

# Energy Choice Matters

July 22, 2008

## "Most" W Power and Light Customers Sold to Green Mountain

Green Mountain Energy is acquiring, "all but a few," of W Power and Light's customers, under an Asset Purchase Agreement which closed July 16.

Under the agreement, Green Mountain will pay W Power and Light \$50 for each W Power and Light residential customer transferred to Green Mountain that is still receiving service from Green Mountain as of Dec. 31, 2008.

At closing, W Power paid a mark-to-market payment to Green Mountain of \$190,762 for the purpose of covering the expected excess energy-related costs that Green Mountain will incur to provide electricity service to certain Medium Commercial Fixed Price Customers for the term of those customer agreements. Those contracts contain fixed rates below current market rates.

Green Mountain is acquiring a mix of residential, small commercial (under 50 kW) and "medium" (size undefined) commercial accounts through the transaction. Residential and small commercial customers were being served under month-to-month plans, while medium commercial customers were either on fixed price plans or monthly variable products.

The acquired customers are to be transferred to Green Mountain within five business days of the July 16 closing date.

According to an SEC filing, "W Power's few remaining customers will find service with another retail electricity provider."

W Power and Light had disclosed its plans to exit the retailing business earlier this month to focus on the less credit intensive brokering and consulting business (Matters, 7/11/08).

## Dominion Calls PUCO Staff's Variable Product Termination Fee Dichotomy Counterintuitive

Dominion Retail opposed the PUCO Staff's recommendation that competitive natural gas suppliers that do not include a formula when disclosing the determination of their variable rates to customers be prohibited from charging an early termination fee on their product (08-724-GA-ORD).

As reported in our exclusive analysis of the Staff's proposal (Matters, 6/26/08), only marketers including a "clear and understandable formula, based on publicly available indices or data," in their variable rate disclosure would be allowed to charge a termination fee. While retailers could still opt to disclose variable rates using a "clear and understandable explanation of the factors," which will cause the price to change (the current standard), retailers using such disclosure would not be allowed to charge a termination fee.

Rather than helping customers, "the apparent intent of the proposed revision is to create an incentive for suppliers to elect the staff's preferred option by prohibiting those that do not from including early termination fees in their customer contracts," Dominion charged. "In no event should suppliers be penalized in this fashion for providing the level of information currently required."

Dominion argued that the existing rules give customers ample, understandable information to make their decision. The retailer "seriously questions" whether customers would actually benefit from the proposed formula disclosure, as most customers would not have ready access to the indices and/or data used in the formula, even if they understood it.

Because Dominion considers the current "clear explanation" formula more useful to customers, Dominion called the Staff proposal counterintuitive, since it penalizes suppliers (through the

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## **Conditions Favorable for REP Consolidation in ERCOT; M&A Interest Grows**

As seen in the Green Mountain-W Power and Light transaction, conditions are ripe for consolidation in Texas, Rob Potosky, executive vice president at Affiliated Energy Group (AEG), told us.

Potosky, no stranger to REP M&A as one of the leaders on last year's sale of Dynowatt to Accent Energy, confirmed that AEG, which offers various consulting and procurement services to REPs, has seen greater interest from market participants looking to buy. In addition to current ERCOT players, retailers from outside of Texas, including energy companies from Canada and Europe, have been evaluating opportunities to purchase books, Potosky reported. "It's an attractive time to come into Texas," Potosky noted, adding that the sheer volume of competitive REPs (C-REPs) means more opportunities for buyers.

Aside from the natural trend towards consolidation in a market with over 100 licensed REPs, the impetus for M&A has been volatile and high wholesale prices, and the associated credit burden imposed on some REPs, which contributed to five mass transitions since May.

But with a calmer wholesale market, REP exits should be more orderly, such as W Power and Light's, without the need for a mass transition.

Market participants have seen a "dramatic" change in ERCOT MCPEs since May, as instances where MCPE exceeds \$200 have decreased, Potosky pointed out. Although there remain blips in MCPE now and again consistent with the energy-only nature of the ERCOT market, they're much more rare than in the spring, and don't last as long.

Potosky attributed the calming to both ERCOT changes (such as lowering the shadow price cap and adjustments to the Closely Related Elements list), as well as changes in market participant behavior.

Although REPs may have had a reprieve from extremely volatile MCPEs, Potosky noted that there are "still issues" in the market, referring to REPs which may have signed heat-rate supply deals to back fixed-price retail contracts.

As long as the price of natural gas remains high, there will be pressure on some REPs to exit, Potosky explained, but such exits should be more like "organized fire sales," as opposed to this spring's drastic mass transitions.

REPs beholden to one wholesale supplier are at a higher risk of being forced to exit the business, since that supplier's demand for more security or decision to terminate its supply arrangement could send the REP into the balancing market, forcing the REP to quickly post the requisite credit with ERCOT. Wholesale suppliers have been increasingly interested in stepping in and taking over a REP's book, dependent on the types of contracts and retail prices in those agreements, Potosky added.

One factor impacting the speed of any potential consolidation is the range of products offered by a REP, Potosky observed. REPs with several types of retail contracts take longer to acquire, since working out supply procurement for acquired customers will need to encompass varied products.

## **U.S. Energy Savings to Offer 30 Days to Cancel Contract Under Agreement with N.Y. AG**

U.S. Energy Savings has signed an Assurance of Discontinuance with the New York Attorney General under which Energy Savings will give natural gas customers 30 days to cancel a contract without penalty, and will limit termination fees applicable to gas customers to no more than \$5.50 per month remaining on the contract.

U.S. Energy Savings agreed to waive termination fees for over 300 consumers and is paying \$100,000 in costs and \$100,000 in penalties under the agreement. The ESCO will also waive termination fees for any consumer who cancels an agreement within 60 days of the settlement.

Energy Savings is to provide every new customer a letter that clearly states the cancellation period and early termination fee.

The Assurance of Discontinuance, under which Energy Savings does not admit wrongdoing, resolves about 300 complaints received by the AG which alleged that sales

representatives promised immediate savings and claimed to be from the LDC. Customers had also complained about termination fees that in some cases totaled \$600.

## Public Citizen Wants Buyer of Last Resort for Green DG in Texas

The PUCT should designate a "buyer of last resort" for distributed renewable generation (DRG) and require a disclosure statement in every rate contract offered to a DRG owner that lists the rates paid for energy outflows, whether such rates vary based on time of day, and how rates compare to the MCPE. Public Citizen and several other environmental groups urged in a docket on net metering (34890, Matters, 3/13/08).

Public Citizen argued that DRG investment under the PUCT's proposed rules would be hampered because a would-be investor is required to negotiate with a REP the value for the energy the DRG would produce. Public Citizen argued DRG owners must negotiate with little information, no leverage, and knowing that owners must also purchase all of their electricity from the same REP.

To boost investment, Public Citizen favors a buyer of last resort for DRG outflows. The buyer of last resort would be required to offer an offsetting value of energy outflows equal to the rate charged by the electricity provider of last resort.

Public Citizen also wants the PUCT to prohibit the use of the term "net metering" in rate offers unless rates for inflows and outflows are equal.

Among other things, Public Citizen's proposed disclosure statement for DRG contracts would have to clearly identify:

- The rate paid by the REP for energy outflows including whether the rate is fixed or variable, and if variable, the published index on which the rate is based and the basis for adjustment;
- Time periods for which variable rates are tracked;
- Comparison to the MCPE; and
- Time period or number of billing cycles for which energy production may be carried over to offset energy consumption, if not netted each cycle.

Similar information would have to be shown

on bills under Public Citizen's proposal. The green groups also requested hearings with testimony from REPs on what terms are currently being offered to existing DRG owners, any cancellation or changes to existing net metering contracts being planned, and the rate plans that REPs expect to make available.

Solar manufacturer HelioVolt suggested that the PUCT adopt a feed-in tariff for net surplus generation, as well as standard profiling of solar DRG, to provide a default value to anchor negotiations between REPs and solar DRG customers. Otherwise, HelioVolt claimed that simply requiring agreement between DRG owners and REPs on the price of outflows will complicate and create barriers for DRG investment. A feed-in tariff would also discourage REPs from "redlining" solar customers, HelioVolt said.

The Alliance for Retail Markets offered a few tweaks to the proposed rule. As written, the rules would require independent school district solar generation owners to sell their outflows to their REP, regardless of whether the school districts wanted to sell any outflows pursuant to a contract with their REP. Since PURA does not impose a strict obligation that mandates that school districts must sell outflows, ARM suggested language clarifying that school districts with DRG may choose to sell outflows to their REPs at an agreed upon price. Reliant Energy made a similar recommendation.

ARM also recommended that a provision requiring REPs to remit any outstanding amounts from DRG due to a school district within 30 days of the termination of retail service be clarified to state that such remittance may take the form of offsetting any delinquent bill for retail service.

### ***Briefly:*** **ERCOT Load Profile Decimal Change Starting Aug. 1**

On August 1, ERCOT will implement Load Profiling Guide Revision Request 026, approved last year, by publishing forecasted and backcasted Load Profiles with three digits to the right of the decimal point (as opposed to the current two digits) for the following Load Profile Types: BUSNODEM; RESHIWR; RESLOWR. Market Participants may need to take steps to ensure that their replication of the ERCOT Load

Profile Models round the final 15-minute interval values to three digits to the right of the decimal point.

### **PUCT Staff Suggests CREZ Statements of Intent Be Due July 24**

With Commissioners voting to support Competitive Renewable Energy Zone Scenario 2 (Matters, 6/18/08), PUCT Staff have asked an ALJ to adopt a proposed schedule in the docket created to select entities responsible for transmission improvements necessary to deliver CREZ energy (35665, Matters, 5/14/08). Staff recommended that the proposed July 24 date for the filing initial statements of interest and intent to file CREZ transmission plan proposals be accepted to facilitate the expeditious determination of CREZ transmission providers.

### **TXU Signs ABC Radio to Green Deal**

TXU Energy inked a deal to supply ABC Radio Network's Dallas facility with 100% renewable energy.

### **FERC Staff Warns Delinquent EQR Filers**

FERC Staff sent letters yesterday to eight market-based rate sellers for failure to file electronic quarterly reports. The sellers were: FC Energy Services Company; Freedom Partners, LLC (of Houston); Mobile Energy Services Company; North American Energy, Inc.; Ohms Energy Company; Pocono Energy Services; Solaro Energy Marketing Corporation; and Take Two, LLC. Staff wrote that failure to respond would prompt Staff to consider recommending that the Commission take action.

### ***PUCO Exit Fees ... from 1***

prohibition of a termination fee) for giving customers more understandable information.

Dominion reminded PUCO that, "early termination fees do not generate profits for competitive suppliers," but instead are intended to, "provide some modest measure of cost recovery for the gas supply retail providers had to secure (and pay for) up front to meet the departing customer's anticipated needs."

"To deny competitive suppliers any opportunity to recover these costs simply because their variable rate offer does not include a mathematical formula of dubious value makes

no sense, particularly in view of the fact that the proposed rule preserves the current requirements as an option, which is an implicit acknowledgement that the current disclosure requirements are adequate and reasonable," Dominion argued.

Dominion added that if customers value and desire the more detailed information contemplated by the new formula option, it is reasonable to expect that suppliers that offer such information will have a competitive advantage. Thus, the marketplace will ultimately decide the issue, Dominion reasoned.

Dominion also suggested a tweak to Staff's proposal to allow retailers to cancel a contract due to force majeure without giving up their right to impose a termination fee on customers. Rule 4901:1-29-11 currently allows a customer to terminate the contract without penalty if the contract allows the marketer to terminate without penalty for any reason other than customer nonpayment.

Staff's proposal would add the condition of a "reasonable force majeure event," such as a change in law or regulation, to instances where a supplier can terminate a contract without penalty, without giving that reciprocal right to the customer.

Dominion, however, noted that, by definition, force majeure events are not "reasonable" and suggested language that would remove the need to make judgment calls on force majeure events, while still preventing suppliers from canceling contracts without penalty for any reason (such as market prices changes) under the guise of force majeure. Dominion's tighter language removes the use of the term "reasonable" and describes a force majeure event 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."

Staff's proposal that suppliers disclose in their contract all the circumstances under which they may permissibly share a customer's account number or social security number without affirmative consent would be cumbersome and would make contracts less readable and less understandable, Dominion

argued.

Dominion suggested simply informing customers that such information will only be disclosed without customer consent due to court order or PUCO order or rule. Dominion also sought changes to allow suppliers who do not perform their own billing, but whose receivables are not purchased by the LDC, to disclose relevant customer information, without affirmative authorization, when needed to conduct a credit check. The Staff proposal would limit such disclosures to only where the retailer performs its own billing.