

Energy Choice

Matters

September 8, 2010

Connecticut Marketing Standards Would Limit Residential Electric Termination Fees

The Connecticut DPUC would impose a limit on early termination fees applicable to residential electric customers under proposed marketing standards for electric suppliers and aggregators in Docket 10-06-24. The proposed standards were erroneously omitted by the Department in publishing a notice of hearing regarding marketing guidelines last week (Only in Matters, 9/6/10), but were published Tuesday.

Except where specifically noted, the draft standards would be applicable to all customer classes.

The proposal provides that no contract for the provision of electric generation services by a supplier shall require a residential customer to pay any fee for termination or early cancellation of a contract in excess of (1) \$100; or (2) twice the estimated bill for energy services for an average month. In order to charge a fee greater than \$100, a supplier must have provided the residential customer, at the time that the contract is offered, an estimate of the average monthly bill that the customer would be charged for electric generation services.

The proposed rules would prohibit a supplier from making a material change in the terms or duration of any contract for the provision of electric generation services without the express consent of the customer. This provision would not restrict a supplier from renewing a contract by clearly informing the customer in writing, not less than 30 days nor more than 60 days prior to the renewal date, of the renewal terms and of the customer's option not to accept the renewal offer, provided however, that no fee shall be charged to a customer who terminates or cancels such renewal not

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New Hampshire PUC Adopts Final Electric Rule, Maintains Applicability to Large Customers

The New Hampshire PUC has adopted final rules governing the certification of competitive electric suppliers and customer protection for competitive electric service (PUC 2000).

Among other things, the final rules maintain the applicability of several standards governing telephonic and in-person solicitations to all customer classes (Only in Matters, 6/8/10). The Retail Energy Supply Association had argued that such standards, similar to the detailed pricing disclosures in the rule, should only apply to residential and small commercial customers.

The final door-to-door marketing standards, applicable to all customer classes, provide that the supplier or its representative shall:

- Produce identification, to be visible at all times thereafter, which prominently displays in reasonable size type the full name of the supplier and representative as well as the supplier's telephone number for inquiries, verification, and complaints. Upon request such identification shall be left with the potential customer.
- Identify the supplier and the relationship of the representative with the supplier. The supplier or its representative shall also state that if the potential customer purchases electricity from the supplier, the customer's utility will continue to deliver their energy and will respond to any outages

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Briefly:

U.S. Gas & Electric Expanding to Five States

U.S. Gas & Electric, Inc. said that it will soon be entering the Connecticut, Illinois, Kentucky, Maryland, and Massachusetts markets, in announcing its recognition in the Inc. 5000 list, which was first reported by *Matters* (see 8/25/10 issue). *Matters* also first reported U.S. Gas & Electric's Maryland and Illinois entry (7/13/10 & 4/8/10). USG&E said that it is serving more than 100,000 customers, compared with 70,000 at the end of last year.

Constellation Expanding Residential Offerings to Allegheny, Delmarva

Constellation Electric (BGE Home) said that it is expanding its Maryland residential electric marketing to customers at Allegheny Power and Delmarva Power. The expansion puts Constellation Electric in each investor-owned utility residential electric market in the state, as it is currently active at BGE and Pepco. Details to be provided in tomorrow's issue.

Duxbury Energy Seeks Texas Aggregator License, Expanding into Three Additional States in 2010

Duxbury Energy, LLC applied for a Texas aggregator license to pool commercial and industrial customers. Duxbury Energy is active in Massachusetts, New York, New Jersey and Pennsylvania. Duxbury Energy said that it plans to expand to Maine, New Hampshire, and Connecticut by the end of 2010 and to Maryland, Ohio, Illinois and Michigan in 2011. Duxbury Energy would also expand to California should the migration load caps be modified. Duxbury Energy said that it brokers for Hess, Gexa, ConEdison Solutions, Hudson Energy, TransCanada, Glacial Energy, Metromedia Energy, and FirstEnergy Solutions.

Energy Edge Consulting Seeks Ohio Broker License

Energy Edge Consulting, LLC applied for an Ohio electric broker/aggregator license to serve commercial, mercantile, and industrial customers in all service areas. Energy Edge Consulting is active or is seeking licensure in California, Illinois, Pennsylvania, and Texas.

Energy Edge Consulting said that its more than 50 clients represent over 500,000,000 kWh per year of electricity consumption.

Utility Management Corporation Receives Ohio Broker License

The Public Utilities Commission of Ohio granted Utility Management Corporation an electric broker/aggregator certificate (Only in *Matters*, 8/4/10).

D.C. PSC Opens Catch-all Smart Grid Docket

The District of Columbia PSC opened Formal Case 1083 to address smart grid related policy matters that are not currently captured in existing cases.

Pa. PUC Approves Columbia 1307(f) Settlement

The Pennsylvania PUC has approved a settlement in Columbia Gas' annual 1307(f) proceeding which sets forth provisions governing retainage and lost and unaccounted for gas (R-2010-2161920).

Under the adopted settlement, commencing January 1, 2011, and each January thereafter, Columbia will adjust its retainage level with regard to transported gas, except for MLS (Maine Line Service) Class I customers and customers served by an excess pressure measuring station. The adjustment will reflect (a) the average lost and unaccounted for gas experienced for the three year period ending on August 31 sixteen months previous to the commencement date; plus (b) the average level of company use gas for the same three year period (e.g., the three years ending August 31, 2009, to establish retainage commencing January 1, 2011). Retainage levels for MLS Class I customers and customers served by an excess pressure measuring station shall remain as reflected in the current tariff.

The calculation of the three-year average lost and unaccounted for gas used to establish retainage shall exclude volumes and retainage for MLS Class I customers and customers served by an excess pressure measuring station, but the retainage calculation shall include company use gas

The three-year average retainage rate to become effective January 1, 2011, is 2.0%. It is based on lost and unaccounted for and company use gas for the three years ending August 31, 2009.

The settlement also provides that if the PUC approves UGI-Central Penn Gas Company's petition in P-2010-2171611 to change CPG's inventory accounting methodology from LIFO (Last In, First Out) to Weighted Average Cost of Gas (WACOG), Columbia agrees that as part of its next purchased gas cost (PGC) filing that is submitted more than 90 days following a final order in the CPG proceeding, Columbia will submit an analysis of the relative merits of a change to Columbia's storage accounting methodology. Such analysis shall include, but not be limited to, an evaluation of the effect of such a change on the volatility of Columbia's PGC rates, as well as the PGC and base rate impacts of such a change.

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later than 7 business days after receiving the first billing statement from the supplier under the terms of the contract as renewed.

When advertising or disclosing the price of electricity, the supplier, aggregator or agent (which is a catch-all term for employees, contractors, vendors, etc.), shall also disclose the distribution company's average current charges, including the competitive transition assessment and the systems benefits charge, for that customer class.

When soliciting residential customers, suppliers and aggregators would be limited to using door-to-door marketing or sales activity during the hours between 10:00 am and 6:00 pm. When the local ordinance is stricter, suppliers and aggregators shall comply with the local ordinance. There are no time restrictions for any other classes of customers under the draft.

Any supplier or aggregator performing door-to-door sales or marketing would be required to conduct, on all existing and potential door-to-door marketing or sales agents, comprehensive criminal background checks and screenings necessary to determine if such agents present a possible threat to the health and safety of the

public. This would include checking the sex offender registry commonly referred to as the Connecticut Sex Offender Registry maintained by the Connecticut State Police. Suppliers and aggregators would be required to exercise "good judgment" in developing standards and qualifications, and shall not hire an individual that fails to meet these standards.

Each door-to-door sales or marketing agent would be required to "prominently" display or wear a photo ID badge showing, in reasonably sized font or type: the full name of the agent, the name and logo of the supplier or aggregator that the agent represents, and the name of the agent's employer, if different than the supplier or aggregator. The agent would also be required to immediately provide a business card or other material that states the agent's identity and the supplier's or aggregator's name and contact information.

Under the proposal, door-to-door sales agents or marketing agents shall not dress in uniforms or wear any apparel that contain any branding elements (including logo) that are deceptively similar to that of the local Connecticut distribution companies.

As a courtesy, the draft provides that a supplier, aggregator, or agent "should" notify the local municipal officials of their locations and schedule of door-to-door marketing or door-to-door sales activities

For all door-to-door sales, the supplier would be required to provide customers with a written notice of "cancellation," or rescission. As part of this requirement, the contract or the customer's receipt copy of the contract shall provide, in "immediate proximity" to the space reserved in the contract for the signature of the customer or on the front page of the receipt if a contract is not used, and in bold face type of a minimum size of 10 points, a statement in substantially the following form:

"You, the Customer, may cancel this transaction at any time prior to midnight of the third business day after the date of this transaction. See the attached notice of cancellation form for an explanation of this right."

The notice of cancellation cited above would be a completed form in duplicate, captioned either "NOTICE OF RIGHT TO CANCEL" or "NOTICE OF CANCELLATION," which shall

contain in ten point bold face type the following information and statements in the same language as that used in the contract:

NOTICE OF CANCELLATION

[date of transaction]

You may CANCEL this transaction, without any Penalty or Obligation, within THREE BUSINESS DAYS from the above date.

If you cancel, any payments made by you under the contract or sale, and any negotiable instrument executed by you will be returned within TEN BUSINESS DAYS following receipt by [name of Supplier or Aggregator], and any security interest arising out of the transaction will be cancelled.

To cancel this transaction, mail or deliver a signed and dated copy of this Cancellation Notice or any other written notice, or send an email, to [name of Supplier or Aggregator], at [address of Supplier or Aggregator] NOT LATER THAN MIDNIGHT OF [date].

I HEREBY CANCEL THIS TRANSACTION.

Date: _____

Customer's Signature: _____

Notably, the notice of cancellation does not provide for telephonic rescission; however, the draft is not explicit that using the notice of cancellation is the exclusive means for a customer to rescind the contract.

Under the proposed standards, a customer solicited door-to-door could not waive any rights to which the customer is entitled under the guidelines.

For all enrollments, the draft would require a notation or other means that indicates whether the enrollment was the result of a door-to-door or telephone sale with a unique sales agent identifier.

Furthermore, each supplier would be required to maintain records of each customer's consent or switching confirmation for at least 10 years.

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or emergencies. This requirement may be fulfilled by an oral statement to the potential customer, or by written materials left with the

potential customer

- The supplier or its representative shall leave the premises of a potential customer when requested to do so by the potential customer or the owner or occupant of the premises; and
- Where it is apparent that the potential customer's English language skills are insufficient to allow the potential customer to understand and respond to the information conveyed, or where the potential customer or another third party informs the supplier or its representative of this circumstance, the supplier or its representative shall either find a replacement who is fluent in the potential customer's language to continue the marketing activity, or shall terminate the in-person contact with the potential customer. The use of translation services shall be permitted.

For telephonic solicitations, the PUC did revise the proposed rule to make one of the standards applicable to residential and small commercial customers only. Specifically, the requirement that the supplier provide the customer with the name of the supplier on whose behalf the call is being made as well as a telephone number or address at which the supplier can be reached only applies to residential and small commercial customers.

All other telephonic solicitation rules (which were not materially modified from the current rules) apply to all customer classes. These rules include, among other things, establishing a written policy for maintaining a do-not-call list, including monthly updates from the National Do Not Call Registry and daily updates from customers informing the supplier or its representative directly that they do not wish to receive sales calls.

For all customer classes, a supplier may not initiate any telephone solicitation to a customer or potential customer before 8:00 a.m. or after 9:00 p.m. eastern time, and may not initiate any telephone solicitation to a customer or potential customer on a weekend or any state or federal holiday.

The final rule maintains that electric suppliers and aggregators may not discriminate in the application process, the provision of service, or the termination of a contract on the basis of income. A supplier or aggregator may use the

customer's credit in determining the provision of credit to the customer.

RESA had asked that the PUC should not preclude suppliers from considering income or, potentially, other creditworthiness factors in making offers, at least until a Purchase of Receivables program recommended by RESA is implemented.

"In a state without a functioning POR program, the suppliers should be allowed to consider income in determining whether to make service offers. If not, suppliers may elect to avoid marketing to such customers entirely," RESA had said.

The final rules grant a clarification requested by RESA regarding the definition of a small business customer, to ensure that large customers who have a meter taking service under a small commercial tariff are excluded from the definition. Specifically, the adopted definition provides that small commercial electric customer means any non-residential customer, as defined under the terms and conditions of the consumer's utility tariff, that meets the availability criteria to take service under a utility tariff having a normal maximum demand threshold of less than 100 kilowatts. "The term does not include any customer eligible to take service under a utility's small customer tariff for an individually metered account, but whose aggregated accounts in New Hampshire exceed the combined demand threshold of 100 kilowatts," the final definition states.

The amount of financial security required for certification under the final rule is a maximum of \$350,000, based on a sliding scale of the supplier's gross receipts. RESA had requested that the maximum security level be lowered to \$250,000.

The final rule modifies an earlier proposal regarding the new quarterly sales report which suppliers must file. The adopted rule provides that each supplier shall file, by January 31, April 30, July 31 and October 31 of each year, a confidential report of the sales activity which occurred during the quarterly period just ended. Such report shall include, but not be limited to, sales of electricity made to customers in each utility's franchise area segregated by residential, small commercial, large commercial and industrial, and street lighting classes, the total

kilowatt hours (kWh) sold, the number of customers in each class to which sales were made, and the total number of customers purchasing electricity.

Under the original proposal, the report would have required suppliers to list sales by utility rate class, a requirement RESA said was burdensome. The Commission denied RESA's request to make the reports annual or semi-annual rather than quarterly, however.

Regarding the pricing disclosures to be made to residential and small commercial customers (most of which are contained in the current rule), the adopted rule adds a new requirement for products which do not have a flat per kilowatt-hour rate. Specifically, if the energy charge for the proposed service is based on determinants other than a fixed rate per kWh, such as time-of-use or real time rates, the supplier must disclose all applicable billing determinants, broken down by time-of-use, and a historic average price per kWh for a typical load profile, described by at least hour of day and day of week, starting at a usage of 250 kWh per month and increasing in 250 kWh increments to 1000 kWh and in 500 kWh increments thereafter. This breakdown shall cover an identified 12-month period ending within one year and one month of the date of the statement.

The final rule also requires suppliers to list (for mass market customers) the average price per kW of demand or other billing determinants for demand charges if other than a fixed rate per kW, if the terms of service include a demand charge.

The final rule maintains the draft provision that the supplier shall disclose to the Commission the name, address, telephone number, and e-mail address of the person or entity acting as a third party verifier for enrollments conducted via voice verification.

Regarding the release of customer information, the adopted rule modifies the current language by providing that a supplier or aggregator, "shall be deemed authorized to obtain customer usage information when it has secured from the customer, in writing, the customer's name, account number(s), and the unique utility assigned authorization number(s)."