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Consumers Energy green power gets Michigan PSC OK

Customers of Consumers Energy (CMS Energy) can sign up for the utility's new Green Power Pilot Program approved recently by the PSC.

Electric customers who sign up for the program can choose to buy 10%, 50% or 100% of their energy from certified green power generators.

Participating customers will pay a Green Surcharge of 0.32¢, 1.6¢ or 3.2¢/kwh respectively for their service.

An electric customer using 600 kwh monthly will pay \$19.20/month more for 100% green power, \$9.60 for 50% and \$1.92 for 10%.

Producers need that revenue, says Consumers' Scott Brockett since green power is more costly to produce.

Almost all of the surcharge will be passed directly to certified generators for power delivered to the Consumers Energy electric system.

The balance goes to cover the utility's cost to administer the program.

The pilot program is limited to a maximum generating capacity sufficient to meet the needs of about 18,000 homes.

Customers have to stay in the program for a year but have the option of paying the Green Surcharge for up to 17 years.

CMS Energy meanwhile picked David Joos, 48, executive vice president and COO to be president and COO.

Williams tells

what prices are: Williams is launching Williams uE website, the first cross-commodity index for the spot and future price of energy. uE reflects the average price of eight commodities that make up 83% of the nation's energy use of electricity, natural gas, unleaded gasoline, heating oil, ethane, propane, residual fuel and jet fuel. As Williams sees it, the service is a companion to its *Energy News Live* (www.energynewslive.com).

Andersen's Oliva favors FERC RTO flexibility

Andersen's Larry Oliva hopes FERC allows utilities to keep options open and doesn't force them into a one-size-fits-all national model.

FERC, under Chairman Pat Wood last week laid out an ambitious effort to create four RTOs to administer fair and competitive wholesale markets.

As an Andersen partner, Oliva has spent a lot of time devising ways for utilities to approach RTOs -- for the Alliance project and for the Midwest and Northeast ISOs developing ideas with 30 transmission owners.

His hope is that FERC-mandated RTO mediation efforts result in utilities' being allowed to set-up independent transmission companies within RTOs rather than an ISO-type organization that does market and grid operations.

"What I see is that you're basically combining functions that don't need to be combined ... taking operation of the grid out of the hands of the people who know how to do it best."

His worst case scenario would have management of ISOs put in the hands of the stakeholders who drove the very creation of the systems.

"Those who are thinking about independent transmission companies having a role in an RTO should not just have a passive organization that allows some independent entity to run their systems," Oliva said.

FERC has spoken to its belief that a low number of RTOs across the nation will aid in grid planning and security to move the industry into the deregulated, restructured marketplace.

The four-RTO approach favored by Wood and the other commissioners would replace the 10 regional reliability groups and 160 or so control areas policing the grid now.

His favorite result would be a fluid model supporting congestion management and ancillary service markets relying where possible on market forces.

The grid would be operated by a transco better equipped to maintain reliability and build new transmission, upgrading the system and cutting congestion through best practices in grid management, he said.

Electricity marketers, ELCON, oil producers fight antitrust case

America's energy marketers have asked urgently that the US Supreme Court block an attempt by the US 10th Circuit Appeals Court to expand utility exemption from federal antitrust laws.

Trigen-Oklahoma City Energy Corp and its supporters have asked the high court to overturn a decision giving Oklahoma Gas & Electric immunity from charges of anti-competitive behavior.

The appellate decision opens a Pandora's box of problems for moving the electric power industry from a regulated to an openly competitive business, a friend of the court brief argues since the 10th Circuit's decision seems intended to frustrate any state's ability to fashion flexible responses to increased competition.

Trigen had charged OG&E with illegal efforts to monopolize the cooling services market in downtown Oklahoma City.

A jury agreed with Trigen. OG&E appealed and won.

The National Energy Marketers Assn, ELCON and the Independent Petroleum Assn of America asked recently the Supreme Court to throw out the 10th Circuit decision to foster "vigilant" enforcement of antitrust laws they believe is vital to restructuring the electricity industry.

The appellate decision ignores many of the standard tests for application of the state action exemption, they argued.

The 10th Circuit held that to gain antitrust immunity a utility need only show that it sells a regulated product, the brief noted.

One other test is whether the challenged action furthered the state's interest, the brief said.

"The utility in this case could not have been furthering the state's interest" in trying to monopolize the cooling market, they argued.

If the 10th Circuit reasoning were carried beyond electric power the impact could be devastating in many other areas, petitioners wrote.

"Dozens of incumbents in a variety of industries -- electric companies, water companies, local telecommunications exchange carriers, sewage companies, gas companies and pipeline companies -- have their rates for service approved by state

regulators," the petitioners said.

As such, the incumbents like OG&E would be free to engage in non-price predatory acts without fear of antitrust liability "even where no regulator actively supervises its anti-competitive conduct."

How about these gems from the brief:

"The decision would transform the state-action immunity doctrine from a sharply limited and disfavored exemption from the otherwise-encompassing Sherman Act, into a sweeping license permitting utilities whose rates for regulated services are approved to suppress competition with impunity by means of unsupervised non-price predation."

And:

"This expansion of private-party immunity will allow incumbents to destroy new entrants and deprive consumers of the fruits of competition."

Then:

"The 10th Circuit's decision effectively will prohibit Oklahoma from deciding that a company's rates should be regulated but that the company in other respects should remain subject to the federal antitrust laws..."

"Particularly as ongoing deregulation heightens concerns about market power, there is compelling need for the court to review the 10th Circuit's decision expanding state action immunity in the electric industry. Failure to do so will signal to utilities that it is business as usual and thus undermine the goals of restructuring."

And then:

"For the foregoing reasons, the amici (friends of the court) urge the court to grant the petition and correct an erroneous expansion of the state action doctrine that threatens to immunize anti-competitive conduct and

shield unwarranted exercise of market power by utilities competing in unregulated markets."

And we might add -- at a time when the doctrine probably should be repealed. **The doctrine itself was never legislated** but grew out of a collection of poor decisions based on the archaic, 19th Century need to regulate monopoly.

ERCOT role expands from reliability

Crisis planning expands; access, settlement added

Jess Totten, electricity director of the PUC, sees ERCOT fitting the FERC picture of an RTO.

Totten sees a major role for ERCOT in the competitive market being independent from any competitor, doing things set out in Senate Bill 7 -- reliability, transmission access, wholesale settlement and customer information.

They don't want someone doing that who is a competitor.

"We don't want TXU doing settlement cause TXU might favor its own company. You don't want Reliant managing the reliability of the system because it would be able to do things that would favor itself over competitors," said Totten (RT, 9/28).

SB 7 made ERCOT subject to the PUC's jurisdiction.

One big positive for Texas retail success, said Totten, is the low level of gas prices going into winter. He sees marketers offering "good prices" providing "vibrant competition."

Large customers are not covered by the legislated 6% discount for non-shopping small customers. Thus the

PUC told suppliers to write large customers in June and tell them what their prices will be if they don't shop.

Some letters were vague but have encouraged negotiation, Totten reported.

Meanwhile, Totten views the RTO process to be complete in Texas while it's just getting off the ground in other parts of the country.

Is Texas talking now about bringing the T&D pricing under the jurisdiction of market forces?

Not yet, said Totten. The PUC has developed rules, he added, to foster distributed generation as a competitive factor.

He doesn't see opportunities for making T&D competitive.

ERCOT switching backlog ends, official says

Bill Bojorquez (bee-YOR-kess) of ERCOT's staff briefed the press last week about switching customers from incumbents to competitive suppliers.

He told a press briefing Thursday that **the switching backlog had ended**.

The retail customer registration department has eight employees.

The agency is completely caught up and asked marketers to send them more names. In his words:

"As of today we should have cleared any backlog."

How many can they switch in a day now?

About 20,000, Bojorquez replied. That's based on the performance in the week ending Sept 21 when they processed 1,600 on their best day. He believes they could have done another 4,000.

ERCOT is ready to take on all new customers, he added, and put the word out to marketers. They had had a

California ISO load/resource balance

	9/24/01	9/25/01	9/26/01	9/27/01	9/28/01	9/29/01	9/30/01
ISO Reported Outages	7,163	7,159	6,713	7,262	7,408	7,812	7,167
Net Resource	44,194	44,198	44,644	44,096	43,949	43,545	44,190
ISO Reported Net Import at Hour 18	4,208	4,291	5,111	4,626	3,962	3,525	4,223
Surplus	15,599	15,888	16,655	17,222	18,493	18,387	16,736
Adjusted WSCC Capacity	51,357	51,357	51,357	51,358	51,357	51,357	51,357
ISO Reported Peak Load	32,803	32,600	33,100	31,500	29,418	28,683	31,677
ISO Planned Outages	3,883	3,133	3,446	3,680	3,891	4,883	4,975
ISO Unplanned Outages	3,280	4,026	3,267	3,582	3,517	2,929	2,192
Total ISO Reported Outages	7,163	7,159	6,713	7,262	7,408	7,812	7,167

Data supplied by Robert McCullough of Portland, Ore (503-777-4616).

backlog that started to build in May and by the end of August had registered 5,429 with many thousands backlogged waiting for computer action.

After the computers do the switch the customer is notified and has to get a final meter reading and respond to ERCOT indicating they want to change suppliers.

The additions rose to 18,468 by Sept 13 then 28,778 were added in the next week bringing the cumulative total to 58,500.

Bojorquez estimated another 20,000 would be added in the final week bringing the total converted to the pilot program to 78,500 (est) even before the program is over Jan 1.

Why does the website say 115,000, asked an attender.

About 40,000 customers had signed with Shell, Bojorquez replied, but the names had not been submitted to ERCOT.

Before the agency had limited the names to 1,000/day so they could check out the system.

As of last Monday ERCOT put out the word that marketers should send them all of their names and they got one name the first day then Tuesday and Wednesday they got thousands each day.

The sign-up delay means the pilot joiners won't save much money considering most won't complete the switching with meter reading and enrollment in October and the entire market opening Jan 1, a reporter asked.

"It's not really about whether they were able to save money," Boroquez explained, "but whether they'll get a bill consistent with their new rate.

"The pilot is more about insuring that before we let everybody choose their provider that we test it on a few," he added.

Boroquez confirmed that "we were late."

Over the last three weeks ERCOT got over 50,000 switches, he reported, then it takes 45 days to get the meter reading and the final bill.

They allow customers 15 days to deny the switch.

Of the group now switched on the computer, 29,000+ are waiting for the final meter reading, he added.

Bojorquez' estimates it will take -- "worst case" -- 26,000 really switched in one month.

So much for the 20,000/day.

The next 29,000 on average will be switched in 30 days, he said.

Large customers can waive the postal notification delays. That's a good thing when a lot of money is at

stake.

For residential people the best case is a 16-day delay and worst case is 45 days, said Bojorquez, depending on where the customer is in the meter reading schedule.

How many meters can the teams read in a day?

ERCOT has about 5 million meters hooked up and all 5 million are in the ERCOT database and meters are read typically 21 days a month so that's 238,000/day programmed for regular reading. For special reading related to a switch it takes a special trip and we didn't get good numbers on how many of those they can do in a day.

He simply doesn't expect that Jan 1 ERCOT will get requests from millions of customers to switch.

Dynegy sees strong energy industry

And now some good news from Dynegy. They find "recent events and the general economic downturn have not adversely impacted the outlook for our merchant energy business and are not expected to affect our earnings growth or slow our momentum," said Dynegy Founder Chuck Watson.

"The volatility found in current energy markets is expected to continue, creating an even greater 'flight to quality' by companies recognizing the need for an energy partner with a reliable physical delivery network," added Watson.

Thus Dynegy expects to meet recurring earnings estimates for next year of \$2.50 to \$2.60 per diluted share.

"Fundamentally, the energy industry has been and will continue to be one of the strongest sectors in our global economy," Watson predicted.

Southern Union

names CFO: Southern Union gas distribution company has appointed David Kvapil to its board of directors as executive vice president and chief financial officer. The company said Ronald Endres will be made an executive advisor ahead of his upcoming retirement.

MISSION: To show where the converging communications and energy industries are headed as they create America's biggest industry focusing especially on the opening up of competitive wholesale and retail markets.

Abbreviations: AGA, American Gas Assn; ALJ, administrative law judge, a hearing

examiner within a regulatory agency, a fact finder; **APPA**, American Public Power Assn; **API**, American Petroleum Institute; **ATC**, available transfer capability; **bcf**, billion cubic feet; **BPA** Bonneville Power Administration; **cf**, cubic feet/day; **CFO**, chief financial officer; **CIO**, chief information (IT) officer; **C&I**, commercial and industrial; **CLEC**, competitive local exchange carrier; **CTC**, competitive transition charge used to recover costs stranded by customer freedom; **DG**, distributed generation; **DSL**, digital subscriber line, **dkt** = **dekatherm** = mmbtu, is roughly = mcf; **DOE**, Department of Energy; **DSM**, demand side management; **ECAR**, East Central Area Reliability Coordination Agreement; **EEL**, Edison Electric Institute; **ELCON**, Electricity Consumers Resource Council; **EPA**, Environmental Protection Agency; **EPRI**, Electric Power Research Institute; **EPSA**, Electric Power Supply Assn; **ERCOT**, Electric Reliability Council of Texas (but not all of Texas); **FCC**, Federal Communications Commission; **FERC**, Federal Energy Regulatory Commission; **FRCC**, Florida Reliability Coordinating Council; **G&T**, generation and transmission; **GAPP**, General Agreement on Parallel Paths; **GRI**, Gas Research Institute; **gwh**, gigawatt hours = 1,000 mwh; **HVAC**, heating, ventilating and air conditioning; **ILEC**, incumbent local exchange carrier; **INGAA**, Interstate Natural Gas Assn of America; **IOU**, investor owned utility; **IPP**, independent power producer; **ISO**, independent system operator; **ISP**, Internet service provider; **kv**, kilovolt; **kwh**, kilowatt hour; **LADWP**, Los Angeles Department of Water & Power; **LDC**, local gas distributing company; **MAIN**, Mid-America Interconnected Network; **MAPP**, Mid-Continent Area Power Pool; **mcf**, thousand cubic feet; **mmbtu**, million btu generally equal to mcf; **1 mw** = 1 megawatt or 1 million watts, enough power to supply 330 homes for one hour on a hot summer's afternoon; **mwh**, megawatt hour; **NARUC**, National Assn of Regulatory Utility Commissioners; **NERC**, North American Electricity Reliability Council; **NOPR**, notice of proposed rulemaking; **NPCC**, Northeast Power Coordinating Council; **NRECA**, National Rural Electric Cooperative Assn; **OASIS**, open access same time information system; **OMB**, Office of Management & Budget (White House); **PEM**, proton exchange membrane (type of fuel cell); **PJM**, the Pennsylvania-New Jersey-Maryland ISO and reliability region; **ppm**, **ppb** parts per million, billion; **PSC**, Public Service Commission; **PUC**, Public Utilities Commission; **PUHCA**, Public Utilities Holding Company Act; **PURPA**, Public Utilities Regulatory Policy Act; **PX**, Power Exchange (California trading center); **QF**, qualifying facility under PURPA; **RBOC**, regional Bell operating company; **RFP**, request for proposal; **RTO**, regional transmission organization; **SEC**, Securities & Exchange Commission; **SERC**, Southeastern Electric Reliability Council; **SPP**, Southwest Power Pool; **T&D**, transmission and distribution; **tcf**, trillion cubic feet; **therm**, tenth of an mmbtu; **TLR**, transmission line loading relief, the failure of a transmission provider to make good on a firm agreement to move power; **TURN**, The Utility Reform Network, California ratepayer group; **TVA**, Tennessee Valley Authority; **USDA**, US Department of Agriculture; **WSCC**, Western Systems Coordinating Council. **UTC**, United Telecom Council.

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