

Energy Choice

Matters

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N.Y. PSC Orders RG&E to File Plan to Lower Mandatory Hourly Pricing Cutoff to 300 kW

The New York PSC ordered Rochester Gas & Electric to submit a plan to lower the threshold for mandatory hourly pricing to 300 kW, in issuing a written order on the electric and gas rates cases for NYSEG and RG&E voted on at its meeting last week (09-E-0715 et. al., Only in Matters, 9/17/10).

The issue of mandatory hourly pricing (MHP) was not addressed by parties in the rate case but the Commission took up the issue on its own motion. The mandatory hourly pricing cutoff is currently 1,000 kW at RG&E, and 300 kW at NYSEG.

"Our policy in recent years has been to gradually lower the MHP threshold to encompass smaller non-residential customers ... Reducing the threshold for RG&E's MHP program will bring it into conformity with the programs we have adopted for other electric utilities and will further the goal of obtaining increased alignment of rate designs between NYSEG and RG&E," the PSC noted.

The Commission noted that RG&E has supported lowering the threshold to 300 kW in a 2009 report on hourly pricing implementation.

RG&E was directed to file a plan within 90 days to lower the mandatory hourly pricing cutoff to customers whose peak demands are in excess of 300 kW.

The Commission's written order in the rate cases, issued yesterday, otherwise adopted without modification the parts of a previously reported joint proposal with respect to retail natural gas and electric market issues. These unmodified retail market provisions, discussed in our 9/17/10 and 7/15/10 stories, relate to the composition of the Purchase of Receivables discount rate and several gas market provisions, such as the consolidation of NYSEG gas supply areas.

Maryland PSC Orders Columbia Gas to Start POR Program By December 1, 2010

The Maryland PSC ordered Columbia Gas to institute a Purchase of Receivables program by December 1, 2010, with the discount rate set at zero until Columbia justifies an alternative percentage.

Columbia had proposed a start date of January 2011 for POR (Only in Matters, 10/9/09).

"[B]ecause the Company has not offered or attempted to calculate a POR discount rate, the POR discount rate will be 0% until the Company files, and the Commission accepts, an alternative POR discount rate(s). In filing such a discount rate, the Company is directed to ensure that all documentation and spreadsheets are provided to Staff to support the calculation of such POR discount rate(s). Cost components that are not adequately supported will be reduced to zero," the Commission said.

Furthermore, the Commission ordered that there shall be at least a separate discount rate for residential and non-residential customers.

Columbia, the PSC ordered, shall not change its POR discount rate, or opt to end the purchase of receivables program in favor of the proration of partial payments, without Commission approval, and that any such change shall include sufficient notice (more than 30 days) to allow suppliers to comment on any such petition.

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PUCO Staff Recommends Temporary Suspension of Just Energy Gas Supplier Certificate

Staff of the Public Utilities Commission of Ohio have recommended that the Commission immediately suspend Just Energy's natural gas operating certificate under Rule 4901:1-27-12(C), O.A.C., to specifically prohibit all advertising, offers, or contracts to provide any new competitive retail natural gas service to existing customers or potential customers during the suspension unless the Commission orders otherwise (02-1828-GA-CRS).

Staff further recommended that PUCO order Just Energy to "show cause" as to why the Commission should not permanently rescind its natural gas supplier certificate under Rule 4901:1-27-12(E), O.A.C.

Staff's recommendations, which were filed as Just Energy is seeking a renewal of its certificate, came, "after investigating numerous consumer allegations that JE's solicitors were providing misleading information, misrepresenting their identity, and engaging in the unauthorized switching of a customer's natural gas service ('Slamming')." Staff alleged that Staff has found, "several apparent violations of the marketing and solicitation provisions of the Commission's Minimum Standards for CRNGS [Competitive Retail Natural Gas Service]."

Among the recommendations from Staff is that Just Energy should be required to provide all customers who enrolled in a fixed price contract via a door-to-door sale since April 1, 2010 an opportunity to opt out of the agreement without any early termination fee.

Additionally, of broader applicability to the market, Staff recommended that the Commission, "order JE to comply with the requirements of Rule 4901:1-29-06(b), O.A.C., and initiate an independent third party verification process not otherwise affiliated with JE, for 100% of all customers enrolled by door-to-door solicitation for the next twelve months" (emphasis by Staff).

"The verification process may not occur with the potential customer while in the presence of a JE solicitor," Staff said

(emphasis supplied).

Rule 4901:1-29-06(D)(6)(b) makes no mention of what constitutes an "independent" verification, and if independence is broken if the sales agent is merely present in the same location as the customer during the call, but is not coaching or otherwise influencing the customer. It is not clear if Staff's position is that the Just Energy agent must leave the customer's presence to conduct the verification as a *requirement* of the independence standard in 4901:1-29-06, or if it is an *additional* requirement Staff is seeking to impose only on Just Energy due to the nature of allegations against the company but is not otherwise required for compliance under the rule. Notably, Staff recommended that Just Energy perform verifications for 100% of door-to-door customers, while the rule only requires successful verifications of 50% of enrolled customers, so on that point, at least, Staff's recommendation goes beyond what is required in the rule.

Just Energy provided the following statement in response to the Staff report:

"Just Energy is in receipt of the staff report, and is continuing its discussion with the Public Utilities Commission of Ohio staff members. We are working very closely with staff about concerns they have raised. We take consumer satisfaction very seriously and that is why we have worked so closely with PUCO in the past, have provided them with all information they have requested and have asked them to provide daily updates with regard to any consumer inquiries they may receive. To put this in context, the concerns identified are less than one-tenth of one percent of our customer sales in Ohio. Until discussions with PUCO staff are concluded, it would not be appropriate for Just Energy to comment on deliberations with a state regulatory agency."

Staff said that it first informed Just Energy on March 31, 2010 of an increase in complaints alleging that Just Energy agents misrepresented themselves as employees of other suppliers, the utility, and/or PUCO. Staff's report states that Just Energy assured Staff that the matter would be dealt with, but Staff reported that the complaints continued.

On April 20, 2010, Staff issued Just Energy a Letter of Probable Non-Compliance (PNC),

identifying five actions that the company needed to address related to marketing and soliciting. The letter was based on 25 consumer contacts alleging misleading or deceptive practices.

Staff and Just Energy began monthly conference calls regarding customer contacts in April, and Staff began reporting contacts to Just Energy on a weekly, and then daily, basis.

Since the issuance of the PNC letter, Staff reported that Just Energy's call rate has dropped slightly, but Staff stated that the number of consumer contacts for Just Energy continues to be high, and one of the highest received, if not the highest, for all competitive gas suppliers in Ohio. Staff reviewed 169 Just Energy consumer contacts from March 1 through July 21, 2010, and identified 70 contacts in which the consumer provided specific, detailed information claiming some form of deceptive or misleading practice by Just Energy, Staff said.

The complaints cited by Staff alleged that Just Energy agents misrepresented themselves as being associated with the utility or government, and alleged that the agents offered what Staff alleged were "misleading" statements, such as statements that the price for default service was about to skyrocket, or statements from the agent that the Just Energy contract would provide savings every month when the contract itself specifically states that it does not guarantee financial savings.

"Staff believes that a significant cause of on-going complaints of misrepresentation and deceptive marketing tactics on the part of JE [door-to-door] solicitors relates to their compensation being primarily commission-based and the apparent lack of in-state supervisory oversight."

"Though JE solicitors obtain some training before engaging in direct sales, their compensation is based upon the sale of natural gas contracts and there appears to be little in-state oversight to ensure compliance with the Minimum Service Requirements for CRNGS suppliers or even the company's own compliance matrix," Staff said.

Staff also alleged several provisions of Just Energy's fixed price contract were contrary to PUCO regulations and recommended that the Commission order the following modifications.

- Order Just Energy to remove language

stating that Just Energy can require customers to submit to final binding arbitration under the American Arbitration Association rules, which Staff alleged conflicts with Rule 4901:1-29-08(B)(4), O.A.C., which provides that Staff shall mediate complaints upon the customer's request.

- Order Just Energy to remove language stating that "(t)he contents of Just Energy's marketing materials do not form part of the agreement and were not relied on by you," as Staff alleged that the language conflicts with Rule 4901:1-29-05(A), O.A.C. which requires that marketing materials shall provide information that allows customers to make informed cost comparisons.
- Order Just Energy to provide the acknowledgement form required by Rule 4901:1-29-08(B)(4), O.A.C for door-to-door sales as a separate form instead of as part of the contract

TXU Energy Launches Fixed Price Product Which Cannot Vary with TDU, ERCOT Fees

TXU Energy has launched a fixed price product whose per kilowatt-hour price will not change for any reason during the term of the plan (with the customer bill varying only due to usage and changes in taxes).

The SuperSecure plan is a 12-month fixed rate with a single per kilowatt-hour charge and no flat or base fees, whose price will not vary during the product's term regardless of changes in distribution charges, ERCOT fees, or other changes in laws or regulations. With no flat monthly fee, the average price per kWh does not vary by usage, and the plan is priced 10.9¢ at Oncor and 12.9¢ at CenterPoint.

The plan is priced at a premium to TXU's standard 12-month online fixed plan, whose price may change to reflect higher TDU rates or new laws, to account for the likelihood of increases in TDU base rates or various surcharges, with the size of the premium depending on service area.

At Oncor, the premium is only 5 mills/kWh versus TXU's standard 12-month fixed plan with

auto-pay which is priced at 10.4¢ for usage of 1,000 kWh per month.

At CenterPoint, which has not only filed a pending distribution rate case but has also proposed a significant change in the design of retail distribution rates (with a much higher flat customer charge, see Matters, 9/20/10), the premium is much higher. TXU's 12-month SuperSecure plan is priced at 12.9¢ at CenterPoint, versus a rate of 11.4¢ for the standard 12-month fixed product with auto-pay.

At Texas-New Mexico Power, which also has a pending rate case and proposal for a much larger flat customer charge (Only in Matters, 8/30/10), the SuperSecure plan is priced at 12.3¢/kWh, versus 10.6¢ for the standard 12-month fixed plan with auto-pay.

In the non-Oncor areas, TXU is offering a \$150 Visa prepaid gift card for enrolling onto the SuperSecure plan.

The SuperSecure plan includes a \$150 early termination fee.

NYSEG, RG&E Propose IVR and Web-Based Solutions to Remotely Provide POD ID

NYSEG and Rochester Gas & Electric have proposed offering customers remote access to their Point of Delivery Identifiers (POD ID) via both a telephonic Interactive Voice Response (IVR) system, and an online system (98-M-1343).

Under the IVR mechanism, the customer would call a dedicated 800 number, unique to each utility and separate from the current 800 customer service number. The customer would follow the normal IVR authentication process by first having the system try to automatically verify the phone from which the customer dialed. If that does not authenticate, the customer would then enter their account number or their phone number. If any of the three authentication processes work, then the customer would be asked to validate who they are by entering the last 4 digits of their Social Security Number (or Federal Tax ID number). "Since the Companies have approximately 70% of the SSNs and Fed Tax IDs, there is a reasonable chance of the system authenticating and validating a customer through this process," NYSEG and RG&E said.

Once the customer has been authenticated and validated, they would receive their active POD IDs. Customers would receive a maximum of one electric POD ID, one gas POD ID, and one unmetered electric POD ID. Customers with more than one POD ID in any of the categories would be required to call the customer relations center during business hours. "However, since the vast majority of customers have only one of each type of POD ID, the Companies envision the number of incidents where a customer is redirected to the [customer relations center] will be minimal," NYSEG and RG&E reported.

For the web portion of the program, customers would go to the NYSEG or RG&E homepages and select the "Your Account", "Your Home," or "Your Business" tabs. Regardless of which tab they choose, an option would be listed on the left side of those web pages entitled "Online POD ID Access" that, when selected, would allow the customer to enter either their 10 digit phone number or their NYSEG/RG&E account number. Regardless of whether the customer chooses to enter their phone number or account number, they would be required to enter the last 4 digits of their SSN. Once this is done, the system would return all POD IDs for a customer, up to 100 POD IDs.

NYSEG and RG&E said that implementing both solutions would cost \$83,000 in implementation costs with an additional \$200 per month in ongoing costs per each 800 number. The incremental cost of the web portion of the program is \$8,400. Without the web mechanism, the IVR costs alone would be \$74,600. "The Companies believe that the benefits of greater access through the web outweigh the incremental cost," NYSEG and RG&E said.

NYSEG and RG&E proposed that all qualified, active ESCOs should pay for the program equally. The utilities proposed that the up front costs (\$83,000) as well as the expected first three years' costs of the new 800 numbers (\$14,400 = \$200 per month x 36 months x 2 [NYSEG and RG&E]) should be summed together (\$97,400) and charged to the ESCOs.

NYSEG and RG&E said that implementation would take approximately 10 weeks.

Gateway Files Suit Against Champion Citing PLAN Solicitation, Champion Vigorously Denies Allegations

Gateway Energy Services Corporation has filed a suit against Champion Energy Services in U.S. District Court for the Middle District of Pennsylvania relating to the previously reported sales call made to Pennsylvania Legal Aid Network Controller Karen Stokes.

As first reported in *Matters* (see 9/1/10 & 9/2/10), Stokes provided a sworn affidavit, submitted by the Pennsylvania Utility Law Project to the PUC, stating that she was visited by three sales agents claiming first to be from PPL, and then Gateway, who eventually produced a contract bearing the name of Champion Energy Services.

Gateway said that the agents had no affiliation with Gateway and, based on this affidavit, Gateway alleged that Champion is, "falsely passing itself off as Gateway's agents or affiliates." Gateway's complaint cited no other instance of such alleged behavior, but alleged, "it is likely that Champion is using the good name and reputation of Gateway in its sales solicitations in an effort to get members of the public to sign a contract with Champion as an energy supplier."

Champion Energy Services provided the following statement:

"We have only recently become aware of a lawsuit filed by Gateway Energy. Champion Energy Services, LLC. vigorously denies the allegations contained in the complaint and we look forward to proving that in court, if necessary. Champion Energy Services, LLC is committed to the highest standard of sales and marketing practices. We trust in the quality of our services and, we demand that from our employees and representatives. In regard to the affidavit presented to the Pennsylvania Utility Commission, there is absolutely no evidence that the individuals involved had any relationship with Champion Energy Services. We have spoken to our sales staff and agents and are confident that none of them were involved in the incident at the Pennsylvania Legal Aid Network and as a follow up previously reported our

findings to the Pennsylvania Utility Commission staff. It is unfortunate that PLAN was solicited in such a manner. Champion supports any legislative action that will promote the integrity of all sales and marketing practices in the retail electricity markets."

Gateway alleged that the behavior cited in its complaint is in violation of the Lanham Act and constitutes unfair competition under Pennsylvania law. Gateway is seeking injunctive relief and damages.

The complaint, filed September 20, is Case 1:10-cv-01959-WWC.

Briefly:

Sustainable Energy Works Receives Ohio Broker License

The Public Utilities Commission of Ohio granted Sustainable Energy Works, LLC an electric broker/aggregator license to serve commercial, mercantile, and industrial customers in all service areas (Only in *Matters*, 8/24/10).

EnergyCruncher.com Seeks D.C. Broker License

Energy Shopper LLC, which runs EnergyCruncher.com, applied for a District of Columbia electric broker license to serve residential, commercial, and industrial customers. EnergyCruncher.com has a pending Maryland broker application (Only in *Matters*, 9/14/10).

Patch Energy Services Seeks D.C. Broker License

Patch Energy Services has applied for a District of Columbia electric broker license to serve commercial, industrial and governmental customers.

Proton Energy Asks Texas ALJ to Deny Revocation Petition

Proton Energy asked an ALJ to deny the PUCT Staff's petition to revoke Proton's REP certificate for allegedly failing to meet new financial and technical requirements under Subst. R. §25.107 (38633, Only in *Matters*, 9/6/10). Proton submitted under confidential seal financial documents it said demonstrate shareholders'

equity of not less than \$1 million. Proton, however, said that it was still in the process of obtaining letters of credit on the Commission's standard form as required by §25.107(f)(1)(B) and (f)(4)(F), including the required letter of credit to support customer deposits, though Proton filed letters from City Bank of Texas and Chase illustrating that Proton has assigned to the PUCT monies in excess of \$500,000 and asked that such documentation be temporarily relied upon for meeting the requirements until the letters of credit are obtained. Proton also indicated that its management meets the requirement for 15 years of experience in the competitive electric or gas industry.

TEPA Announces Agenda, Keynote Speaker for November Conference

The Texas Electricity Professionals Association (TEPA) released an agenda and slate of speakers for its [annual conference](#) on November 11 in Houston. The keynote speaker will be Dr. Ray Perryman, founder and president of The Perryman Group, which has published several studies regarding economic benefits from Texas' competitive electric market. Other featured speakers include Jess Totten, director of Competitive Markets at the PUCT, Trip Doggett, CEO and president of ERCOT, and Taff Tschamler, KEMA Executive Director

for providing the services to the supplier," the Commission found.

The Commission directed Columbia to implement the other features required under COMAR 20.59 by December 1, 2010 as well. Among these is the ability to transmit consumption, billing, and related data to suppliers through electronic transactions, which Columbia had proposed implementing by March 31, 2011.

Columbia POR ... from 1

The Commission rejected Columbia's proposed charges to (a) assess a \$390 set-up fee on a supplier entering the company's service territory; (b) assess a \$1,000 processing fee on a supplier if Columbia is required to perform a billing function assessed for each billing adjustment, plus a \$1.00 charge per account when requesting a billing adjustment; and (c) assess a \$7 switching fee on a supplier that requests a new enrollment.

The PSC noted that these fees are in addition to the proposed POR discount rate, and found them to be inappropriate since such costs are to be recovered from the suppliers through the POR discount rate. "Nor has the Company provided any concrete evidence that these fees are recovering costs incurred by the Company