Energy Choice Matters
September 20, 2010

Court Rules Maryland PSC Mitigation of SOS Rates for New Type II Customers Was Unlawful

Mitigation of SOS rates in 2008 by the Maryland PSC for certain Type I customers at Baltimore Gas & Electric who were being transitioned to Type II service exceeded the Commission's authority and was unlawful, the Maryland Court Of Special Appeals found in an opinion released Friday (Docket 418 of the 2009 term).

As only reported in *Matters*, the Commission, in May 2008, capped a rate increase for customers transitioning to Type II SOS from Type I SOS (under a prior order making the size uniform) at 15%, while financing the mitigation through a distribution surcharge on all non-residential customers (Only in Matters, 5/29/08). The temporary cap was applicable to about 17,000 customers at Baltimore Gas & Electric, Delmarva, and Allegheny Power. The Commission imposed the cap because transitioning these customers to the more market reflective quarterly pricing produced rate shock due to where the current quarterly market price of electricity was versus the price the customers had been paying on the two-year blended Type I SOS rate.

The Court's decision is only directly applicable to the cap and nonbypassable surcharge as applied at Baltimore Gas & Electric, after BGE's surcharge was appealed by several industrial customers in the service area (see Matters, 6/10/08). At BGE, the surcharge was $.00137 per kWh.

The PSC justified its action by arguing that its ratemaking authority was largely unchanged by deregulation, and that it retained broad discretion to set just and reasonable rates, including the power to allocate costs among rate classes. The PSC cited §§ 7-505(b)(8), 4-101, 4-102, 4-201 and

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PUCT Staff Recommends Setting CenterPoint Disconnect/Reconnect Charge at $0

PUCT Staff have suggested that CenterPoint Energy set the Discretionary Service Charge (DSC) for disconnection and reconnection to $0 for all customers, with the costs to perform this service for customers without advanced meters rolled into base rates through some mechanism (38339).

CenterPoint does not incur costs for remote disconnections and reconnections performed through provisioned advanced meters. Staff was responding to testimony from Direct Energy and TXU Energy who have sought to set the Discretionary Service Charge for disconnection and reconnection to customers with advanced meters at $0, to facilitate prepaid products (Only in Matters, 9/13/10). Currently, CenterPoint charges averaged Discretionary Service Charges for disconnection and reconnection which do not distinguish between customers with legacy meters and those with advanced meters.

Staff, "recommend[s] that the company address this issue by simply setting the DSCs to $0 for disconnection and reconnection for all customers and roll the cost of disconnection and reconnection for customers without an advanced meter into rates through some mechanism."

Staff testified that an "alternative" option would be for CenterPoint to allow REPs to identify which customers they serve are prepay customers. "Those customers would then be treated differently - and the company would set the DSCs for the disconnection and the reconnection of those customers

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Briefly:

Interstate Gas Supply Files to Use Columbia Retail Energy Trade Name in Maryland, Pennsylvania

Interstate Gas Supply has submitted amendments to its natural gas supplier licenses in Maryland (Maillog #125446) and Pennsylvania (Docket A-125051) to add the trade name Columbia Retail Energy to each license.

Constellation Energy to Acquire CPower

Constellation Energy has signed an agreement to acquire CPower, which manages approximately 850 MW of demand response capacity in New York, New England, PJM, California, Texas, and Ontario. The transaction, whose terms were not disclosed, would expand Constellation Energy's total demand response capacity to 1,500 MW. CPower's 2009 revenues, as reported to Inc. Magazine, were $38.9 million.

Mint Energy Seeks Pennsylvania Electric License

Mint Energy, LLC applied for a Pennsylvania electric generation supplier license to serve all sizes of non-residential customers in all service areas. Mint is an affiliate of Patriot Energy Group, Inc. (Only in Matters, 8/17/10)

Discount Energy Group Seeks Pennsylvania Electric License

Discount Energy Group, LLC applied for a Pennsylvania electric generation supplier license to serve all customer classes in all service areas. Discount Energy Group CEO Pete McCawley managed energy procurement and cogeneration for biotech company Amgen, and also consulted on energy procurement for Novartis, another health care company.

Worley & Obetz Seeks Pennsylvania Gas Supplier License

Fuel oil provider and electric generation supplier Worley & Obetz applied for a Pennsylvania natural gas supplier license to serve all customer classes at UGI, with an emphasis on the residential and small to medium commercial market. Worley & Obetz would market natural gas under the trade name Amerigreen Natural Gas.

PUCT Staff Seeks Revocation of Fire Fly Electricity, AP Electric REP Certificates

PUCT Staff filed separate petitions to revoke the REP certificates of Fire Fly Electricity, LLC (38686) and AP Electric, LLC (38687), alleging that each has failed to meet the new financial and managerial requirements under amended SUBST. R. 25.107. Additionally, Staff said that AP Electric failed to provide retail electric service to customers within 24 months of its certificate being granted by the PUCT (in December 2007), contrary to SUBST. R. 25.107(j).

Champion Energy, Green Mountain Energy Oppose POLR Designation for TCC/Sharyland Area

Champion Energy Services requested that the PUCT remove Champion as a non-volunteer POLR for the small non-residential, medium non-residential, and large non-residential customer classes in the combined AEP Texas Central and Sharyland service territory since Champion does not have a delivery service agreement with Sharyland. Green Mountain Energy Company requested that the PUCT remove Green Mountain as a non-volunteer POLR for residential customers at AEP Central/Sharyland for the same reason.

Detroit Edison Seeks to Offer Prepaid Pilot

Detroit Edison applied for waivers from several Michigan PSC billing rules to allow it to offer a limited pre-pay billing option for up to 200 customers including: 1) 100 customers on the existing tariff; and 2) 100 customers on a Dynamic Peak Pricing tariff (U-16457). Under Detroit Edison's proposal, customers must have advanced metering, must enroll in on-line or electronic billing, must have two applicable communication methods, and must be on the Standard Residential Service (D1) or General Service (D3) rates. Reconciliation of the customers' usage with their credit balance is to occur on a daily basis through an on-line customer data presentment tool providing the customer with effective data transparency regarding their energy utilization and the cost impacts of such utilization.

Connecticut Light & Power Reports August Migration Statistics

Supplier Accounts as of 8/31/10	Aug '10 Residential	Aug '10 Business	Aug '10 Total	% of Migrated Customers	Change vs. Jul '10 Total
Choice Energy			0		0
Cianbro Energy LLC			0		0
Clearview Electric	10,984	220	11,204	2.9%	(543)
Community Power & Utility			0		0
ConEdison Solutions	6,658	2,498	9,156	2.4%	302
Constellation NewEnergy	1,216	8,515	9,731	2.6%	(13)
Direct Energy Business	133	3,489	3,622	0.9%	183
Direct Energy Services	44,444	7,042	51,486	13.5%	(466)
Discount Power Inc	8,685	1,657	10,342	2.7%	830
Dominion Retail	52,287	9,028	61,315	16.1%	(185)
Energy Plus Holdings LLC	25,338	2,928	28,266	7.4%	502
Gexa	423	1,990	2,413	0.6%	122
Glacial Energy	709	1,622	2,331	0.6%	(160)
Hess Corporation	238	1,671	1,909	0.5%	(11)
Integrys Energy Services	38	3,052	3,090	0.8%	(57)
Liberty Power	625	712	1,337	0.4%	98
MXenergy	29,285	1,584	30,869	8.1%	6,089
North American Power and Gas	12,271	1,186	13,457	3.5%	3,846
Palmco Power CT			0		0
Pepco Energy Services	0	7	7	0.0%	0
Public Power LLC	41,923	3,759	45,682	12.0%	881
Reliable Power LLC			0		0
Rescom Energy	29,807	2,697	32,504	8.5%	3,884
Sempra Energy Solutions	5	1,078	1,083	0.3%	(7)
South Jersey Energy Co.	0	15	15	0.0%	9
Spark Energy			0		0
Starion Energy	8,042	1,662	9,704	2.5%	1,977
Suez Energy Resources NA	21	880	901	0.2%	(4)
TransCanada Power Marketing	29	2,548	2,577	0.7%	17
Verde Energy Savings	26,018	826	26,844	7.0%	14
Viridian Energy	19,463	2,261	21,724	5.7%	1,369
Whole Foods Market Group	0	2	2	0.0%	0
Total All Suppliers	**318,642**	**62,929**	**381,571**	100.0%	18,677

Aggregate Data

Customer Load - Suppliers and CL&P (MWh)

	Residential - SS		Business - SS		Business - LRS		Total CL&P Territory	
	MWh	% of Class	MWh	% of Class	MWh	% of Class	MWh	% of Total
Suppliers	322,916	31.6%	506,832	75.9%	485,412	87.3%	1,315,160	58.5%
CL&P	699,113	68.4%	161,261	24.1%	70,704	12.7%	931,078	41.5%
Total	1,022,029		668,093		556,116		2,246,238	

Customer Count - Suppliers and CL&P

	Residential - SS		Business - SS		Business - LRS		Total CL&P Territory	
	Customers	% of Class	Customers	% of Class	Customers	% of Class	Customers	% of Total
Suppliers	318,642	28.9%	62,049	52%	880	83.7%	381,571	31.2%
CL&P	783,925	71.1%	56,971	48%	171	16.3%	841,067	68.8%
Total	1,102,567		119,020		1,051		1,222,638	

SS: Standard Service   LRS: Last Resort Service

Data as reported by CL&P

Green Mountain Acquisition by NRG Is "About Growth"

NRG Energy's acquisition of Green Mountain Energy is "about growth," Green Mountain CEO Paul Thomas said in an interview with *Matters* on Friday, though Thomas said that it was "too early to say" what markets beyond ERCOT and New York Green Mountain would serve.

Thomas also confirmed that the alignment of NRG's renewable generation with Green Mountain, along with NRG's balance sheet, will lower several costs to Green Mountain, including collateral costs, both at the RTO and counterparty level, and transaction costs.

The alignment with NRG's renewable portfolio will also make the customer experience "more real" by allowing customers to feel a direct connection to the wind or other renewable energy source, Thomas said.

Thomas said that Green Mountain will also benefit from NRG's highly developed trading business, which, along with its renewable generation, will allow Green Mountain to structure more innovative pricing options and products. Earlier coverage in our 9/16 & 9/17 issues.

KeySpan LDCs File Remote Account Number Access Plan, NiMo Limits Cost Recovery

Although the cost of implementing a system to allow customers to remotely access their utility account numbers has increased from an original estimate, Niagara Mohawk informed the New York PSC that it will not seek recovery of the additional costs from ESCOs (98-M-1343, Matters, 7/16/10).

NiMo reported that since it first proposed providing customers with their account numbers remotely via its integrated voice response system (IVR) in December 2006, it has implemented a new IVR. NiMo said that making modifications to the new IVR system will cost $62,000, as opposed to the $17,500 estimate for modifying the IVR system that was in place in 2006. "The Company has decided, however, to only seek recovery from the ESCOs of the $17,500 in costs that were approved in the Commission's [July] Order," NiMo said.

NiMo reported that implementing the modified IVR to allow remote access to account numbers would take 40 days. NiMo said that because of the time needed to study the modification to the new IVR system, it has not yet had adequate time to consult with the ESCOs actively marketing in its service territory to discuss how to recover the $17,500 from ESCOs and whether ESCOs will commit to funding the changes. NiMo asked for an extension until October 18 for submitting a report on cost recovery to allow for further discussion with ESCOs.

KeySpan LDCs

Separately, KeySpan Energy Delivery New York and KeySpan Energy Delivery Long Island submitted revised remote account number access plans using an IVR mechanism after the Commission declined to approve the LDCs' earlier plans in its July order, citing cost concerns (Only in Matters, 7/20/10).

The cost for implementing the IVR solution is estimated at $65,000 for KEDNY and $82,000 at KEDLI. The proposed timeline for the KEDNY upgrades is approximately 42 days, and the proposed timeline for the KEDLI upgrades is approximately 60 days.

Under each KeySpan system, the customer would provide the last four digits of their Social Security Number and their zip code. Upon a positive match based on the last four digits of the SSN and zip code, the IVR would report the first four letters of the customer's last name for the customer to verify. Once verified, the application would provide the customer's account number.

If multiple matches were found with the last four digits of the SSN and zip code, the customer would be prompted to enter the telephone number associated with the account.

Orange and Rockland

Submitting its cost allocation compliance filing, Orange and Rockland proposed that its IVR system application implementation costs, estimated at approximately $5,000, plus estimated annual maintenance costs of $500, should be equally allocated across all ESCOs active in the O&R service territory. O&R held a conference call with approximately 18 ESCOs on September 16 and informed the PSC that, by a consensus, the ESCOs agreed to O&R's cost allocation proposal. The ESCOs stated that their consent to O&R's cost allocation proposal was predicated on its reasonableness due to the nominal costs involved in implementing and maintaining the program, as well as the number of ESCOs in O&R's service territory that would be sharing the costs.

O&R is prepared to implement an IVR-based system application to allow for remote customer access to account information within 60 days of the issuance of an approval from the Commission.

Central Hudson Recommends that Third Parties Take on Behind-the-Meter Role

Central Hudson Gas & Electric, "is not prepared to offer services behind the meter and recommends that other third party entities are better suited to provide these services," Central Hudson said in comments in the New York PSC's smart grid docket (10·E-0285).

"For Central Hudson our expertise does not lay beyond the meter therefore the potential of becoming the behind the meter 'geek squad' is an uncomfortable proposition. The Company is not prepared to become the service and troubleshooting organization for customer energy management systems. There are currently numerous participants such as IBM, Google, Microsoft, and Honeywell in the marketplace, just to name a few, that are more appropriately suited to provide these services. Customers also know what is best for their own lifestyles; Central Hudson cannot tell them what is best," Central Hudson said.

Central Hudson further said that the immediate focus should be on grid-side investments in a smart distribution system rather than behind-the-meter applications.

"The Company also assesses that residential customers do not value smart metering as a priority investment. This realization is reinforced by the results of years of customer surveys issued by Central Hudson. These surveys have consistently shown that grid reliability and reasonable cost of service are the primary drivers of customer satisfaction, not behind the meter services," Central Hudson said.

"Once customers see value in having more service options that is when the value of smart meters and in-home devices will succeed. Until then it is best to prepare the distribution system, monitor and study the results of the nationwide AMI deployments, and remain in correspondence with various manufacturers to discuss their product options and where they see the market heading. This approach will provide customers with the most options in the future," Central Hudson added.

Given that Central Hudson recommends that third parties implement various Home Area Network solutions, "security features and data access [should] be driven by these entities and by the market."

"There is a tremendous amount of commerce done every day over the internet or using internet protocols. The Home Area Network (HAN) market can leverage many of the processes and data security methods employed without involvement from the utility industry," Central Hudson said.

FERC Approves Elimination of Marginal Loss Payments to Financial Up-To Congestion Transactions in PJM

FERC approved without modification PJM's filed tariff changes to: (1) eliminate the requirement to reserve transmission service for Up-To Congestion bids in the Day-ahead Energy Market; and (2) limit the allocation of the transmission loss charges surplus based on the ratio of non-firm point-to-point to firm point-to-point transmission service (ER10-2280).

The changes, first reported by *Matters*, are meant to eliminate the potential for what PJM termed the "gaming" of the allocation of marginal loss surplus revenues (Only Matters, 8/19/10). PJM was alerted to behavior in which a participant would clear megawatt-hours of Up-To Congestion transactions in the Day-Ahead Energy Market between pricing points that had little or no price separation, ostensibly for the sole purpose of qualifying for a surplus allocation.

"PJM's proposal is reasonable to ensure that parties are not engaging in transmission transactions solely because the marginal line loss credit exceeds the cost of entering into those transactions," FERC said.

FERC's order makes Up-To Congestion bids that involve no physical transmission in the real time energy market ineligible for allocation of the marginal loss surplus. "Our understanding is that Up-To Congestion transactions with a physical tie to the Real-time market will still be able to purchase non-firm transmission service. Similarly, we find it reasonable for PJM to base the credit on the relative percentage contribution to fixed cost recovery by firm and non-firm customers," FERC said.

FERC dismissed protests from Monitoring Analytics, the independent market monitor, which had argued that the elimination of the transmission charge for Up-To Congestion transactions is tantamount to permitting spread bidding, with the market monitor further arguing that PJM stakeholders have not endorsed a spread bid product. FERC rejected this protest by finding that, "PJM, however, already permits Up-To Congestion transactions, so this proposal does not result in a new product."

FERC also dismissed Monitoring Analytics' protest that PJM's current tariff along with its tariff changes do not comport with PJM's original basis for allocating line losses insofar as they do not allocate credits to all those who support the fixed costs of the grid. The Commission said such issues were outside the scope of the proceeding, but did direct PJM to convene a stakeholder process on these issues, and directed PJM to file an informational report by December 31, 2010.

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4-204 of the Public Utility Companies Article of the Maryland Code as granting it authority for the rate mitigation.

However, the Court found that, "the PSC's retained authority extends to the oversight of the SOS procurement process but did not allow it to cap SOS rates for New Type II Customers and allocate the recapture costs to other commercial customers."

"[T]he differences between SOS regulation and traditional ratemaking make plain that the definition [of a just and reasonable rate] codified at Section 4-101 cannot apply in the unique context of SOS," the Court added.

Furthermore, the Court found that, "the PSC identified no operative standard beyond the nebulous 'consistent with the public good' benchmark in exercising its purported authority to allocate part of the SOS *supply price*, as determined by the auction results, to non-residential customers' *distribution rate*" (emphasis in original).

Most notably, the Court said that the, "scope of the PSC's authority to regulate SOS is confined to the standards set forth in Section 7-510(c): 1) that the price is a 'market price that permits recovery of the verifiable, prudently incurred costs to procure or produce the electricity plus a reasonable return' and 2) that it was procured 'in a manner that is designed to obtain the best price for residential and small commercial customers in light of market conditions at the time of procurement and the need to protect these customers from excessive price increases.'"

The Court rejected the PSC's statutory construction that because Section 7-505(b)(8) references Title 4, it is meant to bring SOS under the umbrella of traditional "just and reasonable" ratemaking.

The Court Of Special Appeals remanded the case to the Circuit Court for Baltimore City with instructions to vacate the PSC's letter orders of May 16, 2008, and June 6, 2008, and to remand the matter to the PSC for further proceedings not inconsistent with the opinion.

CenterPoint ... from 1

at $0, while maintaining a separate DSC for the disconnection and reconnection for customers not identified as prepay customers." In immediately describing this alternative, Staff was not explicit that such "prepay" customers would be those with a provisioned advanced meter for which a remote disconnection/reconnection could be performed.

However, in a summation of its testimony Staff listed its recommendation as, "[t]he company's costs for the disconnection and reconnection of customers with AMS be set to $0." This recommendation as contained in Staff's summary is also notable because Staff did not include its first suggestion that the disconnection and reconnection Discretionary Service Charge for all customers, regardless of meter type, be set at zero.

Staff also opposed CenterPoint's petition to recover additional costs through the flat residential customer charge, which would raise the monthly residential customer charge to $18.18 from the current level of $1.99 under CenterPoint's proposal.

Staff noted that when unbundling rates in Docket No. 22344, the Commission established the cost components which shall be included in the customer charges, and Staff is hesitant to change these components outside of a generic rulemaking or similar docket.

Furthermore, Staff cited the "rate shock" which would be, "a very real scenario for lower use customers where intra-class cost shifting would occur in which costs would be borne by and shifted to them from higher usage customers."

Additionally, CenterPoint's higher proposed fixed customer charge, "would actually discourage the conservation of electricity usage, contradicting statute and the Commission's recent policy decisions and rulemakings on energy efficiency," Staff testified.

Staff noted that, all else equal, placing more costs into a fixed charge grants the distribution company a greater fixed revenue stream with a lower risk of not collecting the revenues originally used to set rates.

"Commissions, in general, do not approve this approach because it undermines the positive incentive for utilities to control costs in order to have an opportunity to earn the authorized rate of return and it shifts the risk of doing business onto customers," Staff said.

Staff testified that such increased cost recovery through fixed rates would only be appropriate in a case where reduced volumetric sales were deteriorating a utility's financial condition to a point where its status as a going concern was in jeopardy. CenterPoint's stable financial condition, with an investment grade credit rating, does not qualify for such treatment, Staff said.

Staff recommended waiving demand ratchets for certain smaller customers, consistent with actions taken by the Commission at other utilities. With respect to the Secondary Greater Than 10 kVA and Primary Service class rate schedules which for the distribution charges feature billings based on Non- Coincident Peak (NCP) kVA billing demand with an 80% ratchet, Staff recommended that the Commission adopt a waiver for those customers with peak annual demand of less than the kVA equivalent of 20 kW of electricity in the prior twelve month period, so that all customers with less than the kVA equivalent of 20 kW of annual peak demand are billed based on their NCP monthly usage, with no ratchet applied.

Staff raised concern with CenterPoint's proposal to adjust the residential class billing determinants based on CenterPoint reaching its projected energy efficiency goals. Under this proposal, CenterPoint would deduct residential class billing determinants by 62,165,700 kWh from test year billing determinants.

Staff said that the adjustment is not known and measurable, noting that any base rate adjustment as proposed could be in rates for a number of years before rates are reset. "Specifically, CenterPoint's adjustment relies on projected revenue impacts for 2010 and 2011 before the results of its energy efficiency programs, which are reliant on customer preferences and changes in behavior, are known," Staff said.

Staff also raised concern that the adjustment amounts to, "a 'back door' attempt by CenterPoint to gain approval for a new 'lost revenue' recovery mechanism related to falling sales as a result of recently approved energy efficiency programs that will have various cost recovery implications, which the Commission has recently declined to consider."

Staff recommended that the Commission deny CenterPoint's Rider SH-System Hardening rider, due to various concerns including concerns about piecemeal ratemaking.