

Energy Choice

Matters

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Noble Group to Acquire Sempra Energy Solutions for \$317 Million Plus Assumed Debt

Noble Group Ltd. has agreed to acquire the Sempra Energy Solutions retail marketing unit from the Sempra Energy and Royal Bank of Scotland joint venture for \$317 million in cash, plus assumption of \$265 million in debt.

Sempra Energy Solutions has approximately 1,400 customers in 16 states, with the largest sales in Texas, Pennsylvania, New Jersey, and Maryland. The unit will be renamed Noble Americas Energy Solutions.

Noble said that Sempra Energy Solutions is the fifth largest non-residential power marketer in the US. In 2009, Sempra Energy Solutions booked sales of electricity and gas in excess of \$1.6 billion with a focus on larger retail customers consuming more than 800 MWh/year.

Noble said that it expects to benefit from marketing synergies as the transaction adds breadth and retail capability to Noble's natural gas and power business. Among other things, Noble has served as a wholesale supplier to various retail marketers.

The transaction only includes the retail side of the RBS-Sempra North American energy business. Sempra and RBS are in advanced negotiations for the sale of their North American wholesale power and natural gas business.

The sale of Sempra Energy Solutions is expected to close in the fourth quarter of 2010.

Consensus Reached on All Massachusetts POR Terms Except Reconciliation

The Massachusetts electric distribution companies have filed revised model terms and conditions to govern Purchase of Receivables programs which the companies said reflect a consensus with competitive suppliers, with the exception of the design of the reconciliation mechanism included in the discount rate (10-53, Only in Matters, 6/10/10).

The updated proposed terms and conditions maintain a discount rate composed of the following: an Uncollectible Percentage, a Administrative Cost Percentage, and a Past Period Reconciliation Percentage, with each component specific to a particular customer grouping (which may combine several rate classes or default service groupings).

The Uncollectible Percentage is the uncollectible expense for the participating customer class based on actual data for the most recent period for which data is available, divided by the total amounts billed by the distribution company, including late payment fees if included in uncollectible expense, to that participating customer class for the same period. The revised terms and conditions modify the proposed definition of the Uncollectible Percentage such that it is not explicitly based on the most recent 12 months of data, but is instead based on the same period which is used to calculate the distribution company's uncollectible costs associated with Basic Service.

The Past Period Reconciliation Percentage is proposed to include three components under the revised terms and conditions:

- 1) the difference between actual uncollectibles for customers purchasing supply from competitive

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National Fuel Gas Distribution Files Remote Account Number Access Plan

National Fuel Gas Distribution Corporation has proposed two alternatives to provide customers with remote access to their account numbers: a telephonic system based upon its SmartPhone system, and a less expensive web-based alternative (98-M-1343).

The telephonic system would be based upon developing enhancements to Distribution's SmartPhone system (currently used to collect meter readings), and would cost approximately \$105,000.

The alternative is a web-based approach, which presumes that the ESCO would have internet access at the point of sale. Distribution estimates that the web-based approach would cost approximately \$40,000.

In both approaches, customers would provide four pieces of information designed to uniquely identify their account information along with a pre-defined ESCO PIN. If all five items are provided, the system would provide the customer's account number. The four customer-provided items are as follows:

- a) Last 4 digits of customer's Social Security Number
- b) House Number (e.g. '6363' for 6363 Main Street)
- c) Zip Code (5 digits)
- d) Telephone Number (with area code)

The ESCO PIN is being designed primarily as an additional security measure because the last four digits of a customer's SSN are less unique than the full 10 digit SSN, Distribution said. "Given Distribution's near 100% market penetration and relative ease by which the phone numbers can be correlated with address information, addition of an additional layer of security is seen as a reasonable attempt to protect customer information," Distribution added.

ESCO PINs would be available only to those ESCOs registering with Distribution and would be changed monthly or upon ESCO request. Since provision of the account number is envisioned as a means to sign up the customer at the point of sale, presumably the

ESCO would make the PIN accessible to the customer under either of the two approaches, Distribution said. "Given the transient nature of contractors used by some ESCOs for marketing campaigns, Distribution believes the PIN would help protect ESCOs too," Distribution said.

Gateway Energy Services Files Suit Alleging MXenergy is "Passing Itself Off As An Affiliate Of Gateway"

Gateway Energy Services Corporation has filed a suit against MXenergy Inc. in the U.S. District Court for the Eastern District of Pennsylvania alleging that, "MX Energy is misleading Gateway's existing customers," by, "passing itself off as an affiliate of Gateway." Gateway alleged that MXenergy's actions constitute slamming, as Gateway alleged that MXenergy has had Gateway customers, "unknowingly end their contracts with Gateway, and instead sign with MXE without disclosing that the two companies are unrelated."

Gateway alleged that MXenergy obtained access to customer lists in order to track who had signed with Gateway. Gateway alleged two instances in the PPL service area in which an MXenergy agent (the same agent in both cases) allegedly approached a recently contracted Gateway customer door-to-door and:

- a. "told Gateway's two customers ... that he was from or affiliated with Gateway;
- b. "said that MX is also affiliated with, or is a division of, Gateway;
- c. "said that [the Gateway sales agent] had made an error on their respective contracts and that they were filled out incorrectly;
- d. "asked the two customers for their contracts with Gateway;
- e. "had in his possession a list appearing to contain the names of all customers who had recently signed with Gateway;
- f. "proceeded to cross out Gateway's stated rates and put in a different rate on the contracts to further entice the customer to sign; and
- g. "crossed-out Gateway's logo that appears at the top of the form contract and hand-wrote 'MX' along with the agent's ID number

Gateway submitted copies of the allegedly altered contracts with its complaint.

Gateway alleged that the customers were informed that they had to verify the contract corrections through telephonic third-party verification, in which the third party verifier allegedly, "confirm[ed] that the transaction with MXE to 'correct' Gateway's contract had been completed."

"Gateway is currently unaware of how many of its customers have been 'slammed,' in what specific jurisdictions it has occurred, and the aggregate amount of revenue that MXE has misappropriated," Gateway alleged.

Gateway alleged that such actions amount to unfair competition and false designation of origin under the Lanham Act; common law unfair competition; tortious interference with contract; and unjust enrichment. Gateway is seeking injunctive relief barring further actions, and damages. The complaint, filed on September 20, is Case 5:10-cv-04836-JKG

CL&P Seeks Fee for, or Elimination of, Utility Consolidated Billing

With the maturation of the retail electric market, "suppliers, brokers and aggregators should now bear the administrative responsibility of competition and the attendant costs of that responsibility," Connecticut Light & Power said in comments in the DPUC's investigation of retail market issues, including marketing standards (10-06-24).

Continuing a position it took during the last legislative session, CL&P recommended that suppliers take on the exclusive responsibility for billing their customers, or pay the electric distribution companies a "reasonable fee" to bill on their behalf.

Furthermore, CL&P said that the customer referral program, "should be discontinued because it is no longer as advantageous to customers in providing information regarding suppliers and their offerings, as it was when it was first contemplated, or since it was amended."

Of the 25 plus active suppliers in CL&P's service territory, "there have never been greater than four (4) suppliers participating in the referral

program," CL&P reported. United Illuminating reported similar participation, with a high-water mark of four suppliers and a current participation level of three suppliers.

UI, however, did not seek elimination of the referral program since it, "requires minimal input from the Company each month." UI did request that, if the Referral Program is maintained, each supplier should be required to have a webpage link where its referral program prices are shown so that a customer can directly link to such referral program prices from UI's website as well as from the CTEnergyInfo.com website.

ResCom Energy, LLC said that, "[t]he referral program is also difficult to manage and is not entirely fair to suppliers offering variable rate programs. We believe it should be discontinued." The referral program mandates a fixed price for 12 months, while the majority of upstart Connecticut suppliers have elected to offer variable rates.

While the Office of Consumer Counsel reserved its comments on the issue of the referral program, "OCC believes that the market is now competitive and questions the need for a continued referral program."

The National Energy Marketers Association argued that it would be "premature" to end the referral program now, "particularly in view of consumer interest and participation levels achieved to date and yet to be achieved, as well as the stakeholders' meaningful resource commitment to continued market development."

Furthermore, to the extent utilities and suppliers have incurred costs to provide the referral program, "it would be wasteful and inefficient to discontinue it so shortly after it has been put in place," NEM said.

Aside from policy reasons for continuing the program, Dominion Retail argued that statute compels the continuation of the referral program.

CTEnergyInfo Rate Board

Several issues related to the online rate listing at CTEnergyInfo were raised by stakeholders, with some suppliers requesting that the rate board be abolished.

"It will be very difficult for the Department to manage the myriad of offers made by suppliers and aggregators on ctenergyinfo.com," ResCom Energy said, without expanding on this assertion.

The Texas Power to Choose site offers some 100 rates from 30-odd suppliers, while the New York Power to Choose site, in the most contested service areas, includes up to 50 rates from dozens of suppliers. CTEnergyInfo currently has about 30 offers from a dozen suppliers.

"There is currently plenty of competition in the Connecticut electricity market, and perhaps the ctenergyinfo.com website has done its job and should be retired. Any customer can use a search engine and come up with numerous electric offers," ResCom Energy said.

The Office of Consumer Counsel, in contrast, called the rate board a helpful tool for consumers. Furthermore, due to the time expended by DPUC Staff to maintain the rate board, "OCC believes that the suppliers should be charged an annual fee, as a condition of licensure, to contribute to the upkeep of the Rate Board."

Discount Power Inc. said that the offering of a wide array of products should not be seen as a negative, but did raise concern with the manner of listing offers on the rate board. Specifically, Discount Power said that only offers available to all customers in the applicable rate class should be listed on the rate board, arguing that more limited offers should not be listed. Discount Power said that suppliers benefit from listing such special discounted offers, with limited customer applicability, because it places them higher (toward the top of the page) on the rate board, even though the offer is not generally available to all customers.

Discount Power further said, in a recommendation echoed by several parties such as NEM, that the rate board should group offers by product type (fixed, variable, variable with a cap, renewable, etc.)

Marketing Standards

Though not uniform, most suppliers generally made the expected comments regarding the proposed marketing standards, such as:

- The standards should be limited to residential customers
- Early termination fees should not be capped, and should not be waived for a period of 7 business days after the first bill of a renewed product

- The allowed time for door-to-door marketing should be expanded from the proposed 10 a.m. to 6 p.m. window
- Maintaining a copy of the customer contract verification for 10 years is burdensome

Several stakeholders also offered additional requirements to be imposed on suppliers.

For example, Interstate Gas Supply requested that, "given the unique nature of personal contact that door-to-door marketing creates with customers - and given a number of continuing performance issues that have occurred in certain markets with various participants," the DPUC should institute a separate door-to-door certification/licensing process, where a supplier is certified and an individual is licensed to perform door-to-door sales.

ResCom Energy asked that the Department establish a "marketing agent's license" to assure that every entity that markets electricity is familiar with the Department's guidelines. However, though the marketing agent license would be distinct, ResCom further said that the Department should allow those entities with aggregator licenses to act either as a marketing agent or as an aggregator, providing that the aggregator clearly and truthfully communicates that role to the customer in any transaction.

The Retail Energy Supply Association sought clarification of the term agent as defined in the proposed standards. As previously reported, the term is essentially a catch-all for any individual or entity soliciting a customer, and agents would be subject to all of the proposed standards (Only in Matters, 9/8/10).

RESA argued that the term agent should not be applied to certain affinity groups or those individuals running the groups, such as situations in which a trade association, alumni group, or similar organization enters into an agreement with one or more suppliers to make retail electricity services available to the organization's members as a benefit or membership enhancement. "Individuals who work for such organizations may well be authorized to pass on marketing materials and provide related information to their members. But this is far different from the broad marketing activities conducted by typical supplier representatives," RESA said.

"Further, while the organization often serves as the initial contact to link a customer and a supplier, the organization's employees are not generally involved in consummating the sale. These individuals should be exempt from the strict training and related requirements triggered by 'agent' status under the Guidelines," RESA argued.

RESA further said that the standards should expressly note that the standards do not cover what RESA termed "brokers," specifically referring to a broker whose relationship is with the customer, and not brokers acting more in the vein of a marketing agent.

"An energy broker owes its duty of loyalty to the customer, not the Supplier. Accordingly, the Supplier should have no liability for a broker's activity nor any obligation (or legal ability) to insist that the broker behave in a certain manner," RESA noted.

Dominion Retail requested that the DPUC clarify whether the term agent applies to a customer engaged in multi-level marketing on behalf of a supplier, and further sought clarification of several additional guidelines' applicability to customers engaged in multi-level marketing activity.

United Illuminating asked that the Department prohibit the ability of suppliers to participate in three-way calls with the customer and UI in cases where confidential customer information is disclosed. UI noted that the customer identifiers required for a supplier to electronically enroll a customer are the POD ID and the four character "Customer Name Key". While both of these items are found on the UI monthly customer bill, sometimes customers do not have a bill when enrolling with suppliers, and therefore, a customer may call the UI call center to obtain the information.

However, in order to confirm that the customer is indeed the account holder, UI requires the caller to provide some confidential information such as a Social Security Number. "On occasion, suppliers have initiated three-way call center inquires with customers to obtain the POD ID and Customer Name Key. UI requests that this activity be specifically restricted in the Guidelines for Marketing and Sales Practices for Electric Supplier and Aggregators because a customer may unwittingly release confidential

information to a third party under these circumstances. Alternatively, the supplier could ask the customer to either obtain a copy of the bill or call UI independently to obtain the information and then make a return call to the supplier," UI said.

The Office of Consumer Counsel asked that any door-to-door sales agent should be required to have both Spanish and English materials available for distribution to the potential customer.

Regarding the proposed requirement that suppliers disclose the average charges of the distribution company in any marketing, which as *Matters* noted parrots language found in Section 16-245o(f) of the Connecticut General Statutes, RESA said that the DPUC should interpret the statute as applying only to disclosures of the total price of electricity. "If a supplier chooses to advertise or disclose a total delivered price of electricity, the statutory requirements would apply. But if a supplier is simply describing the price of generation, there is no need for a mandatory disclosure of the total delivered price of electricity," RESA said, calling the statute outdated and confusing.

D.C. PSC Denies Pace Global FOIA Request for Suppliers' Confidential RPS Reports

The District of Columbia Public Service Commission denied Pace Global's request for the public disclosure of RPS reports from various suppliers, with two exceptions, as the PSC found that the reports are exempt from the Freedom of Information Act disclosure requirements (FOIA10-2-12 et. al.)

As only reported in *Matters* (7/9/10), Pace Global had sought copies of the confidential RPS reports of GDF Suez Energy Resources NA, Pepco, Washington Gas Energy Services, RRI Energy (formerly Reliant Energy), and Hess Corporation for 2008 and 2009, and, for 2009 only, the report of BlueStar Energy Services. Pace Global was seeking pricing data to support its proprietary REC pricing services.

The PSC found that Pace failed to support its assertion that the release of the data would not harm competitive positions, or that the data needs to be released publicly to support

renewable energy goals.

The PSC will make public Reliant Energy's 2008 RPS report after RRI said that it no longer had a confidential claim on the data (having sold its Northeast book in December 2008; RRI did not file a report for 2009). Additionally, the PSC will make public certain portions of Hess' 2008 report which Hess has specifically indicated are not confidential and proprietary.

Briefly:

Palmer Energy Receives Ohio Gas Broker License

The Public Utilities Commission of Ohio granted Palmer Energy Company, Inc. a natural gas broker/aggregator license to serve all customers in all service areas (Only in Matters, 8/6/10). Palmer recently received an Ohio electric broker license as well (Only in Matters, 9/13/10).

MXenergy Offering Rewards Debit Card to Georgia Variable Customers

MXenergy has launched a Savers Club program and card in the Georgia gas market. Residential and small business customers electing a variable rate plan will receive a Visa debit card branded as the MXenergy Savers Club Card pre-loaded with a \$10 sign-on bonus. Residential customers only will also receive loyalty rewards of 3% cash back based on household natural gas usage, issued every six months. Club members will have access to an online entertainment SaversGuide, which offers thousands of discounts to local restaurants, movies, and shopping, and a monthly newsletter that offers energy-saving tips and exclusive offers. The debit card is offered in conjunction with Wolfe Rewards & Loyalty.

GDF Suez Energy Resources NA Seeks Removal as Non-Volunteer POLR at TCC/Sharyland

GDF Suez Energy Resources NA requested that it be removed from the PUCT Staff's preliminary list of non-volunteer POLRs for the small non-residential, medium non-residential, and large non-residential classes in the combined AEP Texas Central/Sharyland territory, since it does not have the requisite agreements or EDI certification to serve load in Sharyland.

IEU-Ohio Files Complaint at PUCO Over MISO Independence, Citing Bear Letter

The Industrial Energy Users-Ohio filed a complaint against the Midwest ISO at the Public Utilities Commission of Ohio alleging that the May 4, 2010 letter from MISO CEO John Bear to Duke Energy, which outlined several steps MISO would take to retain Duke Energy as a MISO member, shows that MISO fails to meet the requirements for an entity to control an Ohio transmission owner's facilities under Section 4928.12 of the Revised Code, specifically, the independence requirement (10-1398-EL-CSS). The Bear letter has become an issue in Duke's application at FERC to join PJM (see Matters, 8/30/10). IEU-Ohio alleged that the offers and commitments to Duke made in the letter, "were part of an unlawful, unjust and unreasonable MISO-scheme to increase capacity profit opportunities for Duke's generation business in exchange for Duke to leave all of its transmission assets within MISO's operational control." IEU-Ohio further argued that since MISO cannot meet the independence standard required in Section 4928.12, Duke Energy Ohio cannot comply with the obligations contained in Section 4928.12 of the Revised Code (requiring a transfer of control of transmission assets to a qualifying transmission entity) by placing operational control of its transmission facilities with MISO.

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suppliers and the amounts collected to recover uncollectibles through the discount rate

2) the difference between actual administrative costs and the administrative costs recovered through the discount rate, and

3) interest calculated on the average monthly balance of the Past Period Reconciliation using the customer deposit rate, as outlined in 220 CMR 26.09

According to the distribution companies, competitive suppliers have instead proposed that the distribution companies should reconcile the Past Period Reconciliation Percentage to the uncollectible percentage for all customers of the distribution company, rather than to the uncollectible percentage of only competitive

supply customers.

The revised model terms and conditions hold that pursuant to the terms of a service contract applicable to the POR program, the distribution company shall pay a participating competitive supplier for its existing outstanding accounts receivables at the commencement of the distribution company's POR program. Implementation dates for POR would be left to individual company proceedings at the DPU.

The revised terms and conditions also state that a supplier may choose utility consolidated billing (known as standard complete billing) for either all or a portion of its customer accounts in a class. Suppliers will only be required to sell their accounts receivable to the distribution company relating to generation service for those customers for whom the distribution company issues a standard complete bill.

The modified terms and conditions also define "generation service," which is the only service eligible for POR, as, "the sale of electricity to a Customer by a Competitive Supplier, including capacity and ancillary services such as the provision of reserves and all other services relating to generation required by ISO-NE, and retail offerings that utilize renewable energy certificates or represent alternative compliance payments that are bundled with generation, provided that such products can be billed using the Standard Complete Billing Service platform."

Pursuant to the terms of a service contract applicable to the POR program, participating competitive suppliers shall grant the distribution company a first priority perfected security interest in the accounts receivable that the distribution company will be purchasing through its POR program. A participating competitive supplier shall be authorized by the distribution company to place a security interest on the accounts receivable from the distribution company to the participating competitive supplier associated with the purchase by the distribution company of the participating competitive supplier's accounts receivable.