

Energy Choice Matters

September 25, 2008

PUCT Suspends Deposits, Disconnections for Ike-Impacted Customers

Attempting to strike a balance between aiding customers while not overly burdening REPs, the PUCT yesterday ordered the suspension of several disconnect for non-pay and deposit rules relating to retail electric service for those customers impacted by the devastation of Hurricane Ike (project 36150).

A final order was not available at press time, but per the Commission's decision at yesterday's open meeting, the order waives or suspends various substantive rules so that REPs cannot refuse service, or disconnect service, due to a customer's inability to post a deposit. REPs can also not disconnect affected customers due to non-payment.

The protections potentially apply to customers who were in FEMA-declared disaster areas in Southeast Texas, but apply whether they remain in affected areas or are forced to relocate and establish service elsewhere.

Attempting to tailor the protections to customers truly affected by the storm, the PUCT based automatic exemptions on a map of outages by zip codes in the CenterPoint Energy territory, based on the data as of 9 p.m. Sept. 23. For customers in zip codes in which 60% or more of customers were without power (pink and red areas on the map), customers automatically qualify for the protections.

Customers in other CenterPoint zip codes, and those at Texas-New Mexico Power, can receive the protections by establishing proof of residency in the area and by showing that they were impacted by the storm (such as showing they are receiving FEMA, Red Cross or similar governmental/non-profit aid, or proof of home damage).

The deposit and disconnect protections are to initially last until October 10, and the PUCT will consider any extension, if needed, at its October 8 open meeting. Fees for priority reconnections or move-ins are also suspended in affected areas.

REPs urged a narrow scope for the emergency rule given the "financial beating" REPs are
... **Continued Page 5**

Ohio Gas Marketers Must Send Renewal Rate Earlier, Termination Fee Rules Bifurcated

PUCO has extended the time under which gas marketers must hold renewal offers open to 35 days, and also adopted Staff's proposal to only allow marketers to charge a termination fee on variable products when a formula for determining the contract's pricing is disclosed, in revised rules for the retail gas market (08-724-GA-ORD, Matters, 7/28/08).

The Commission found that its current rules regarding when renewal pricing information needs to be sent to customers is ambiguous. Specifically, the rules address contracts that automatically renew for six months or more, have a material change, and have a termination fee of \$25 or less.

Marketers argued that the current rules require two renewal notices, with pricing only included in the second notice, sent 20 days before renewal. PUCO, however, observed that while a 2006 order regarding the second notice did shorten the time of the notice to 20 days, its order did not clearly state that the first notice, still required 45 days out, no longer required pricing.

In any event, PUCO determined that a 20-day renewal rate notice would provide an inadequate opportunity for customers to switch suppliers before the renewal takes effect, perhaps as little as five days depending on the billing cycle.

While conceding disclosing the renewal rate earlier may add a risk premium, PUCO noted the
... **Continued Page 6**

SaveOnEnergy, Choose Energy Partnership Opens New Revenue Streams to Both

The strategic partnership between Texas online brokers SaveOnEnergy.com and Choose Energy generates a new revenue stream for each while allowing both to focus on their core business, principals at each intermediary told us yesterday (Matters, 9/24/08).

Under the partnership, Choose Energy will use SaveOnEnergy's commercial retail exchange portal for its commercial leads, and will be paid a per-lead fee. The arrangement provides Choose Energy with a new revenue stream while also creating more opportunities for SaveOnEnergy to close C&I deals.

The two online brokers have focused their development and systems on different ends of the market. SaveOnEnergy has devoted its resources to developing its commercial retail exchange, which sends customer information to suppliers in real-time rather than using an internal sales force.

Choose Energy, meanwhile, has concentrated on developing a residential model that includes graphic icons highlighting special features of each electric product, while giving customers the opportunity to enroll directly through Choose Energy's website, without the need to go to a supplier's website and having to find the same product and re-entering all the information.

Choose Energy's President Jerry Dyess recently bought the broker from Amen Properties, where Dyess developed Choose Energy as a companion to Amen's traditional broker Priority Power Management. Dyess previously founded broker EnergyTX which he later sold Priority Power, but said he's not returning to the traditional brokering business and is solely focusing on online ventures.

The SaveOnEnergy partnership will allow Choose Energy to maintain a revenue stream from C&I leads while cutting overhead and backoffice requirements, Dyess said. That means Dyess can continue to refine the residential backoffice system, which includes as one of its features automatic emails to customers informing them their renewal is approaching so they don't get caught on a post-

contract, month-to-month rate which could be considerably higher.

Dyess told us he's going to advertise a lot more since the spin-off, and also is entering the New York market for both electricity and gas towards the end of the year.

While SaveOnEnergy has put most of its effort into the commercial retail exchange portal, it's by no means conceding the residential space, CEO Brent Moore told us, who sees healthy competition between the firms in that market.

Moore has "learned a lot" from nearly a year of running the commercial retail exchange, with one of the top lessons being to trim down on the number of suppliers included on the exchange. While the exchange started with eight suppliers, Moore is working on cutting it down to five or so, saying that eight suppliers contacting the customer was overwhelming for some. Reducing the number of competitors receiving access to customer pricing requests also increases the value of SaveOnEnergy's exchange to the participating suppliers, since there will be less crowding out.

Moore also touted customer surveys automatically sent to customers 45 days after using the retail exchange as providing additional value to participating suppliers. The surveys provide customer intelligence on what type of plan, if any, they chose, and what factors influenced their decision.

Moore intends to launch the retail commercial exchange in New York for the start of next year. SaveOnEnergy does broker in New York now, but uses an internal sales force to pursue New York leads instead of the direct retail exchange. Moore said he has been ready to launch in New York, but held off during the run-up in prices earlier this year, and now has pushed things back given many suppliers are dealing with the effects of Hurricane Ike.

About 70% of SaveOnEnergy's commercial clients are in the mid-merit range, from 50 kW to 350 kW or so, although Moore does get customers up to 1 MW or more in size. The size of customers using SaveOnEnergy.com has been growing over time due to customer referrals, Moore said.

Gateway Energy Recommends Pricing Comparisons in ERCOT Not Include TDU Charges

Gateway Energy Services recommended the PUCT fundamentally shift the treatment of TDU charges in retail electric pricing by, among other things, prohibiting the listing of "all-in" fixed price quotes that include TDU charges on the Power to Choose website, in comments on proposed REP disclosure rules (35768, Matters, 8/8/08).

Gateway essentially argues that, "REPs are not selling the transmission services provided by the TDU," and, "are merely billing for these services." While that may be the practical effect in the market, retail customers do not purchase delivery services from TDUs under any tariff, and have no contractual relationship with the TDU.

While REPs per se might not "sell" delivery service, they are responsible for selling a bundled electricity product which includes delivery to the customer, and accordingly must procure delivery service for their loads under each TDU's standard tariff for retail delivery service. Thus, while a REP may choose to pass through delivery service costs charged by the TDU, it is no different than passing through other components of a bundled energy product such as high-voltage transmission costs, ancillary service fees, and the commodity itself. When REPs choose to directly pass through their TDU charges, they are no more billing "for" the TDU any more than REPs bill "for" ERCOT if they pass through the ERCOT system administration fee.

In any event, Gateway opposes the inclusion of TDU recurring charges in the rates under Staff's proposed "guaranteed" fixed and "limited" fixed product definitions, since REPs merely bill for such charges.

"Since REPs are not responsible for making these rates, we should simply be able to bill them as a pass-through," Gateway said, noting the potential for TDU charges to change over time.

If individual REPs are comfortable quoting prices that are fixed and "all inclusive of TDU recurring charges," REPs should be allowed to do so, Gateway said. However, to ensure apples-to-apples comparisons, the Commission, "should establish a standard for posting on the

power to choose web site that would prohibit any posted fixed rate from including the TDU charges," Gateway suggested.

Currently, all Electricity Facts Label prices are required to be for bundled products, to facilitate such apples-to-apples comparisons.

Due to its view of TDU charges, Gateway also proposed a change to the definition of "price" to exclude TDU charges. Gateway recommended that price be defined as, "The cost for a retail electric product that includes all of the REP's recurring charges but may exclude non-recurring charges and does not include any TDU charges."

Gateway stressed that REPs should be permitted to offer variable products that do not have a method of determining the price from publicly available data or otherwise independent of the retailer's proprietary knowledge. While some customers may prefer an indexed variable price which they can calculate and track, some customers prefer a rate that varies in a way that is managed by the retailer, Gateway said. In such cases, customers can be informed of the particulars of the variable rate (how often it may change and illustrative factors that the retailer may consider when adjusting the rate) without disclosing the exact formula the REP uses.

Customers of any size should be permitted to waive customer protections, and those over 50 kW should not need to sign a waiver to do so, Gateway said. Gateway did not support a proposed disclosure statement in contracts regarding distributed renewable generation purchases by the REP.

Three months, as proposed by the Commission, is not long enough for REPs to conform contracts and other materials to any new rules, particularly if REPs cannot use a standard Terms of Service for different products (with custom features reflected only in the EFL), Gateway said, recommending six months for compliance. All documents have to be re-written, proofed, approved by REPs' legal departments, translated into Spanish, formatted and programmed by the print house, and uploaded onto websites, Gateway said in describing the burden. Gateway observed that having several different versions of the Terms of Service and Your Rights as a Customer will be confusing to customers and difficult to maintain, and suggested that the EFL contain product specific

rate information, while other documents could be standardized.

Gateway recommended that the EFL for renewal products be sent 10 days before renewal, instead of 60, arguing that TDU fees may change in the interim, and that the rate may not be known that far ahead for variable products.

Universal Enrolls 4,200 in Michigan in 3 Months

Universal Gas & Electric signed 7,602 Michigan gas contracts from June 13 through Sept. 12, with 4,225 of those customers eventually enrolled with the supplier, Universal said in a quarterly update on its marketing and complaints to the Michigan PSC (U-15509, Matters, 6/25/08).

During that period, 2,473 of the signed customers exercised their 30-day cancellation right. Some 365 contracts were cancelled after 30 days, while LDCs rejected 199 contracts.

Contracts signed versus enrolled by month were:

	Signed	Enrolled
June 13-30	1,450	834
July	2,319	1,282
August	2,803	1,532
Sept. 1-12	1,030	577

Customer "contacts" (a term used by Universal to encompass both complaints and other inquiries) from the new contracts were 43 during the period.

Universal currently has 97,160 flowing customers in Michigan from 221,604 contracts signed.

Briefly:

ICC Dockets Rulemaking on ABC Law

The Illinois Commerce Commission has opened a rulemaking to implement Section 16-115C of the Public Utilities Act (08-0548). Although no scoping documents were posted as of yesterday, Section 16-115C was created by last year's ABC law and directs the ICC to create licensing requirements for agents, brokers, and consultants, including a review of technical competence, managerial competence, and financial responsibility. Annual reporting requirements are also to be developed. The ICC has been developing draft language through a stakeholder group (Matters, 7/28/08).

CenterPoint Sets Conferences on AMS Settlement

CenterPoint Energy is hosting a series of technical and settlement conferences in its advanced metering deployment docket (35639, Matters, 9/19/08). The dates are Sept. 25, Oct. 9, Oct. 13, and Oct. 14.

ERCOT Assured of Priority in Reserve Funds

Although ERCOT notified The Reserve, a major money-market investment management company, of intentions to file suit to protect ERCOT's and market participants' assets invested with The Reserve, ERCOT last night announced that the suit will not be needed in light of an acknowledgment from The Reserve. ERCOT received notice from The Reserve acknowledging ERCOT's rightful priority in securing the return of funds invested in two of the company's money-market funds, the U.S. Government Fund and the Primary Fund, regardless of the Securities and Exchange Commission order that was entered after ERCOT's redemption request, and that freezes certain redemptions in the two funds until the assets can be repaid at full value, ERCOT reported. ERCOT believes that all ERCOT assets in both the Primary Fund and U.S. Government Fund will be repaid dollar for dollar once liquidity returns to the financial markets. ERCOT does not anticipate any impact to normal market operations.

Consumers Energy Withdraws, to Refile IRP

Citing Michigan's new electricity laws, Consumers Energy withdrew its previously filed Balanced Energy Initiative, an integrated resource plan, from the Michigan PSC (U-15290), stating it intends to update the plan. Consumers intends to refile the plan which includes new utility-built generation, renewables, and energy efficiency and demand management programs once the PSC sets new rules for integrated resource planning and certificates of public convenience and necessity.

PUCT Denies SWEPCO Turk Rehearing

The PUCT denied rehearing of its conditional CCN for SWEPCO's Turk plant, as Chairman Barry Smitherman expressed dismay that SWEPCO argued that the Commission lacked authority to implement various cost caps in its

order (Matters, 9/1/08). Smitherman noted much of the potential cost exposure stems from SWEPCO's own inability to obtain an Arkansas air permit.

AREVA-Duke Partner on Biomass

AREVA and Duke Energy are partnering in a joint venture called ADAGE to develop biomass electric generating plants that run on wood waste. AREVA will design and build the plants whose operations will be managed by Duke Energy Generation Services.

NYISO Completes Wind System Changes

The New York ISO said yesterday it has completed previously announced systems and operating changes to better utilize wind resources, and accommodate the variable nature of wind-powered generation with a centralized forecasting system (Matters, 6/18/08). AWS Truewind was contracted to provide forecasts for each wind power project, which are fed directly into the NYISO operational systems.

Emergency Rule ... from 1

suffering due to the combined loss of load and situations in which wholesale power may have been contracted for, but REPs aren't taking delivery due to the loss of load. Many Houston-based REPs have had to undertake significant expenditures to continue business operations, perhaps temporarily re-locating or putting staff, who may still be without power at home or otherwise suffered damage, in hotels.

Catherine Webking, executive director of the Texas Energy Association for Marketers, noted REPs are being boxed in, as bills that would normally be rendered now, if not for the suspension of meter reading, would reflect usage from before the storm. REPs have already paid for that power, but now face a prolonged period of not collecting the receivables for 1-2 month old usage.

Marc Burns, director of regulatory advocacy for TXU Energy, cautioned that an overly broad rule could drive REPs into bankruptcy, creating more POLR problems are exposing customers to higher rates.

To help REPs, the order directs the TDSPs, upon the return of normal operating conditions,

to use their "best efforts" to stop billing premises that cannot physically take power due to storm damage, and to report such information to ERCOT so such premises are not included in wholesale settlement. Such action will prevent REPs from incurring bills for energy and capacity charges from ERCOT in connection with premises that are not actually receiving electric service.

The order also directs CenterPoint and Texas-New Mexico Power to use their best efforts to take into account reductions in consumption that have resulted from the disruption in delivery of electricity, hurricane damage, and customer evacuations when estimating bills as restoration work prevents meter reads. The Commission has waived its limit of three consecutive estimated meter reads for affected customers.

CenterPoint has announced its procedure for estimating such meter reads. Starting with reads due on Sept. 21, CenterPoint will calculate estimated meter reads as the amount of the prior month less a 11% Weather Reduction and less 3.3% reduction for each day of outage based upon a majority of customers in a particular zone. CenterPoint has divided its territory into five zones that replicate the general pattern of damage from Hurricane Ike and reflect the average days without power for customers in such zones. The least system damage was in the western portions of the service territory, and the most system damage was in the eastern region. Meter reads prior to Sept. 21 but after Sept. 16 use individual discount factors on estimated reads as detailed in a market notice.

Burns, however, noted estimated meter reads are of little use on Move-In and Move-Out transactions. REPs also noted that due to the suspension of normal market operations, thousands of Move-In and Move-Out orders are stacking up, which will become a problem once restoration is complete. The emergency rule is to direct TDSPs to work on the issue to the extent possible while not interfering with restoration efforts, but the rule will not include any specific mandate on the problem.

Ohio ... from 1

concern must be balanced with the realistic time constraints on customers' ability to shop for competitive offers.

Accordingly, PUCO ordered that the second renewal notice must be received by customers at least 35 days before their renewal, and must contain their new rate. The first, 45-day renewal notice does not have to include a price, but must inform customers that their new price will be coming 35 days ahead of their renewal date so they can prepare to shop.

PUCO rejected the Ohio Consumers' Counsel recommendation that renewals lasting less than six-months require renewal notices. The Commission cited the costs associated with repetitive notifications relating to short-term renewals, and the fact that customers renewed on short-term deals (typically monthly) are not being placed in a situation in which it is impossible or expensive to terminate a contract.

The Commission also adopted Staff's proposal to offer marketers two options for disclosing the nature of variable rate offers to customers, but only permitting termination fees under one of the options.

Marketers can still disclose pricing in variable offers using a "clear and understandable explanation of the factors that will cause the price per Ccf or Mcf, whichever is consistent with the incumbent natural gas company's billing format, to vary (including any related indices) and how often the price can change," which is the standard in the current rule. However, PUCO said in its order that it was adopting Staff's proposal to prohibit suppliers from imposing termination fees on variable products disclosed in such a manner (although PUCO's final rules attached to the order did not reflect this provision, it was stated in the order).

In order to include a termination fee with a variable product, suppliers would have to disclose variable pricing using a, "clear and understandable formula, based on publicly available indices or data, that the retail natural gas supplier or opt-in governmental aggregator will use to determine the rate that will be charged."

"It is our belief that a continued effort to provide customers with a real opportunity to monitor the prices that they will be charged is

beneficial," the Commission said in encouraging the formula-disclosure approach by only permitting termination fees in products using such a formula.

The Commission recognized contract portability under the rules, determining that customers may not terminate a contract without penalty upon relocation if the LDC can accommodate continuation of the supplier contract.

PUCO also adopted Staff's proposal, with some minor edits from Dominion Retail, to allow suppliers to terminate customer contracts due to force majeure without giving customers the opportunity to terminate contracts without penalty. Under the old rules, if marketers wished to exercise unilateral termination rights without penalty, they had to give customers the same rights, except in cases of customer non-payment. The Commission, as suggested by Dominion, removed the requirement that any force majeure be "reasonable," and defined force majeure as including, but not limited to, a change in any governing law or regulation that physically prevents or legally prohibits the retail natural gas supplier or opt-in governmental aggregator from performing under the terms of the contract.

The Commission declined to adopt a suggestion from the OCC to consider any change in the ownership of the supplier, or changes in its business plan, as "material" changes for purposes of contracting and renewal. PUCO also rejected OCC's recommendation that renewal notices detail all changes to the contract from the original contract. Since the original contract may have been modified and no longer be in effect, PUCO found such comparisons to be confusing. The Commission maintained Staff's proposal that renewal notices only list material changes from the contract currently in effect, since those are the changes upon which customers will base their decision.

OCC's proposal that disconnections be prohibited for customers who have disputed their bill with the OCC was also denied by PUCO, since law provides that the Commission should be contacted with complaints.