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The Texas Retail Electric Scorecard

Rulemaking Projects Take the Stage

Texas's electricity market is about to enter six years of intense review, culminating with the next Sunset review of the PUCT during 2010. Until the 82nd Legislature considers the next Sunset Report in 2011, it is extremely unlikely that the laws governing the retail electric market will change substantially. Instead, the practical operation of the retail market will be revised through numerous rulemaking projects conducted by the PUCT to implement legislation enacted by the 79th Legislature.

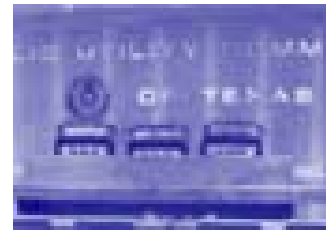
This will be one of those "interesting times" especially when the price to beat expires. The rule-makings should be contentious. The detailed discussions of rule language over the course of the next year and a half will establish new limits for the market. These limits may eventually be reflected in law.

Even if you are unable to actively participate in these rulemaking projects, you should pay close attention to the progress of these projects as their results June be crucial to the success of your business plan.

18 Months of Projects

Starting immediately, a series of PUCT projects will establish rules addressing numerous issues fundamental to the electricity market. These projects are expected to occur over the next 18 months. A partial list the rulemaking projects appears below along with their anticipated start date shown in parenthesis.

- Independent Market Monitor (immediately)
- Advanced Metering (immediately) - Docket 31418
- Service when PTB Expires, Role of POLR (immediately) - Docket 31416



The PUCT will be the center of activity as rules are developed to implement legislation passed by the Texas Legislature.

- Wholesale Market Design (2 months)
- Credit Scoring (2 Months)
- Broadband over Power Lines (6 months)
- Capacity Auctions (6 months)
- ERCOT Transmission Charge (12 months)

Legislative Timeline

The last of these rulemaking projects will be completed just as the 80th Texas Legislature convenes in 2007. Unless there is near unanimous consensus among legislators on any issue, affected parties will be able to delay consideration of new laws until "we know how the new rules will affect the market." This argument will be even more convincing when it is pointed out that it is uncertain how the expiration of the "Price to Beat" will affect retail electricity. In addition, the 80th Legislature no doubt will suffer from regulatory fatigue as a result of the Sunset review during this past legislative session.

The 81st session (2009) does offer some opportunity to reform the laws governing the market. Most legislators will be over their regulatory fatigue, and there will have been some experience with the new market rules. Unless that experience strikes voters as completely unacceptable, how-

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Rulemaking Projects Take the Stage (cont'd)

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ever, new legislation is unlikely. Again, near unanimous agreement will be necessary to ensure enough votes. The 81st Legislature will also be able to point to the Sunset Review of the PUC to forestall action. The argument will be that a more thorough review, incorporating the results of the studies that the PUC is tasked with, will provide a better basis for comprehensive amendments to encourage a competitive market.

So, until the next Sunset Review process starts its 18 month-long schedule in the Fall of 2009, the only real opportunity to influence the shape of the retail electric market in Texas is to participate in the upcoming rulemaking projects at the PUCT.

PUCT Update

Project 31418 - RULEMAKING RELATING TO ADVANCED METERING

Advanced metering is taking off in Texas, and REPs have six months to help decide the shape it will take.

HB 2129, effective September 1st, has started the public debate over which advanced metering technology and services are appropriate for the Texas retail electricity market and how they should be offered. REPs have about a six month window of opportunity to influence the metering technology TDSPs will install, and the services they will offer. The next decision point for advanced metering will be 2010, when the PUC T will recommend whether metering should be a competitive service. Once the metering equipment is installed, though, options will be limited.

The PUCT has opened project 31418 to write the rules governing TDSP decision regarding advanced metering equipment and services they will offer. It is expected that the rulemaking project will last approximately six months.

Among other things, the rules will establish:

- What the nonbypassable surcharge TDSPs will include and which customer classes will pay it;
- Which “standard” metering equipment and services TDSPs will provide;
- Which “specialized” metering features REPs will have to pay extra for; and
- How the PUCT will conduct biannual reviews to identify barriers to advanced metering, and what changes to regulation are needed to remove them.

Every REP will be affected by these advanced metering rules. The rulemaking offers a chance for REPs

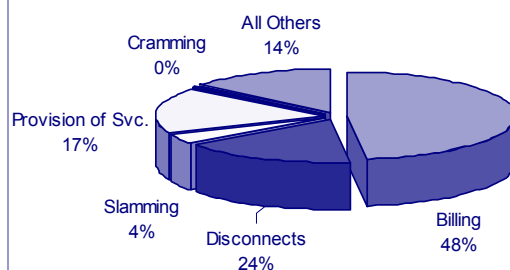
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Will changes to PUCT metering rules allow for cost effective deployment of prepaid electric meters?

Monthly PUCT Electric Complaint Scorecard (data obtained from the PUCT)

PUCT Electric Complaints Received in June 2005



Did You Know?

The PUCT staff found 36 rule violations on the electric complaints they closed in June 2005. Of the 36 rule violations, 14 were for late-filed complaint responses. This figure does not include an additional 21 complaints that had late responses filed, but were not coded as “violations.”

Billing complaints accounted for 33% of the violations, while Disconnect complaints accounted for another 22% of the violations.

Subscribe to the Complaint Scorecard to find out your company's complaint statistics.

PUCT Update

(Continued from page 2)

to make their opinions known to the commission. Without hearing their views, the PUCT cannot consider how the rules affect REPs.

At the very least, REPs need to understand what the rules say, so they can anticipate the impact on their business. Those REPs whose business plans will be significantly affected by changes in metering service and prices should submit comments to the PUCT as the rules evolve through various drafts.

Project 31416 - EVALUATION OF DEFAULT SERVICE FOR RESIDENTIAL CUSTOMERS AND REVIEW OF RULES RELATING TO THE PRICE OF BEAT AND PROVIDER OF LAST RESORT (POLR)

What will happen to REP pricing on January 2, 2007? Why do I ask? The price to beat, the rate that must be offered by affiliate REPs to customers in their traditional service area, will disappear on January 1, 2007. The Price to Beat is the rate that customers have been educated to shop against. More importantly, the affiliate REPs, most of whom still serve majority of the customers in their incumbent area, must operate under more stringent customer protection standards. Many have been speculating that these affiliate REP customer protections coexist with the price to beat service offering and not with other price offers. With the end of the price to beat era, is it also the end of the dual provisions in the customer protection rules? While the above project does not purport to deal with these questions, they may arise as the notion that affiliate REP obligations should shift to the Provider of Last Resort. It is expected that the PUCT will evaluate whether there should continue to be a regulated price for "default service" and who provides such "default service," the affiliate REP or the POLR?

Why should REPs care? Well, many have been exploring prepaid service as a viable product offering to complement other pricing offers. Regulatory Compliance Services hosted two, one-day workshops in July which were attended by over 13 existing REP, several prepaid support service providers, and several telephone companies actively pursuing the prepaid electric business model in Texas.

Pricing is one key issue in prepaid electric service. Many argue that the price of prepaid could be cheaper than regular, credit-based models. Others argue that in a competitive market, pricing should not be regulated beyond "what the market can bear." At present, the price of prepaid electricity is constrained -- it can be no higher than the price charged by the Provider of Last Resort in the applicable TDSP territory (PURA §39.107(g) and Subst. Rule §25.478(a)(4)). Therefore, a move to make the POLR provider the provider of default service and make the default rate the same as the POLR rate may result in the resetting of the POLR rate to a level closer to the existing price to beat. Obviously such a move could impact many prepaid business models.

Again, all REPs are encouraged to actively participate (in some form or fashion) in this rulemaking project. Regulatory Compliance Services stands ready to assist REPs in providing a cost-effective method of participating in these important rulemaking proceedings.

Basics of Telemarketing

Just the Facts, Ma'am

Over the coming months, we will take areas of the telemarketing regulations and look at them in more detail. We continue this month with regulations detailing the specific information about your product or service you are required to disclose during a telemarketing call.

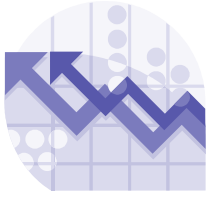
Material Disclosure rules are fairly consistent among the federal and state regulatory bodies and the rules apply to both inbound and outbound calls. The federal government considers failure to comply

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Need Assistance to Participate in PUCT Rulemaking Projects?

RCS can be a conduit between REPs and the PUCT. We can provide clients timely insight into the status of draft rules and the positions of different participants. We can also communicate singular (or collective) REP positions on the rules through formal comments and discussions with the PUCT staff. Other activities RCS can perform:

- Monitoring rulemaking progress
- Providing regular and ad hoc reports to clients
- Draft & submit comments
- Draft & submit proposed rule language
- Representing clients at rule-making meetings



Electric complaint volumes increased in June.

It took an average of 19 days for the PUCT to investigate and close the electric complaints it closed in June 2005.

Companies took 12 of the 19 days to provide their responses to the PUCT.

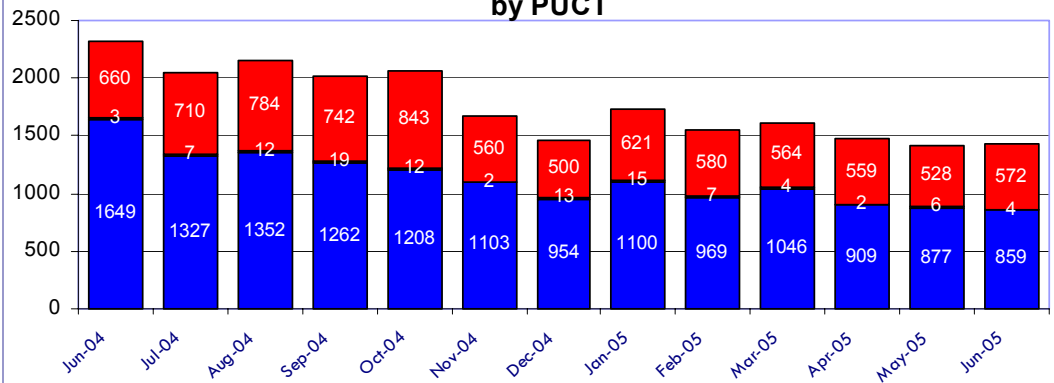
Complaint Statistics

For the month of June, 2005, the PUCT complaint staff received a total of 1,435 complaints. Electric complaints represented 40% of the total during June. The total volume of complaints increased slightly from the May figures, while electric complaints increased by approximately 8% from the May figures. This information is presented in the first chart, below.

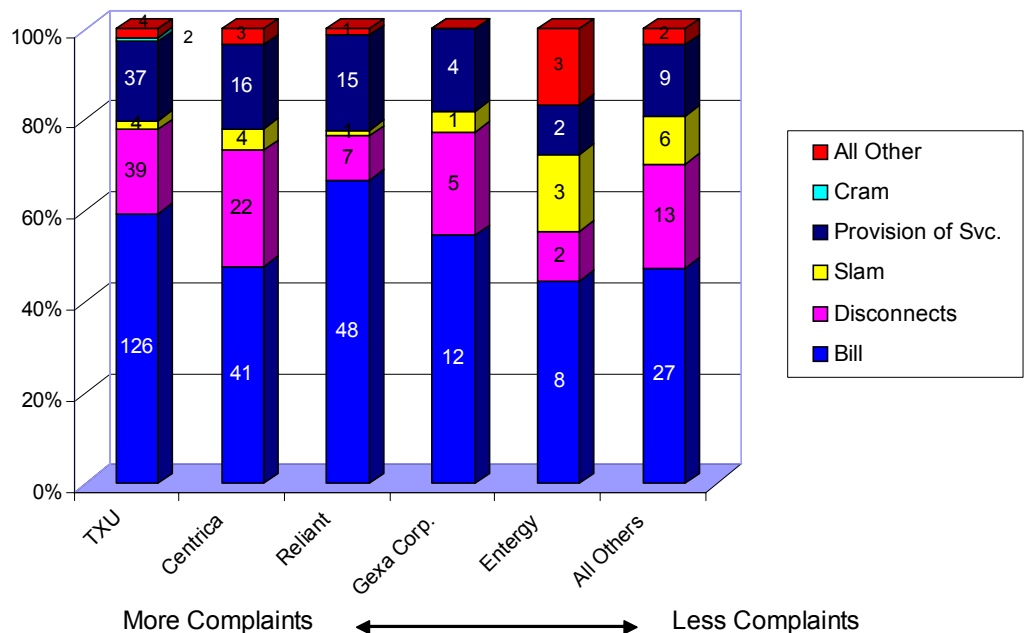
REP complaints comprise approximately 82% of the total volume of complaints related to electric service. The five REPs receiving the most complaints in June accounted for approximately 88% of all the REP complaints. The chart at the bottom shows five REPs receiving the most complaints and the types of complaints each company receives. To obtain company-specific information, please contact us.

Also during June, the PUCT staff closed 545 complaints related to electric service. Of that number, over 80% were investigated by the PUCT staff.

Total Volume of Complaints Received by PUCT



REPs Receiving Highest Volume of Complaints at the PUCT During June 2005



Want to know how your company compares?
 Contact **Regulatory Compliance Services** to subscribe to the Company Scorecard and find out!

More Complaints ← → Less Complaints

Basics of Telemarketing (cont'd)

(Continued from page 3)

with the Material Disclosure rules to be a “Deceptive Telemarketing Act or Practice” . . . so take these seriously! The information below is intended to provide guidance; however, I strongly urge you to have your scripts and call center representatives regularly reviewed and monitored by your legal and regulatory support staff for compliance.

Basics of Material Disclosure

Material information is any information a customer would need to make an informed decision about whether to make a purchase. Failure to provide material information in a “clear and conspicuous” manner before a customer pays is considered a violation.

“Clear and conspicuous” means the information is conveyed in a way a consumer would notice and understand.

“Before a customer pays” means the information must be given prior to asking for any credit card, bank account, or other information that could be used for payment.

Categories of Material Information

The federal government specifies that the following aspects of your product or service would be material to a customer making a purchase decision. At a minimum, the following information must be provided, but you should also ensure you are communicating any other details your customers would consider to be material in their decision-making process.

Cost and Quantity

You must clearly explain all costs related to purchasing your product or service. This can include initial fees, ongoing and one-time payments, and any costs to stop receiving your product or service. For negative option plans, you must disclose the initial payment. (A negative option plan continues until a customer takes an affirmative action to cancel it.)

Material Restrictions, Limitations, or Conditions

You must clearly explain the methods of payment accepted, deposits required, and any limitations on purchasing or receiving your product or service.

No-Refund Policy

You must clearly explain any return, cancellation, exchange, or repurchase policies.

Prize Promotions

You must clearly explain the odds of winning (or the method to calculate the odds if the odds cannot be calculated in advance), that no purchase is required and making a purchase will not increase chances of winning, how the consumer can enter without making a purchase, and any costs or conditions to receive or redeem the prize.

Negative Option Features

You must clearly explain that customer’s account will be charged until he/she takes an affirmative action to cancel, the date(s) of the charges (if the dates aren’t known you can provide an approximate date as long as reasonable advance notice is given), and the specific steps the customer must take to terminate.

Texas State Regulations Related to Telephonic Enrollment for Electric Service

Substantive rule §25.474(h) provides the Texas regulations which detail additional disclosures that must be made to initiate a switch or move-in.

For more information on telemarketing regulations or for assistance in building processes to ensure compliance, contact Coppice Channel Marketing (www.CoppiceMarketing.com) at (713) 582-8634 or Regulatory Compliance Services.



What your sales agents say on the phone to customers is regulated at both the Federal and the state level.



Most federal and state laws are designed to protect customers from telemarketing fraud.

Regulatory Compliance Services



"Your Consumer Protection Specialist"

P.O. Box 15103
Austin, Texas 78761-5103

Phone: 512-656-3185

Fax: 512-452-8596

Email: rcs@your-rcs.com

Web: <http://www.your-rcs.com>



Call to find out how **Regulatory Compliance Services** can help your company's bottom line.

Need Quick Help? Get our Compliance Checklists

Compliance Checklists are geared for non-regulatory staff use as a means of easily documenting compliance with the Public Utility Commission of Texas' rules. Checklists are currently available for the following topics:

- **Telemarketing Sales Enrollments**
- **Door to Door Sales Enrollments**
- **Internet Enrollments**
- **Written Enrollments**
- **Electric Bills**
- **Terms of Service Documents**
- **Electricity Facts Label**
- **Your Rights as a Customer**
- **Marketing & Advertising**
- **Disconnecting Customers**

Each compliance checklist is available for \$150, or all 10 checklists July be purchased as a bundle for \$1,250. You will free receive updates necessitated by PUCT rule changes for 1 year from date of purchase.

The checklists are Microsoft Word template documents that can be opened and used as forms by your staff. Since template files can be password protected, staff using the forms can be prevented from changing the checklists and limited to simply responding to the questions posed. Completed forms can be then saved and routed electronically within your company for further review and approval.

Terms of Service Checklist		
1. Does your Terms of Service document for each product or service that is made available to residential and small commercial customers?	<input type="checkbox"/> Yes	<input type="checkbox"/> No
2. Does each version of a Terms of Service document contain a unique identifier (e.g., product or service)?	<input type="checkbox"/> Yes	<input type="checkbox"/> No
3. Are terms of service documents provided to any eligible customer before the customer enters into a contract with you?	<input type="checkbox"/> Yes	<input type="checkbox"/> No
4. Are terms of service documents provided to customers in plain language that is understandable to the customer?	<input type="checkbox"/> Yes	<input type="checkbox"/> No
5. Do you retain a copy of each version of the TOS for the entire term of the contract and for one year after the term is no longer offered and for one year after a being removed from the contract?	<input type="checkbox"/> Yes	<input type="checkbox"/> No
Specific TOS Requirements		
6. Does the TOS contain all of the following: a. Your contact name b. Mailing address c. Billing contact address (if different from your mailing address) d. Your telephone number and fax number	<input type="checkbox"/> Yes	<input type="checkbox"/> No
7. Does the TOS include the EFC information and the consumer's consent to be contacted by the utility?	<input type="checkbox"/> Yes	<input type="checkbox"/> No
8. Does the TOS include a description of any charges resulting from a service or service that may be passed through to the TOS, and when the charges are passed through to the TOS?	<input type="checkbox"/> Yes	<input type="checkbox"/> No
9. Does the TOS include an acknowledgment of any services that are not included in the terms of service including: a. A description of the conditions under which a deposit may be required for a customer who qualifies for the rate reduction program to any required deposit to have equal conditions. b. The amount of the deposit and the conditions under which the deposit may be paid on the deposit at a rate set by the utility. c. The conditions under which the customer may obtain a refund of the deposit. d. The conditions of the conditions under which a deposit may be required for a customer who qualifies for the rate reduction program to any required deposit to have equal conditions. e. The amount of the deposit and the conditions under which the deposit may be paid on the deposit at a rate set by the utility. f. The conditions under which the customer may obtain a refund of the deposit.	<input type="checkbox"/> Yes	<input type="checkbox"/> No
10. Does the TOS include a description of any charges resulting from a service or service that may be passed through to the TOS, and when the charges are passed through to the TOS?	<input type="checkbox"/> Yes	<input type="checkbox"/> No
11. Does the TOS include an acknowledgment of any services that are not included in the terms of service including:	<input type="checkbox"/> Yes	<input type="checkbox"/> No

Regulatory Compliance Services is proud to recommend **TexasAdmin.com** to its customers who need access to webcasts of key PUCT administrative meetings and workshops by streaming video live, to be viewed in real-time, or on-demand from the **TexasAdmin.com** archives.

For more information, visit <http://www.TexasAdmin.com>

Regulatory Compliance Services is also a proud vendor/service provider member of the **Texas Energy Association for Marketers (TEAM)**. **TEAM** members receive a 10% discount on subscriptions to newsletters and scorecards provided by Regulatory Compliance Services.

For more information about **TEAM** visit <http://www.txteam.org>

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