

# Energy Choice

# Matters

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## Direct Energy Expands Md. Marketing; Viridian, MXenergy Launch Campaigns

Direct Energy has expanded its electric marketing to residential and small commercial customers at Allegheny Power and Delmarva Power & Light in Maryland.

Direct will initially offer residential customers a variable product that is guaranteed to be 5% lower than the Schedule R SOS rate through May 2011. The product will not include a termination fee.

Direct will not process residential enrollments until July 26.

Direct said that it will hold a series of town hall meetings in Maryland, with customer feedback from the sessions informing future product offerings, including renewable products. Direct is already active in the BGE mass market, and would not offer a substantive comment on plans for Pepco.

Viridian Energy has also begun offering service to customers at Baltimore Gas & Electric, and, according to the Office of People's Counsel price comparison chart, Allegheny and Pepco as well. BGE is the only Maryland service area Viridian promotes on its website, and Pepco and Allegheny zip codes are not accepted for enrollment online.

At BGE, Viridian is offering residential customers a monthly variable rate of 9.9¢/kWh for a 20% renewable product and 10.9¢/kWh for a 100% wind product. BGE's current residential SOS rate is 11.913¢/kWh (excluding Rider 8-Energy Cost Adjustment).

OPC lists Viridian as offering the same residential rates and terms that it is offering at BGE to customers Allegheny and Pepco.

MXenergy has also entered the BGE residential market with a 12-month fixed price offer of 9.9¢/kWh. The product includes a \$150 early termination fee.

## Illinois Office of Retail Market Development Issues 2010 Report

The Illinois Office of Retail Market Development released its [2010 annual report](#). As mostly a review of activities related to retail electric choice since last year, much of the report has already been chronicled by *Matters* over the year.

ORMD's only recommendation in the report, which has been made in past years, is for the elimination or modification of the 24-month minimum stay for residential and small commercial customers returning to bundled service from competitive supply. At a minimum, such customers should be given a two-month grace period to find a new alternative supplier prior to the initiation of the minimum stay period, ORMD said.

Although the report highlights the steady growth in migration among mid-merit and smaller commercial customers (and is only based off of migration as of May 31, 2010 so misses a likely large jump in migration due to the change to default hourly pricing effective June 1 for several mid-merit customers), ORMD only briefly notes that there is only one active residential supplier in the state.

Indeed, despite the introduction of Purchase of Receivables at the Ameren utilities in October 2009, ORMD reports that only one supplier is currently using Ameren's POR service, while another has recently executed the necessary billing service agreement with Ameren in order to use POR. ORMD does not identify what customer classes these suppliers are billing using POR.

## **First Choice Power to Pay \$16,500 to Resolve Alleged Violations of Substantive Rules**

First Choice Power would pay an administrative penalty of \$16,500 under a settlement with PUCT Staff to resolve an investigation of several alleged violations of consumer protection rules (38433). The investigation arose from a 2009 audit of First Choice Power. The settlement details six alleged violations of the Substantive Rules including:

- For contract expiration notices, failure to include a statement on the outside of the billing envelope that states "Contract Expiration Notice" (Subst. R. 25.475(e))
- Failure to indicate the identification number of the Terms of Service and Electricity Facts Label during a telephonic re-enrollment (Subst. R. 25.475(e))
- Using an Electricity Facts Label that did not precisely conform to the format provided in the rules (Staff did not specify areas of non-conformance)

## **WGES Raises Concerns with Delmarva Separate Billing of Pre-POR Receivables**

Washington Gas Energy Services has raised concerns with Delmarva Power & Light's updated Purchase of Receivables tariff, which fails to allow suppliers to use a utility consolidated bill to bill outstanding receivables which are not purchased by Delmarva upon the start of POR.

As only noted by *Matters*, Delmarva said that due to billing system limitations, it cannot bill such outstanding charges on consolidated bills, and instead will issue a separate bill to customers for any such charges (Only in *Matters*, 7/2/10). Delmarva said that this separate billing process would apply to about 330 accounts.

WGES, which noted that the Commission had mandated a consolidated billing solution for the outstanding amounts, said that, based on its experience, charges billed on a separate, one-time, and unexpected bill may result in unpaid amounts of up to 30%, which is, "a significant financial burden to suppliers that is untenable."

WGES further noted that Section 12.4.3 of Delmarva's supplier tariff includes provisions that grant suppliers, "access to customer billing and payment information from the Company for the supplier's presently enrolled customers at no cost beyond the tariffed rate," and that suppliers shall have, "the same electronic access to customer bill information that it provides to the customer." WGES said that it is not apparent that suppliers will have access to the billing information provided to customers through the separate bills to recover outstanding receivables. "Without access to customer bills, and no knowledge of when customers make payments, suppliers will have great difficulty managing these receivables," WGES said.

WGES also took issue with Delmarva and Baltimore Gas & Electric's updated POR tariffs for including a risk factor in the tariff, though it is initially set at zero. WGES called including the risk factor in the tariff regardless of its nil status inconsistent with the PSC's orders, which held in part that, "the Commission accepts Staff's recommendation and sets the risk factor at zero, *and excludes it from the approved POR discount rates*" (emphasis added by WGES).

With regard to BGE's filing, the Retail Energy Supply Association said that the Commission should consider deleting from the tariff sections listing eligible costs and providing the calculation of the discount rate, as the formula for POR should not be locked into the tariff. Rather, RESA suggested that BGE should be required to annually file discount rates which it would have the burden of proving are just and reasonable, similar to the treatment of other tariff provisions and riders that relate to rates and charges.

## **Pa. ALJ Would Allow Constellation to Transfer AECs to Cure Administrative Error**

An initial decision from a Pennsylvania ALJ would allow Constellation NewEnergy to transfer Alternative Energy Credits (AECs) to a GATS subaccount for compliance after the close of the true-up period, without penalty, because the true-up administered under the PUC's regulations does not provide the opportunity for

load serving entities to correct administrative errors as intended (P-2010-2153657).

Pennsylvania PUC Staff had recommended a penalty of \$45/MWh against Constellation for its AEC shortfall (the total of which is confidential). The shortfall resulted from Constellation transferring Midwest ISO-based AECs to satisfy its load obligations at Duquesne. In Pennsylvania, MISO AECs can only satisfy AEC obligations at utilities within the MISO (Matters, 5/31/10).

Constellation had sufficient PJM AECs to meet its obligations for its Duquesne load; and only transferred the MISO AECs into a GATS subaccount for compliance due to an administrative oversight because it did not identify those AECs as originating from the MISO (GATS only lists an AEC as eligible in Pennsylvania but not whether it is only qualified at certain utilities).

"[T]he gist of this case is that the Commission Staff does not want to extend to an EGS [electric generation supplier] the opportunity to correct an error in its AEPS compliance beyond that allowed by a strict interpretation of the statute without a Commission interpretation because the statute does not expressly grant the authority for such allowance," the ALJ summarized.

The ALJ found that the AEPS statute intends for retail suppliers to be provided with a true-up period to correct any administrative errors in their AEC reports and retirements. However, the ALJ found that current Commission regulations contain a "practical flaw" because, during the true-up period, the AEPS Administrator does not evaluate a supplier's compliance with their AEPS obligation, and merely compares the number of AECs submitted by the supplier versus its obligation.

However, the true-up review does not evaluate whether the AECs submitted may actually be used for compliance; that is, whether they qualify as satisfying a supplier's obligation. "[T]he program administrator only tells the companies whether the numbers of AECs are correct (quantitative), not whether the AECs submitted are eligible for their stated use (qualitative)," the ALJ noted.

Since actual compliance is not reviewed under the true-up process as it currently exists,

the ALJ found that suppliers are not granted a meaningful opportunity for corrections during the true-up period, contrary to statute.

The ALJ noted that the AEPS statute provides for an "assessment of [an LSE's] compliance" during the true-up period, finding that the numbers-only review falls short of this standard.

Accordingly, the ALJ found that Constellation had not been provided with an actual true-up period, and recommended that Constellation be allowed to retire AECs to meet its shortfall even though the true-up period has expired, with Staff's notice of violation withdrawn.

## **Rate Counsel Says Need for N.J. Retail Margin Has Passed**

The New Jersey Division of Rate Counsel recommended that the BPU eliminate the Retail Margin applicable to BGS pricing for customers above 750 kW, "as soon as feasible."

"The Retail Margin has served its purpose of facilitating development of a market in New Jersey for Third-Party Suppliers ('TPSs') of electricity. In fact, the majority of BGS-FP customers with a peak load of 750 kW to 1,000 kW and of BGS-CIEP customers, who pay Retail Margin, has switched to TPSs," the Rate Counsel noted (Docket EO10050338).

The Rate Counsel cited migration statistics in which about 70% of BGS-CIEP customers have switched to competitive suppliers, and 65% of BGS-FP customers above 750 kW have switched.

The Rate Counsel further called elimination of the retail margin consistent with the electric distribution companies' expressed preference, "for market-based options rather than artificial mandates." Migration, "should occur naturally due to market forces without charging these customers an artificially higher rate," the Rate Counsel added.

The National Energy Marketers Association countered the argument that the Retail Margin was solely meant to incubate the retail market at start-up, and is no longer needed due to significant migration.

"[T]he purpose of the Retail Margin is to approximate those on-going costs incurred by

marketers to serve choice customers. Regardless of the state of market development, marketers will continue to incur costs to serve choice customers over and above just the pure commodity rate just as does the utility to provide default service. To eliminate the Retail Margin would therefore inaccurately skew the information that consumers utilize in comparing marketer offerings and the utility rate," NEM said.

Furthermore, "the significant lack of migration of mass market consumers ... would support the extension of the Retail Margin," NEM added.

"Recent market changes have created favorable conditions for competition under the three-year averaged BGS pricing regime. As such, this is precisely the wrong time to inject regulatory uncertainty into the competitive marketplace as to significant structural changes to BGS that would dissuade marketers from entering the New Jersey market and make long-term plans to serve such customers," NEM said.

The Rate Counsel further opposed lowering the CIEP hourly pricing threshold to 750 kW as unnecessary to support customer migration, calling the move, "ill-advised during the current economic downturn."

## **ERCOT Says Treatment of Laredo Quick Start Units Consistent with Protocols**

A complaint from Morgan Stanley Capital Group Inc. and Laredo WLE, LP regarding compensation for Laredo's quick start units responding to Out of Merit Energy (OOME) Dispatch Instructions essentially, "urge[s] a reading of the Protocols that puts their financial interests over the interests of the market as a whole," ERCOT charged in an answer and motion to dismiss the complaint at the PUCT (38350).

Morgan Stanley and Laredo are essentially seeking resettlement for the period prior to the October 1, 2009, effective date of Protocol Revision Request 818 so that their quick start units are settled as providing Out of Merit Capacity (OOMC) service rather than OOME service (Matters, 6/15/10). The complainants had argued that the ERCOT procedures used to

allow quick start units to participate in the Balancing Energy Service (BES) market violated the Protocols since the procedures required the responsible QSE to show the quick start Generation Resource as on-line with its Low Sustainable Limit as 0 MW, despite the fact that the unit is actually off-line until the unit is called on to provide Balancing Energy to the market.

ERCOT, however, said that the procedures, which were necessary due to system limitations to allow system operators to "see" the quick start units, were developed subsequent to the relevant Protocol sections to enable Quick Start Units to participate in the BES market, and thus did not violate any other Protocols.

"The Complainants' claims of inconsistency with the ERCOT Protocols, especially in light of the fact that the Complainants themselves never questioned the operational process until now, flies in the face of the facts," ERCOT said. ERCOT further maintained that the complainants voluntarily qualified their quick start units to participate in the BES market pursuant to ERCOT's April 14, 2005 Market Notice and PRR588 and, therefore, the complainants knowingly subjected their Quick Start Units to the stakeholder-accepted operational process at issue.

"Nevertheless, the Complainants argue that the system encouraging Quick Start participation in the BES market should have ensured that they make more money, by compensating them at the higher amounts that come into play when ERCOT is required to give a unit OOMC rather than OOME Dispatch Instructions. Even though the ERCOT Protocols require ERCOT to 'make reasonable efforts to minimize the use of OOMC,' and even though the service the Complainants provided is the equivalent of OOME rather than OOMC Service, the Complainants urge a reading of the Protocols that puts their financial interests over the interests of the market as a whole," ERCOT said.

ERCOT also charged that the complainants are asking for selective resettlement on days which favor them financially, while omitting intervals where the application of their Protocol interpretation would not be profitable for them.

Finally, ERCOT moved to dismiss claims with respect to Laredo Energy Center Unit 4,

since claims regarding its compensation were never part of the alternative dispute resolution process required prior to the filing of complaints. Unit 4 was excluded from the alternative dispute resolution process because ERCOT said that a timely settlement dispute for that unit was not filed. Unit 4 accounts for \$122,000 of the \$306,000 the complainants are seeking.

## **Briefly:**

### **Ness Energy Services Seeks Conn. Aggregation License**

Start-up Ness Energy Services LLC applied for a Connecticut electric aggregator certificate to serve all customer classes. Ness Energy Services is led by Erik Ness, who has served as head of the Energy & Utility practice at Shipman & Goodwin LLP.

### **Tremcor Energy Would Pay \$2,500 for Failing to File Annual Reports with PUCT**

Tremcor Energy would pay an administrative penalty of \$2,500 under a settlement with PUCT Staff to resolve an alleged violation of PURA § 39.353 arising from Tremcor's failure to file an annual aggregator report with the PUCT since its registration in May 2004 (38439).

### **BGE Files for Rehearing of Smart Meter Order**

Baltimore Gas & Electric filed for rehearing of the Maryland PSC's order denying its advanced metering deployment plan, formally withdrawing its request for mandatory Time of Use SOS rates as part of the application (9208, Matters, 6/22/10). BGE further said that the PSC misconstrued \$2.6 billion in customer savings that BGE has forecast under smart metering as being attributed to Time of Use generation rates, when BGE said that such savings are actually based on the nonbypassable peak time rebates that would be open to all distribution customers (unless enrolled in a similar peak rebate program). BGE further amended its application such that only 25% of costs would be recovered through a tracker, and included a more detailed customer education plan.

## **Illinois ... from 1**

ORMD does not discuss or raise any questions regarding this slow pace of residential market development at Ameren since the introduction of POR, which would have been an interesting analysis given potential factors influencing suppliers' decisions (level of discount rate, Ameren's Midwest ISO membership, current headroom under the blended/block default service procurements, Ameren's more rural service territory, etc.). As it stands, if not for the successful PPL market, and increasing interest in Maryland with the advent of POR, the Ameren territory could be serving as Exhibit A for opponents of POR due to the costs being incurred by residential customers with no attendant increase in offers.

Nevertheless, ORMD reported that there are a number of suppliers with a "concrete interest" in serving Illinois' residential customers, with ORMD pointing to new supplier applications or amendments to add residential marketing to current supplier licenses. Such activities have been detailed in *Matters* throughout the year, with Champion Energy Services and Direct Energy among those expanding their licenses (*Matters*, 5/20/10), and new mass market applicants including Clearview Electric (*Matters*, 6/3/10). Also of note is that the Illinois Energy Marketers Coalition, in seeking intervention in the ComEd POR docket, said that its members for the purposes of intervention, Energy Plus Holdings LLC and Illinois Gas & Electric, are, "awaiting approval of their license applications."

"It is expected that the availability of utility-consolidated billing and the purchase of receivables in the ComEd area ... will bring additional residential service offerings in the near future," ORMD said, though, unless anything distinguishes ComEd from the Ameren territory (ComEd's PJM membership and more densely populated areas), the Ameren experience gives pause to such a conclusion, especially if the discount rate at ComEd is prohibitively high as some suppliers have suggested.

ORMD reported that its workshop process has recently turned its attention to the requirement that ComEd and Ameren offer the purchase of two billing cycles of uncollectible

receivables ("POU"). Distinct from Purchase of Receivables, under POU a supplier may sell two billing cycles worth of uncollectible receivables to the utility, but only after the supplier has made reasonable collection efforts and returns the customer to the utility for bundled service. ORMD's expectation is that the workshop discussions will lead to POU tariff filings by the utilities in the, "near future."

ORMD, which launched a redesigned electric choice website this spring, reported that it has also begun development of an offer comparison website that will list "all" residential electric supply offers, sorted by utility service territory. The offer comparison website will provide the supplier's name and contact information as well as the product name, the price in cents per kilowatt-hour, additional fees, and the current month's total cost for 500, 1000, and 1500 kWh. It will also show the length of the supplier's offer in months and any early termination fees.

Recently, ORMD held a conference call focusing on municipal opt-out aggregation, permitted under 2009 legislation. "[I]t was apparent that there is a concrete and real interest in serving municipalities that want to pursue aggregation for their residential and small commercial customers," ORMD said, stating that it is, "hopeful that this level of interest will translate into actual pursuits of municipal aggregation by some communities in the near future."

ORMD analyzed the non-residential market shares of the individual alternative retail electric suppliers (excluding those which only self-supply affiliates) based on kilowatt-hour sales using the Herfindahl-Hirschmann index (HHI). ORMD's analysis was limited to the segment of the market that has already switched to a competitive supplier (e.g. evaluating market share within the pool of migrated customers), and did not perform an HHI analysis of the broader market when including those customers still on default service.

In the ComEd area, the small commercial customer segment (0-100 kW) had the lowest HHI value (1,124) and even the customer class with the highest HHI value (the 1-10 MW customer class with an HHI of 1,499) is still well below the value for a highly concentrated market

(a minimum score of 1,800).

The HHI values for small commercial customers of the three Ameren Illinois Utilities are in the 1,200 to 1,400 range.

Some customer segments in the Ameren territory, however, showed significantly higher HHI values, representing a higher market concentration. For example, the HHI values for the segment of customers with a demand above 3 MW were mostly well above the 1,800 threshold for a highly concentrated market in all three Ameren Illinois territories. ORMD stressed that the number of customers with a demand above 3 MW is very small (well below 200 customers for all three Ameren Illinois utilities combined), which may account for the concentration.

Overall, ORMD concluded that there appears to be effective competition among the active retail electric suppliers in almost all non-residential customer segments.

ORMD's report includes a review of migration through May 31, 2010, with the updated statistics [available on the ICC's website](#).