

Energy Choice

Matters

July 16, 2010

N.Y. PSC Approves Four Plans to Provide Customers with Remote Access to Account #

The New York PSC yesterday approved procedures to provide customers at Consolidated Edison, National Grid (presumably only NiMo), Central Hudson Gas & Electric, and Orange & Rockland with "real-time remote access" to their individual utility account numbers simply by inputting part of the customer's Social Security Number (98-M-1343).

The PSC did not publish any orders regarding the plans yesterday, or indicate what, if any, changes were made to these utilities' compliance filings to enable such remote access. Aside from mentioning that a customer's SSN would be required, the PSC did not discuss the mechanics of the programs. Competitive supply parties, including the National Energy Marketers Association, had noted that several utilities do not have SSNs for all of their customers (see Matters, 4/28/09).

Costs of implementation for the remote access programs are to be recovered from ESCOs. Prior to introducing the remote access service to consumers, the companies listed above must consult with the ESCOs actively marketing in their service territories, to determine how to recover the costs of the approved plans from those ESCOs.

The PSC's approval results from a petition from Accent Energy filed in 2005 and adjudicated in 2006, in which Accent requested that ESCOs be given direct access to a customer's account number upon providing the customer's name and billing address, and affirming that the ESCO had obtained customer consent to receive the account number. Accent requested such access to facilitate ESCO enrollments at malls, sporting events, concerts, or other events where ESCOs may establish a booth or other presence to offer customers competitive supply. Since an account number

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Pa. PUC Tentative Order Includes Phone Numbers as Part of Customer Lists

The Pennsylvania PUC has issued a Tentative Order containing draft interim guidelines for eligible customer lists to be available to electric generation suppliers (EGSs), with such lists including customer phone numbers when not restricted by the customer (M-2010-2183412).

The Commission tentatively found that customer telephone numbers should be included on the customer lists, except when restricted by customers via an opt-out in accordance with 52 Pa. Code § 54.8. "Subject to additional comments, we find that this information is important to the marketing efforts of the EGSs and is necessary to reduce barriers to competition," the PUC said.

The Tentative Order does not provide that customers would be able to restrict the sharing of any information beyond the current elements allowed to be protected: telephone number and historic billing data. Vice Chairman Tyrone Christy believes that customers should be permitted to restrict all of their data from the customer lists, and invited comments on this issue.

The customer lists would also include a POLR flag indicating whether the customer is currently taking default service. Furthermore, the customer lists would include an interval meter indicator denoting whether the customer has an interval meter.

Under the Tentative Order, the customer lists would include current as well as future values for

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Briefly:

Pa. PUC to Issue Interim Marketing Guidelines for Comment

The Pennsylvania PUC yesterday voted to issue for comment in docket M-2010-2185981 interim guidelines for marketing and sales practices for electric generation suppliers (EGSs) and natural gas suppliers (NGSs). A published version of the interim guidelines was not available yesterday. The PUC said that the proposed guidelines will apply to suppliers, "and to any entity conducting activities on their behalf." The guidelines include best practices for direct (door-to-door) marketing and telemarketing and sales. Regarding door-to-door sales, the guidelines contain additional protections recommended by Vice Chairman Tyrone Christy, such as requiring suppliers to verify that door-to-door sales agents are not registered sex offenders. Christy reiterated his preference that door-to-door sales be banned, stating that energy supply is a complex decision requiring customers to make comparisons and do their homework prior to contracting. Such an educated choice isn't possible in response to a door-to-door solicitation, Christy said.

Energetix Receives Pa. Gas License

The Pennsylvania PUC granted Energetix a natural gas supplier license to serve all sizes of customers, including residential customers, at UGI Utilities, UGI Central Penn, and UGI Penn Natural Gas (Only in Matters, 11/5/09).

WGES Receives Pa. Gas License, Expands Electric License

The Pennsylvania PUC granted Washington Gas Energy Services a natural gas supplier license to serve all sizes of customers, including residential customers, at PECO and Columbia Gas (Only in Matters, 5/18/10). The PUC also granted WGES' request to expand its electric supplier license to include marketing to all customers, including residential customers, at Duquesne Light, Metropolitan Edison, Pennsylvania Electric Company, UGI Utilities, and Allegheny Power. Previously, WGES had been authorized to only market at PPL and PECO.

TEPA Certifications Surpass 50

More than 50 individual aggregators, brokers, and consultants have been certified by the Texas Electricity Professionals Association as it reaches the one-year anniversary of creating the certification program to ensure quality and adherence to a code of conduct. "When consultants and brokers are behaving responsibly, it is strengthening the industry as a whole," said Jeff Schiefelbein, vice president at First Choice Power, who started his career at First Choice as manager of indirect sales. "It only takes a handful of brokers to mess that up," Schiefelbein warned. "There's no barrier to stop anyone from entering the market. Having TEPA and certification definitely helps," Schiefelbein said.

Advantage Energy Receives Conn. Aggregator License

The Connecticut DPUC granted Advantage Energy, LLC an electric aggregator certificate to serve residential, commercial, industrial, municipal, and governmental customers (Only in Matters, 4/22/10).

Conn. Draft Would Grant Aggregator License to The Group Purchasing Organization

A draft Connecticut DPUC decision would grant The Group Purchasing Organization, Ltd. an electric aggregator certificate to serve residential, commercial, industrial, municipal, and governmental customers.

PUCT Concerned with NPPR 209 and Proposed Restriction on Data Publication

The PUCT directed Staff to address issues raised by Nodal Protocol Revision Request 209, which would delay the release of certain State Estimator data, such as transmission and transformer flow information, since NPPR sponsors NRG Texas and Calpine contend that such data can be used to back into generator output information. NRG and Calpine consider the release of such information inconsistent with Subst. R. 25.505, which requires a 60-day delay in posting resource data. Commissioners are concerned that the NPPR may restrict the publication of data that was not intended to be protected by Subst. R. 25.505. PUCT Chairman Barry Smitherman said that an NPPR should not

be used to require the disclosure of less information or grant protected status for a longer period of time. If any conflict exists with the rules, parties should seek a rule change, Smitherman said. Smitherman said a compelling case needs to be made to convince him that withholding the State Estimator data is appropriate. Staff is to report back at the next open meeting.

Less Than 25 Oncor Advanced Meters Afflicted By Over-registering Problem

Fewer than 25 of Oncor's 1.1 million deployed advanced meters were found to have a similar defect to a problem identified by Navigant in one of the meters it had tested, which was registering higher than the PUCT's required level of accuracy (38053). Oncor said that it will provide corrected billing information to the retail electric providers of these customers with the affected meters which resulted in higher bills. None of the problem meters were in Killeen, Temple, Oak Cliff or Kessler Park - the areas where customers raised concerns about higher winter bills.

N.Y. PSC Opens Investigation of Smart Grid Data Access, Privacy

The New York PSC has commenced a further investigation into regulatory policies that will be needed to encourage the development of the smart grid (09-M-0074; 10-E-0285). Questions raised by the Commission for stakeholder comment include customer data privacy and access matters, and consumer education, among other topics such as the timing of smart grid deployment and interoperability.

PUCT Wrestles With Price for Switch Hold Customers with Expiring Contract

PUCT Staff posted an updated proposed rule to govern disconnections and deferred payment plans, with one of the main lingering issues being the rate treatment of customers subject to a switch hold whose term product expires during the term of the switch hold (36131).

As previously reported (Matters, 7/2/10), Commissioners wish to limit REPs from charging exorbitant prices to customers on a

switch hold because customers cannot switch to a lower cost provider until paying off any outstanding debt. For example, all three Commissioners agree customers on a switch-hold with an expiring contract should not be defaulted to rate of 20¢/kWh when prevailing rates are 9¢/kWh.

However, drafting precise language to achieve this goal remains elusive. In particular, Commissioner Donna Nelson raised concern with proposed language that would require REPs to offer switch-hold customers their "lowest" offer, since REPs often reserve their lowest offers, often reflecting introductory discounts, to new customers to support acquisition.

Depending on the REP, such low introductory rates may not normally be publicized to existing customers up for renewal, once the customer is considered sufficiently sticky to extract an additional margin from them (though these REPs typically honor the lower rate if the customer asks for it). Therefore, requiring that all switch hold customers with an expiring contract be offered the lowest rate offered by the REP would afford such customers an additional protection, or benefit (for lack of a better term) that a customer diligently paying their bill may not receive absent an affirmative action from the customer.

Commissioner Kenneth Anderson, however, considers this requirement to offer the lowest rate to switch-hold customers a trade-off that a REP agrees to for the extraordinary right of imposing a switch hold.

Staff's latest draft includes the following language:

"REPs shall not discriminate against customers that are on a switch-hold in the provision of any services or pricing of any products. Customers on a switch-hold shall be eligible for all services and products generally available to the REP's other customers."

Staff's draft further states that, for a switch-hold customer with an expiring contract, "the REP shall make all of its currently available contract terms and prices available to the customer placed on a switch-hold. Unless a customer affirmatively chooses a different product with the REP, a customer whose term product expires while the customer is subject to

a switch-hold shall be moved to the lowest priced month-to-month product currently offered by the REP to new applicants or the rate of the lowest priced short term fixed product currently offered by the REP to new applicants, whichever is lowest."

The offers included in determining the lowest offered rate shall include those listed on Power to Choose. If the customer does not affirmatively choose a product, the customer shall not be required by the REP to enter into another contract term so long as the switch-hold remains on the customer account, and no early termination fees shall be applied to the customer's account, per the draft.

An additional and final workshop will be held on July 19.

FERC Rejects ISO-NE Carve-Out Granting POLR Utilities Exclusive Access to Unsecured Credit

FERC rejected ISO New England's application to selectively eliminate the use of unsecured credit, which would have granted utilities serving customers at administratively set rates (e.g. POLR providers) continued access to unsecured credit, while denying competitive retail suppliers similar access (ER10-942).

Among other things, FERC did not accept ISO-NE's argument that the competitive LSEs are far more likely to default than POLR utilities (Only in Matters, 4/19/10).

"In fact, several of the Competitive LSEs have higher credit ratings and more liquid balance sheets than the Qualifying Distribution (POLR) LSEs who would continue to have access to unsecured credit under the Amendments," FERC noted.

"[W]e find that the Supporting T&D Companies have not adequately shown that their POLR obligations uniquely justify allowing them unsecured credit while simultaneously eliminating it for the Competitive LSEs that do not serve native load. While it is true that the T&D Companies will continue to own the infrastructure to provide distribution service to native load customers in jurisdictions where retail choice is available, there is the risk that customer migration to Competitive LSEs may

result in unrecoverable stranded wholesale power purchase costs," the Commission found.

FERC cited several bankruptcies or severe credit downgrades among regulated utilities in the past as supporting its findings that such rate regulated entities do not have any special status with respect to credit risk.

"While we agree with the Filing Parties that the risks of an unforeseen bankruptcy for the Qualifying Distribution LSEs are very low, we do not believe that the Filing Parties have demonstrated that such entities are immune from these same risks just noted and therefore deserve a carve-out as a separate class of entity allowed the continued use of unsecured credit," FERC said.

FERC's order will allow the continued use of unsecured credit by both competitive retail suppliers and POLR providers. The Commission rejected a proposal to increase the total unsecured credit limit from \$75 million to \$100 million for certain T&D Companies that are entitled to recover costs through government-established retail rates, by providing up to \$50 million of unsecured credit for ISO Charges and up to \$50 million for Transmission Charges.

Unsecured credit was eliminated for all Market Participants with respect to Financial Transmission Rights, however.

Over the objection of some retail providers, FERC also accepted ISO-NE's proposal to further shorten the cycle for billing and payment of Hourly Charges from once each week to twice each week, to become effective on or after December 1, 2010. Such action will further increase cash working capital costs ultimately passed through to end users.

Direct Energy to Automatically Retain Pike County Aggregation Customers

Reversing an ALJ's recommended decision, the Pennsylvania PUC held that Direct Energy shall retain its current Pike County Light & Power aggregation customers when the aggregation program expires May 31, 2011 (P-2008-2044561).

As only reported in *Matters*, an ALJ had found that Section 2807(d)(1) of Act 129

requires an affirmative choice to change a customer's default service supplier. As Pike County retains the default service obligation, the ALJ concluded that Direct could not continue to serve customers under the unique aggregation program, created as an opt-out pool to mitigate high prices resulting from Hurricane Katrina, unless customers affirmatively consented to remain with Direct (Matters, 10/22/09).

The Commission accepted a motion from Chairman James Cawley to reverse the ALJ's recommendation, and to allow Direct Energy to retain the aggregation customers automatically without any action from the customer. "The ALJ's recommendation would follow the normal course, but this case is abnormal. We have previously approved an Aggregation Program and a PECO Market Share Threshold Program that gave customers real alternative supplier choices. A strict interpretation of our statute, as taken here, could seriously impinge on our ability to bring rate relief to customers going forward. It would, in essence, remove a tool from our tool box to help customers benefit from choice of suppliers," Cawley said.

"Under the Aggregation Program, Direct Energy provided rate relief to Pike customers in their time of greatest need ... Additionally, Direct Energy agreed to impose no switching restrictions or penalties for customers who affirmatively choose to take Pike's default service or service from another EGS [electric generation supplier]," Cawley added.

While Section 2807(e)(3.1) of the Public Utility Code states that Pike County shall be the default service provider for any customer that has not chosen an alternative supplier, Cawley noted that, for over three years now, Pike customers have been given the choice of remaining with Direct Energy or taking service from Pike or other suppliers without any restrictions on switching whatsoever. "Under these circumstances, it can be reasonably concluded that customers who have not switched to Pike's default service or elected to receive service from another supplier have 'chosen' to receive service from Direct Energy within the meaning of Section 2807(e)(3.1)," Cawley said.

Cawley said that Section 2807(d)(1) must be read in conjunction with Section 2807(e)(3.1),

which gives guidance regarding the type of service to be provided following the expiration of rate caps. "Section 2807(d)(1) is clear that customers should not be switched from their supplier of choice without either oral or written confirmation of the customer's desire to switch suppliers. Thus, automatically migrating customers who have chosen to remain with Direct Energy to Pike's default service offering, without confirming that choice either orally or in writing, would constitute slamming in violation of Section 2807(d)(1)," Cawley found.

Cawley stressed, however, that the PUC's decision is, "very fact specific." Direct Energy has represented that it will not impose any shopping restrictions or penalties in the post-aggregation term, and that it will provide a service similar to that offered under the aggregation program.

"If Direct Energy wishes to change the nature of its service, such as frequency of price changes, or if it wants to impose shopping restrictions or penalties, it must obtain customers' affirmation for such changes," the PUC ordered.

Direct Energy was directed to report to the Commission any aggregation contract changes, and provide the Commission, the Office of Consumer Advocate, and the Office of Small Business Advocate with any customer education materials that are to be provided to aggregation customers.

Vice Chairman Tyrone Christy and Commissioner Wayne Gardner dissented from the order.

NEM Touts Outlook for Illinois Retail Choice

National Energy Marketers Association President Craig Goodman is confident that Illinois will see robust residential electric competition as additional market enhancements are implemented, and called Illinois the "next crown jewel" in retail choice.

NEM yesterday held a Summer Policy Leadership Conference focusing on the Illinois gas and electric markets, with the Illinois Commerce Commissioners, Commission Staff, the Attorney General's office, and suppliers.

Excitement about the Illinois electric market is nothing new. Since landmark 2007 legislation (PA 95-0700) which included purchase of receivables, purchase of uncollectibles, utility consolidated billing, referral programs, and an ICC Office of Retail Market Development, the Illinois market has consistently topped suppliers' and industry experts' lists of the most attractive markets. Goodman said the Act, and other laws passed during the same session, "got all the right ingredients" for a thriving retail market, calling the Illinois laws the most broad-based and comprehensive legislation supporting retail choice he has seen.

But as such policies have largely remained legislative mandates rather than in-place programs (Ameren POR and ORMD being among those implemented), *Matters* notes that other states have been able to attract active residential suppliers with increasing migration rates (Connecticut, Pennsylvania, Maryland), while Illinois activity has almost exclusively been confined to the large and mid-merit non-residential classes.

Supplier interest remains high for Illinois mass market choice, but suppliers are largely still on the sidelines. One of the earliest residential efforts since the 2007 legislation, a collaborative between Integrys Energy Services and New Illinois Cooperative Energy, was never executed because of regulatory issues regarding the managed product and customer pricing disclosures (see *Matters*, 11/17/09). BlueStar Energy Solutions began piloting residential sales some time ago and has since moved to fully active residential marketing, the only supplier to do so.

Goodman is confident that as the working group process and implementation of retail market enhancements is completed, Illinois (particularly Commonwealth Edison) will see migration levels similar to those seen in Pennsylvania. In fact, Goodman noted that under the "competitive declaration" statute, only 33% migration is required, along with the presence of three competitive suppliers, for a class to be declared competitive, upon application of the utility and approval of the ICC. Such "competitive" customer classes are no longer eligible for fixed price default service.

Goodman noted that PPL has essentially

reached a 33% migration rate in six months, and said that NEM members are focused on crafting an "end game" for residential default service in Illinois. Residential customers cannot be declared competitive until July 1, 2012. However, given the pace of market development, and time to conduct a contested case for a competitive declaration, that date would likely be just about the time a contested case would be completed if Illinois migration is indeed as rapid as at PPL.

Though Illinois has one of the most comprehensive statutes for retail market programs, *Matters* notes that the rub is always in implementation, so much heavy lifting remains for Illinois suppliers. Many variables still exist: the level of POR discount rates, the form of any customer referral program (e.g. contract versus service model), and potential customer protection rules which inhibit the offering of certain products (e.g. proposals for a 30-day no cancellation fee period).

Nevertheless, Illinois remains primed for increased migration levels as more market enhancement policies are implemented. While the Office of Retail Market Development recently provided an update on continuing work on various market enhancements in its annual report, several suppliers in attendance at the NEM conference said that Commissioners did not offer any specific insight into when the Commission would open formal rulemakings or proceedings for additional enhancements.

During the NEM roundtable, suppliers generally reiterated to the ICC that the lack of POR at every utility save Ameren remains the highest barrier to participation in the mass market. In particular, suppliers expressed a desire for the implementation of gas POR, for which there is currently no legislative mandate.

The need for greater customer education efforts was also stressed by suppliers and Commissioners alike, with Commissioner Lula Ford calling for a collaborative among the ICC, Citizens Utility Board, utilities, and suppliers. Chairman Manuel Flores and Commissioners Erin O'Connell-Diaz and Sherman Elliott also praised NEM's consumer bill of rights, released in April, as a key part of creating a viable market.

Pa. PUC Approves New Option for Capacity Release at National Fuel Gas Distribution

The Pennsylvania PUC approved several tariff changes at National Fuel Gas Distribution Corporation which include an alternative capacity release option for Small Aggregation Transportation Supplier Service (SATS) utilizing a Weighted Average Cost model, and a new tariff section titled "Market Price of Natural Gas" featuring a cash out index change (R-2010-2151205).

As an alternative to the 'slice of the system' or pro rata approach to capacity release, Distribution, under the new capacity release option, would designate a capacity path from southwestern gas supply basins into market area pipeline and storage capacity, where releases of transmission and storage capacity are then provided to the SATS suppliers. The new mechanism mirrors a similar program in Distribution's New York territory that resulted from recent changes in federal regulations concerning capacity release.

Under the new option, all suppliers will be in direct control of pipeline transmission and storage capacity; i.e. they will be customers of the pipeline via the FERC capacity mechanism with a slice of storage and a slice of transmission capacity. Distribution anticipates SATS suppliers will gain gas supply efficiencies in managing consolidated upstream capacity segments relative to managing pro rata shares of every upstream segment.

The capacity released under the new mechanism will be priced at the Weighted Average Demand Cost of Upstream Capacity. As such, the overall cost will be identical to that attained if a SATS Supplier elected to receive a pro rata slice of each segment of pipeline and storage capacity held by Distribution.

Regarding cash outs, Distribution will include the cost of transportation from the Columbia Gas Transmission Appalachian Pool (TCO Pool) to Distribution's city gate in the few rates schedules where this cost is not currently included. The added costs, representing the variable costs associated with shipping gas to Distribution's system, are already included in the market price calculation for the majority of

circumstances where under-delivery rates are applied, i.e. Rates Schedule SATS and Rate Schedule Monthly Metered Natural Gas Supplier Service (MMNGS). The same transportation costs are also already included in the rates paid to a natural gas supplier or customer as compensation when Distribution appropriates gas supplies under a Gas Emergency. The proposed additions will create consistency across Distribution's rate schedules and will close a potential gaming opportunity to help to ensure that sales customers do not subsidize suppliers in under-delivery situations, Distribution said.

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is needed for enrollment, and typically customers do not know their account number or carry their bill with them, such remote enrollments are currently impeded.

The PSC in 2006 found that rather than providing ESCOs with such information, the same objective (allowing enrollments in situations where the customer does not have a copy of their bill) could be achieved by giving customers remote access to their account numbers.

In their original compliance plans filed in December 2006, ConEd and NiMo proposed using an Interactive Voice Response (IVR) system to provide customers with their account number, requiring the customer's SSN (or taxpayer ID) and zip code, plus (at NiMo) name validation.

The Commission said that it rejected the initial proposals from NYSEG, Rochester Gas and Electric, KeySpan-New York, KeySpan-Long Island, and National Fuel Gas Distribution Corporation to offer customers real-time remote access to their utility account numbers. The PSC, which did not indicate what led to the rejections, directed these five companies to submit new proposals that are in line with the Commission's decision approved yesterday.

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a customer's Capacity and Transmission Obligations, "that are calculated and provided to PJM by the distribution companies on an annual basis."

"We are persuaded that these calculations are an integral piece of EGS pricing for accounts," the PUC said.

A customer's old account number, when the account number has changed, would not be included in the customer list. However, in cases where there are system-wide account number changes across the utility, the PUC would require one-to-one mapping of accounts.

A customer contact name and address (distinct from the legal account holder name and address) would not be included in the customer list. While suppliers had wanted this additional information in order to identify decision-makers at business customers, the PUC found that utilities may not have this data, and do not have the means to maintain current information.

The Tentative Order would further decline to include a rate mitigation plan indicator in the customer lists, given the temporary nature of the opt-in rate mitigation plans.

The Tentative Order finds that there should a mechanism for victims of domestic violence or those customers in similar dangerous situations to restrict access to their service address.

Customer lists would be updated monthly under the Tentative Order.

The Tentative Order would adopt consensus items from the Committee Handling Activities for Retail Growth in Electricity, including the following minimum requirements for customer lists:

- Revision Date
- Meter Read Cycle
- Customer Name
- Customer Account Number
- Service Address
- Billing Address
- Utility Rate Class
- Load Profile Group Indicator
- Usage (kWh)(non-Time of Use) Period 1...12 (monthly)

There was also consensus that the following information shall be included in customer lists, if

data is available:

- Billing Country Code
- Utility Rate Class (additional to main rate class)
- Rate Subclass/Rate Subcode
- On Peak kWh Period 1...12 (monthly)
- Off Peak kWh Period 1...12 (monthly)
- Registered Demand Period 1...12 (monthly)

Additionally, the following elements which are specific to one or another utility service areas would be included on the lists where applicable:

- Meter Flag (Master/submeter) (PECO)
- Loss Factor (FirstEnergy Companies)
- Procurement Classification Indicator (for EDCs whose rate codes and procurement classification do not directly map)

Distribution companies would have discretion to include the following fields:

- Revenue Code
- Load Factor
- Fixed Price Election (to be either included in the list or provided separately, at the discretion of the EDC)