review market components in need of change, and make recommendations for potential changes to programs.

Less than a year ago, in August 2009, the DPUC held a meeting with suppliers to address marketing methods and customer complaints, with the DPUC focusing on how suppliers enforce marketing standards on their third-party agents, and how suppliers ensure agents properly represent themselves (Only in Matters, 8/10/09).

Since the August 2009 meeting, the DPUC has found it necessary to open investigations of several specific suppliers due to the incidence of customer complaints.

*Continued P. 4*

## Md. PSC Denies BGE Smart Meter Proposal Including Mandatory Time of Use SOS Rates

The Maryland PSC has denied Baltimore Gas & Electric's proposal for ubiquitous deployment of advanced electric and gas meters, for, among other reasons, what the Commission deemed to be the premature introduction of Time of Use (TOU) supply rates under the program (Case 9208).

BGE's smart grid proposal included transitioning residential SOS electric customers to a two-tier rate schedule consisting of higher supply prices between 2:00 pm and 7:00 pm on weekdays during the months of June through September, excluding holidays, and lower energy prices at all other times (Matters, 10/15/09). Additionally, all distribution customers would have been able to earn Peak Time Rebates from 2:00 pm to 7:00 pm on company-declared critical days during the summer, excluding weekends and holidays, as well as during PJM-declared emergencies.

The Commission said that prior to any change to time-based rates, customers must be provided sufficient education so as to understand the new tariff and how their behavior and decisions will affect their energy bill, and customers must be provided the equipment and technology, such as in-home displays, orbs, electronic messaging, etc. to receive the requisite information that triggers behavior changes.

"Yet the Proposal contains no concrete, detailed customer education plan, includes no orbs or other in-home displays, and provides for grossly inadequate messaging, in our view, to trigger the

*Continued P. 4*

## TLSC Raises Concern on Venue Language in REPs' TOS, Other Provisions

REPs' terms of service documents which prescribe the placement of the venue for litigation under the contract as Harris County (or another specific county) regardless of where the contract was signed or where the consumer resides, "may violate Texas' Deceptive Trade Practices and Consumer Protection Act," Texas Legal Services Center said in a letter to the PUCT (36131)

Many REPs' terms of service provide that any litigation shall be conducted in a specific venue, with each REP using nuanced language in describing this obligation.

At §17.46(b)(23), the Deceptive Trade Practices Act provides that "false, misleading, or deceptive acts or practices" include, but are not limited to, "filing suit founded upon a written contractual obligation of and signed by the defendant to pay money arising out of or based on a consumer transaction for goods, services, loans, or extensions of credit intended primarily for personal, family, household, or agricultural use in any county other than in the county in which the defendant resides at the time of the commencement of the action or in the county in which the defendant in fact signed the contract; provided, however, that a violation of this subsection shall not occur where it is shown by the person filing such suit he neither knew or had reason to know that the county in which such suit was filed was neither the county in which the defendant resides at the commencement of the suit nor the county in which the defendant in fact signed the contract."

Texas Legal Services Center noted that Mega Energy's terms of service provides, "This agreement shall be governed by Texas law and exclusive venue for any controversy arising from or relating to this agreement will be located in the state or federal courts of Harris County, Texas (and each party waives any right to object to venue in this regard)."

While a statement regarding venue is common in many terms of service, several REPs' terms of service explicitly provide that the prescribed venue is also subject to applicable governing law, in which case the terms of

service ostensibly recognize that while the REP must bring suit in a venue consistent with the Deceptive Trade Practices Act, actions brought by the customer would be subject to the venue enumerated in the terms of service.

Texas Legal Services Center was writing to the PUCT to highlight several contractual provisions which it said will harm low-income customers should these customers become subject to a switch-hold as a condition of entering a deferred payment plan, and used the Mega Energy terms of service as an example. In particular, TLSC noted that Mega Energy's terms of service prescribes a default rate of 24.9¢ per kWh applicable to customers who reach the end of a contract term and do not renew or switch to another REP.

TLSC said, "[a]s set out in the agreement, the consumer is protected from taking the default rate only by terminating the variable price contract with Mega Energy. That right is extinguished under the switch-hold provisions," which is not entirely accurate, as the customer retains the right to terminate the variable contract by meeting any obligations to remove the switch hold.

"The price surge is an obstacle to maintaining their electric service and thereby, substantially increases the chances that these customers will default on their deferred payment plans and then be constructively evicted from their residences. Without pricing protections commensurate with the monopoly aspect of a switch-hold mechanism, the commission's current and proposed rules will allow low and moderate income consumers to be victimized by unscrupulous retail electric providers," TLSC said.

In reply to TLSC Executive Director Randall Chapman, PUCT Chairman Barry Smitherman wrote, "[i]t is important, as you note, that appropriate protections are in place for customers so that they are not taken advantage of while in the position of a switch-hold. This is an issue that we will need to address as we move towards adoption of the rule."

TLSC also interpreted the Mega Energy terms of service as appearing to grant the REP the ability add an early termination fee on to the outstanding balance of a deferred payment plan.

## **Snohomish County PUD Opposes Imposition of CAISO Policy on Rest of WECC**

The California ISO should not be allowed to dictate policy for the entire Western Interconnection, Public Utility District No. 1 of Snohomish County, Washington said in opposing FERC's proposal, on its own motion, to raise price caps in the Western Electricity Coordinating Council to the new CAISO level of \$750/MWh, and, effective April 1, 2011, to \$1,000/MWh (EL10-56). The current WECC soft cap is \$400/MWh.

The Commission has opened an investigation and proposed raising the WECC-wide cap because it claimed such action is necessary to avoid any distortions caused by having a different cap applicable in CAISO than in the rest of the WECC (Matters, 5/21/10).

While recognizing the potential for distortions under extreme circumstances, "[t]he Commission should instead require the CAISO to conform to the \$400/MWh soft price cap currently in place for the Western Interconnection rather than allowing the CAISO to dictate policy for the entire Western Interconnection," Snohomish said.

"Entities outside California have no role in setting CAISO policy aside from filing comments of protest to the Commission on whatever market structures the CAISO adopts. The Commission's proposed solution therefore amounts to a form of taxation without representation. Bi-lateral transactions that occur in the Western Interconnection, outside of the CAISO, are not subject to CAISO market rules or policy decisions and therefore should not be tethered to price vagaries that such a complex structure produces," Snohomish added.

"Further, price caps should be linked to common elements, such as fuel price or other measures of cost of production, and not to price levels arbitrarily imposed by the CAISO," Snohomish said.

Given the nature of the soft cap that allows cost-justified prices above it, "the Commission's proposal which raises the hard cap to \$750/MWh now, and to \$1,000/MWh in 2011, accomplishes little other than to remove an important price monitoring tool from the

Commission's arsenal in fighting market manipulation or other improper market activity," Snohomish argued.

Furthermore, "the Commission's orders raising [the] price caps to \$750/MWh and then to \$1,000/MWh assume that the Commission will conclude in the future that the CAISO markets remain competitive. That is, the Commission has stated that future increases in the CAISO bid cap are contingent upon a finding that the CAISO markets are competitive. The May 20 Order, however, effectively eliminates this precondition, assuming away the question whether the CAISO markets will be judged competitive and the price caps raised as the Commission projects," Snohomish noted.

Generators and power traders endorsed FERC's proposal to raise the WECC price caps, with Mirant suggesting the higher cap should be in place immediately, rather than in September as suggested by FERC's order.

The Financial Institutions Energy Group argued that, given the implementation of Resource Adequacy requirements in CAISO, and lack of a capacity market in the rest of the WECC (and attendant reliance on energy revenues), "the Commission should consider removing the WECC price cap altogether."

Additionally, "[g]iven the increasing levels of wind deployment in California and throughout the WECC, where tax credits may incent production at price levels below - \$30/MWh, the CAISO's price floor creates a risk of market distortions that was not present the last time the Commission evaluated the appropriateness of the -\$30/MWh level," the financial institutions said.

### ***Briefly:***

#### **Genesis Energy International Seeks. Md. Broker License**

Genesis Energy International applied for a Maryland electric broker license to serve all customer classes at the four investor-owned utilities.

#### **America Approved.com Seeks to Expand Pa. Brokering**

America Approved.com, LLC filed at the

Pennsylvania PUC to expand its electric broker license to include all service areas. Currently, America Approved.com is licensed to broker at PPL and Duquesne Light.

### **ERCOT Says June 17 LFC Test Successful**

ERCOT said that it successfully completed the June 17 eight-hour load-frequency control test of the nodal market real-time systems. Seventy-nine energy schedulers representing 99.9% of the system generation participated in the test. "The purpose of the test was to demonstrate that we can effectively operate the power grid with the nodal applications. We found minor application issues as expected, but overall, we believe the test was successful," said ERCOT COO Mike Cleary. Market trials for the nodal wholesale market have been running for 19 weeks, and no issues are affecting the December launch date at this time, Cleary added.

### **NRG Acquires US Solar Development Portfolio**

NRG Solar, a subsidiary of NRG Energy, has entered into a definitive agreement with US Solar, an affiliate of Arclight Capital Partners LLC, to acquire a portfolio of solar development projects on nine sites in California and Arizona. The purchase price is subject to a confidentiality agreement between the parties. The development projects acquired range in size from 20 MW to 99 MW with the potential to be operational between 2011 and 2013. The acquisition nearly doubles NRG Solar's projects under development to 1,150 MW.

### **TXU Launches Energy Saving Website for Summer**

TXU Energy has launched an interactive, web-based suite of tools and resources aimed at helping customers lower their electricity bills, particularly in the summer, through better control of their energy usage. The website includes an energy calculator, energy saving information and tips, and information on TXU Energy's various bill assistance and disconnection protection programs.

([www.txu.com/residential/billhelp.htm](http://www.txu.com/residential/billhelp.htm))

### **Constellation NewEnergy Expands Pa. Advertising, Education Efforts**

Constellation NewEnergy said yesterday that it has launched a comprehensive informational campaign to educate businesses and public sector customers at PECO, West Penn Power, Penelec and Met-Ed about electric choice, expanding on its current informational and marketing activities that it has already been conducting in these areas. Similar to numerous other suppliers, Constellation will offer free forums and webinars on choice, coinciding with an electronic, radio, newsprint and billboard ad campaign.

### **The Eric Ryan Corporation Seeks Pa. Conservation Service Provider License**

Broker The Eric Ryan Corporation applied for a Pennsylvania conservation service provider license to offer various energy and lighting auditing services and measurement and verification services.

### ***Conn. ... from 1***

The Department has also raised concern with aggregators acting solely as the marketing arm of a supplier, previously finding that such a relationship is inconsistent with the statutory definition of an aggregator which requires the aggregator to represent the customer's interest, not the supplier.

### ***BGE ... from 1***

behavior changes contemplated under the Proposal. Moreover, we are persuaded that some of the Company's most vulnerable residential customers, such as low-income households, elderly customers, customers with medical needs for electricity that cannot be shifted to off-peak hours, or other customers who are 'stay at home' are less likely to realize the potential benefits of TOU pricing than would the 'average' residential customer," the PSC found.

The cost-effectiveness of BGE's advanced meter proposal depends upon a "fundamental change" in the way BGE customers use energy and think about energy pricing, the Commission

noted. "Because a shift to dynamic pricing will depend so heavily upon customer understanding of its potential benefits, we are concerned that premature implementation on a mandatory basis will cause customer confusion and will result in higher energy bills for customers who have not yet embraced the concept," the PSC said.

"We also are concerned that a mandatory TOU rate structure could disadvantage low-income customers, elderly customers, customers with medical-related energy needs, and others who may have difficulty shifting their usage to off-peak times," the Commission added. BGE's Summer 2008 Pilot program revealed that many seniors and low income households saw increased energy bills based upon TOU rates alone, the PSC said.

The PSC said that in any future smart grid application, BGE should provide a business case where TOU pricing is either an opt-in or opt-out option for SOS customers, and not the lone bundled service rate as proposed in the instant application.

The Commission concluded that BGE has not provided a comprehensive analysis that indicates whether its business case for smart metering remains cost-effective under non-mandatory TOU rates.

Additionally, the PSC noted that BGE's business case projects that non-PeakRewards residential customers will reduce peak load, on average, by 0.49 kW while PeakRewards residential customers will, in addition to their PeakRewards peak load reduction, reduce their average peak load substantially less: 0.10 kW (PeakRewards is BGE's air conditioning/heat pump cycling program). "This significantly reduced figure reflects the lower baseline for PeakRewards customers that will limit their ability to further reduce their load during critical peak periods. We are concerned that this same principle will apply to customers who actively engage with TOU, whether having opted in or out. The record appears to support the possibility that a significant shift in usage to obtain the benefits of lower off-peak prices under TOU could reduce those customers' ability to further reduce load during critical peak periods and thereby lower their rebate and undermine one of BGE's key assumptions

regarding the extent of reduced critical load from non-PeakRewards customers," the PSC said.

While BGE had allocated \$30-50 million to education, the PSC concluded that, "[e]ven \$50 million, however, may be insufficient to cover the unprecedented amount of effort that a successful [education] program might require." The Commission cited testimony from the Maryland Energy Administration which indicated that \$100 million would be needed to educate customers about the new rate design.

Absent such education, the Commission doubted if customer responsiveness to price would produce the demand and usage reductions forecast by BGE necessary to achieve the stated price mitigation benefits of the smart meter program. The Commission noted that BGE's past experiment with voluntary time-of-use rates has shown a steady decline in participation since its peak in 1999. "Should the current Proposal realize a similar gradual decline in interest, a substantial portion of the projected benefits in this Proposal will disappear with no corresponding reduction in either the costs of the Proposal or in BGE's revenue stream," the Commission said.

Given the "largely indirect, highly contingent" price savings (through reduced demand, capacity charges, etc.) which make up the majority of the benefits of the smart grid plan, the PSC found BGE's business case for its proposal to be "untenable."

The Commission also opposed a tracker for cost recovery, since a monthly surcharge creates a "no-lose proposition" for BGE as it, "virtually guarantees that the Company will recover from its ratepayers the prudently incurred costs associated with the Proposal, a profit for its investors, and a portion of certain projected benefits, if they are realized."

"The proposed project is, in our view, classic utility infrastructure investment that should be recovered through distribution rates, not in a supplemental surcharge that begins long before customers could realize any benefits from the project," the Commission said.

The Commission invited BGE to submit a revised advanced metering plan that (1) foregoes any expectation of recovery by way of a tracker surcharge mechanism; (2) provides a detailed business case that addresses the costs

and benefits of proceeding without mandatory TOU pricing; (3) includes a concrete and detailed plan for how BGE intends to educate its customers regarding its new proposed rate structure; and (4) provides a workable methodology by which BGE will mitigate and more fairly allocate between the Company and its customers the risk that the proposal will not provide the benefits underlying BGE's business case, or that it will cost significantly more than BGE currently projects.