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Electricity retailer won't honor fixed-rate contracts

Move to raise prices prompts public complaints, inquiry by agency

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When can a "fixed-price" electric plan be "un-fixed?" Customers of one Houston-based electric retailer say the company is telling them whenever it wants.

National Power Co. has told customers it will no longer honor many of its existing long-term power contracts and will increase rates as much as 28 percent in the next 45 days. Customers say the company told them it is adjusting its rate of 11.9 cents per kilowatt hour to 15.3 cents because of higher wholesale power prices.

A flood of complaints to the Texas Public Utility Commission led that agency to launch an investigation and pull the company's price data from its consumer Web site Wednesday after repeated efforts to get answers from the company failed.

PUC Chairman Barry Smitherman said he doesn't believe National Power's contract allows it to make such a move, although he's had a hard time nailing down what the commission's rules say about such changes.

"I've called as many retailers as I can to tell them they better not consider doing the same thing," Smitherman said. "We're working as hard as we

can to make sure nobody else thinks it's a good idea."

An attorney working for National said officials there are "concerned about their customers and the news reports" but they won't comment further until after meeting with PUC officials Thursday.

Notices of the change began arriving in customer mailboxes last week. Glenn Kruse, a Spring Branch homeowner who signed up with National last year for an 18-month, fixed-rate plan, said a customer service representative told him the company could change the plan based on the "material change" clause in its contract.

The contract does not define "material change," but only says the company will warn customers of the change 45 days in advance.

"What they're doing is contrary to their own service agreement," Kruse said, noting the documents repeatedly point out the rate will remain fixed. "It's obviously unethical. I don't see how they can get away with it."

Part of PUC code

The "material change" clause is in many other Texans' electric service contracts, however, says Patricia Dolese, the former head of consumer protection at the PUC who now runs a consulting firm. It is allowed under the codes the PUC passed in 2000 as part of electric deregulation.

The language was designed to protect companies in the early days of Texas' open markets, giving

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them a way to avoid bankruptcy if wholesale prices went up higher than they anticipated, Dolese said. That happened repeatedly in Ohio and essentially led to a scuttling of open market plans there.

Some companies have used the clause to change some terms of their plans in the past, Dolese said, "but this is the first time the price increase has been so drastic."

No clear definition

Does this mean there's no such thing as a "fixed price" plan? It depends on who you ask.

Steve Madden, senior vice president of supply at StarTex Power, an independent electric retailer, said his company would only use such a clause for something "truly material, like legislators reregulating the market."

"But we've never even thought about applying the clause for wholesale price change. That's just a normal part of the business function," he said. "If a retailer hasn't hedged against wholesale prices going up, then they're out of the money."

No change at Reliant Energy

Patricia Hammond, a spokeswoman for Reliant Energy, the state's largest retailer by amount of power sold, said the company would not change the terms of its fixed-price contracts based on changes in natural gas prices or wholesale market conditions.

"Reliant secures the cost of its wholesale supply

in advance to back its fixed-price contracts. This allows us to honor the commitments we've made to our customers," Hammond said.

But Dolese said there's nothing in the PUC code that requires companies to define "material changes."

"Whenever I talk to retailers about using the term 'fixed price' in their ads, I tell them they may as well put an asterisk next to it and say it's subject to change based on wholesale price," Dolese said.

Cancellation option

Customers of National can cancel their contract without being assessed the usual cancellation fee, according to the letters customers received from company President Richard Hunter. They would be hard-pressed to find rates comparable to what they had before, however, since power prices have risen steadily this year as the price of natural gas — a key power plant fuel in Texas — has risen more than 30 percent.

On Wednesday, the lowest fixed-rate power plans offered in the Houston area through the PUC's Web site, www.powertochoose.com, was 13.9 cents for 12 months. One company offered a month-to-month introductory rate of 12.5 cents per kilowatt-hour.

Smitherman said National's action is unusual but that the PUC has faced a similar situation in the past. In 2006, the former Starlight Electric and TriEagle Energy agreed to pay back more than \$1 million to small-business customers who saw

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their rates jump steeply when one company sold its customer base to the other.

"We determined the move was contrary to the rules of customer protection," Smitherman said. "And while the current case isn't directly on the same point, they're pretty darn close. I'm surprised anyone would attempt to change their pricing after our decision in that case."

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