Energy Choice Matters

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Illinois AG Suing U.S. Energy Savings

Illinois AG Lisa Madigan is suing U.S. Energy Savings in Cook County Circuit Court for "allegedly selling fixed-rate gas contracts using deceptive sales tactics that falsely promise significant consumer savings in violation of the Illinois Consumer Fraud and Deceptive Business Practices Act," the AG said in a press release.

U.S. Energy Savings has been a frequent target of the state's Citizens Utility Board in the past. We got this story after business hours and weren't able to contact Energy Savings for their side of things. Madigan, meanwhile, is fresh off helping extract $1 billion in concessions from Exelon and other firms concerning the state's move to market-based electric rates, and had been suing over the ICC procurement auction.

The AG singled out Energy Savings' door-to-door sales force in Nicor's and Peoples Energy's territories.

The AG claimed sales agents, "allegedly told consumers that the fixed-rate program would offer significant savings by locking them into a consistent gas price before rates allegedly spiked."

The AG complained that customers weren't told the contract price was, according to the AG, higher than "prices historically offered by regulated utility suppliers."

The suit alleges that customers were told they could cancel any time without a penalty, or that agents "did not clarify that cancellation required a substantial penalty." The AG alleges some agents negotiated contracts in English with non-English speakers, and that the rescission process was difficult.

Madigan's Consumer Fraud Bureau reports 457 complaints against Energy Savings plus another 2,000 from CUB.

The suit asks the Court to prohibit the marketer from engaging in the alleged practices and a civil penalty of $50,000 for each violation committed with the intent to defraud and $10,000 for each instance where a violation was committed against a person 65 years of age or older. Madigan wants customers to get full restitution and for the Court to rescind the contracts.

First Choice Ready to Chase Customers, Boosts Marketing Budget

After being forced to sideline aggressive customer acquisition to work out some back-office issues, PNM Resources' First Choice Power unit is ready to get in front of customers again.

The marketing lull was part of a "difficult and challenging year" for PNM which ended with a sharp drop in fourth quarter ongoing earnings, from $36.7 million a year ago to $8.8 million, CEO Jeff Sterba told investors yesterday.

Much of the losses stemmed from the lack of a fuel clause at PNM's New Mexico vertically integrated utility, but performance was down at ERCOT competitive retailer First Choice Power as well, Sterba noted.

First Choice reported ongoing earnings of $26.8 million last year compared with $41.4 million in 2006.

Of course, Sterba reminded analysts that First Choice had a "stellar" 2006 that was going to be tough to match.

In 2006 First Choice grew customer accounts by 15% but had to scale back its acquisition

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Nstar: 10% Participation in Green Program "Highly Unlikely"

Nstar doesn't expect incumbent customers to use up RECs from two wind projects it wants to buy power from under bilateral contracts, the utility revealed in an interrogatory response to the Retail Energy Supply Association.

In what has become known as the "Nstar Green" case (07-64), the utility told RESA it is projecting a "considerable surplus" in RECs from the two proposed wind facilities -- not a shortfall.

RESA had asked how Nstar would obtain RECs if customer participation exceeded the allotment of RECs from the farms. In order to exhaust the REC supply, Nstar customers "would have to participate at a 2.9 percent level for the 100 percent match and a 5.7 percent level for the 50 percent match," the utility said.

"This possibility is highly unlikely based on even the most successful programs elsewhere," Nstar claimed. For 1% participation in the 100% program, 62,000 MWhs of RECs are needed, while the farms will produce 178,000 MWhs, Nstar wrote.

If Nstar thinks that 8.6% total participation among the two programs is "highly unlikely" we have to wonder why it is pushing so hard for the programs if it will produce de minimis participation from customers. Clearly, Nstar is admitting there is no urgent demand from customers for its Green Service, which would have the utility enter into bilateral contracts for green power outside of the market-based RFP for basic service.

Nstar told RESA it did not compare the prices embedded in the bilateral contracts to forward prices. Instead, it relied on a recommendation from Navigant Consulting that the economics of the contract prices versus forward prices "looked favorable" after a review by Navigant.

"Navigant did not provide any supporting calculations or analysis to NSTAR Electric, just its opinion," Nstar said.

Clerical Change Would Produce Big Windfall for DC Net Metering Customers

District of Columbia electric customers could end up subsidizing customers using net metering under a "correction" to proposed net metering rules issued by the PSC in January, the Office of People's Counsel told the PSC (FC 945).

The PSC's original proposed rule, issued in November, would compensate net metering customers "at the retail rate for generation service," OPC noted.

But a January correction to what the PSC called a "scrivener's error" (clerical error) changed that language, and the corrected rule would compensate customers, "at the Full Retail Rate," OPC pointed out. That means the combined price of generation, transmission and distribution as defined in the rulemaking.

Net metering customers send excess generation onto the grid and paying them at the generation rate is sensible, OPC argued. Net metering customers, "do not construct, operate and maintain transmission or distribution facilities," OPC reminded. Thus they shouldn't be paid for those services.

Excess energy from net metering does not reduce either PEPCO's or competitive suppliers' transmission and distribution costs, and payment for net metering that includes transmission and distribution costs isn't valid on an avoided cost criteria, OPC added.

Other Mid-Atlantic states pay net metering customers only the generation or wholesale energy rate, the People's Counsel noted.

Texas ALJ Recommends Rejection of Application from TCE, Bridgepoint Vet

It's not often that Texas REP applications go to the State Office of Administrative Hearings (SOAH), but that's where the application of Consulting Groups Network (d/b/a PowerOne) ended up, with an ALJ siding with PUCT staff to deny the application in a proposal for decision (docket 34363).

Consulting Groups Network was founded by Darwin Lau, a veteran of Texas

Commercial Energy (TCE) and Bridgepoint Power & Light, two failed REPs. That raised red flags with the PUCT staff.

Under PURA, REPs certificates can only be issued to a person demonstrating "the managerial and technical ability to supply electricity at retail in accordance with customer contracts."

The ALJ agreed with staff that Lau does not fit that standard, and Consulting Groups Network did not offer another principal to satisfy the requirement.

Lau had argued that he joined TCE after its bankruptcy and left Bridgepoint before its default, arguing he shouldn't be held accountable by his association, and that he didn't have control over the REPs' decisions to leave the market.

But Lau's duties as CFO at Bridgepoint demonstrate "significant involvement" at the REP for nearly 16 months, the ALJ found.

The ALJ added that Lau was "intimately involved in the formation, implementation, and ultimate failure of both these companies," whose defaults left heavy debts at ERCOT, the wires utilities, and customers.

Staff particularly objected to Lau because he signed an affidavit in transferring TCE's REP certificate to Bridgepoint that he would ensure it complied with PURA and all applicable rules. But at Bridgepoint the PUCT ultimately found "multiple, significant violations that reflect a complete disregard for the duties assigned to [Bridgepoint] as a REP."

NY Strawman Tells NYSERDA, Utilities to Play Nice

NYSERDA and utilities would split work to achieve New York's 15x15 energy efficiency target under a straw proposal released by ALJs yesterday (07-M-0548).

Success "depends upon immediate and substantial increase in funding for electric energy efficiency programs and the addition of new aggressive natural gas efficiency programs," the ALJs noted.

The straw proposal considers both NYSERDA and utilities to be "essential" for creation of an energy efficiency portfolio standard (EEPS), and the ALJs singled out utilities for their ability to "bring access to end-use customers, especially mass market customers."

Utility participation also brings "the potential to integrate energy efficiency with overall energy resource planning," the straw proposal added.

Making utilities administrators for some programs aligns utility financial interests with EEPS goals, the ALJs argued.

New York City, independent energy efficiency providers and non-profit and community institutions are to have smaller roles in EEPS as well, under a "cooperative" approach.

NYSERDA would be allocated $181 million annually from the system benefits charge under the plan. It would administer energy efficiency block RFP programs, available through competitive procurement, to non-utility and non-NYSERDA energy efficiency providers including ESCOs, nonprofits, community organizations, and vendors of emerging technologies.

NYSERDA would be the exclusive provider of statewide "market transformation" programs.

Should NYSERDA programs overlap with utilities, the Commission would play traffic cop.

Utilities would be allocated $146 million annually from the system benefits charge, with Consolidated Edison getting $53 million, National Grid $47 million and NYSEG $20 million.

Contractors implementing utility-administered programs would be selected through competitive procurement.

Additionally, utilities would provide, for NYSERDA and other program administrators, initial point-of-contact services for small business and residential customers.

Utilities would have an opportunity to earn incentives and would also bear the risk of negative performance adjustments.

The straw proposal ultimately sees the Commission creating a New York Clean Energy (NYCE) program that would combine system benefit and RPS funds.

While noting the "importance" of demand response, the ALJs "do not propose specific demand reduction programs for inclusion in the EEPS," since the roles of the New York ISO and EEPS administrators, and the need for funding of demand response measures that do not provide permanent efficiency gains, require further development.

A technical conference is set for March 5 with issues for the conference due Feb. 22.

Power Marketer Skeptical of PJM FTR Risk Plan

PJM's plan to rein in risky actors in the financial transmission rights (FTR) markets "is a significant step in the wrong direction," several affiliated power marketers told FERC (ER08-455).

In response to defaults in the FTR market which have imposed costs on PJM members, PJM proposed holding affiliates of defaulting companies responsible. PJM would deduct FTR revenues due to affiliates of a defaulting company and apply it to unpaid obligations, and would also apply affiliates' posted security to cover unpaid obligations.

But seeking recovery from the affiliates of a defaulting party "is bad public policy because it could result in penalizing the owners (investors) of those affiliates when they are not responsible for the trading activity of the defaulting party and do not otherwise share in any gains from the defaulting party's trading activity," a group of marketers owned by Citadel Investment Group told FERC.

Citadel also warned of "serious questions relating to the enforceability of PJM's proposed mechanism, both under applicable state corporate law and under the United States Bankruptcy Code if a party or its affiliate(s) file for bankruptcy protection."

Citadel favors tighter reins on traders and boosting PJM members' protection from default, but argued the most appropriate policy is to "properly calibrate collateral requirements so that they account for the risk of default and provide sufficient financial coverage."

"In certain unique or unusual circumstances, it also would be appropriate to have enhanced collateral requirements, provided that such requirements are clear and formulaic in application and are applied uniformly to all market participants," Citadel added.

But Dominion Resources supports PJM's changes, noting the RTO would only use them when a trader has a net short position of FTRs. The RTO's strict definition of the term, "provides assurances that PJM will not use the set-off in an unjust or unreasonable manner," Dominion said.

Briefly:

NewEnergy to Supply Maine Gas

Constellation NewEnergy submitted a gas supplier registration form with the Maine PUC yesterday.

Ameren Submits Gas Efficiency Strategy

Ameren rolled out its gas efficiency programs to the ICC (08-0104) that would be marketed to residential and small business customers in conjunction with the utility's electric energy efficiency and demand response programs. Savings targets start at 0.1% (1.1 million therms) for 2009, escalating to 0.3% (3.3 million therms) for 2011. The 2009 budget would be $4 million, with funding growing to $6.5 million by 2011. The 2009 budget is 0.4% of applicable revenues, Ameren said. The programs would be open to Rate GDS-1 (residential) and Rate GDS-2 (small general) because those are the rate classes where revenues are to be decoupled. Ameren would collect costs through a single usage based charge (Rider GER).

SUEZ Keeps Green Boston Customer

SUEZ Energy Resources NA renewed a contract to provide Starwood's Westin Copley Place hotel in Boston with 678 Green-e certified National wind RECs. The RECs account for about 5% of the hotel's load.

Another Surcharge for Calif. Ratepayers

California electric and natural gas ratepayers would be socked with a $60 million annual bill to create and fund the California Institute for Climate Solutions under a draft proposal by PUC President Michael Peevey (07-09-008). Peevey believes ratepayer funding is "appropriate" because benefits from the institute would flow back to customers and inaction would ultimately lead to higher costs. The decision would "not approve funding for unfocused, exploratory academic research," Peevey stressed. The Institute's main mission would be "to develop technologies, mechanisms, and educational and workforce training programs that are practical, ready for implementation and will result in actual and cost effective GHG reductions," he added, with a "particular focus on speeding the transfer of these technologies from the laboratory to market place."

First Choice .... *From 1*

efforts last year as it built new infrastructure and portals for customer care and back-office support.

That led to "stunted" growth of about 5,000 customers, or two percent, with First Choice ending 2007 with around 258,000 accounts.

Sterba reminded investors that when PNM bought First Choice his management team quickly found that the REP was rapidly losing customers, had little to no infrastructure for growth, and had a fairly poor power procurement strategy.

"Fortunately we didn't pay too much for that business," he noted.

But since the REP didn't have a scalable customer care infrastructure when PNM bought the retailer, Sterba had to put the brakes on customer acquisition as he built one through 2007. Thus First Choice virtually ceased marketing and acquisition efforts because it doesn't make much sense to add customers when you don't have a system to enroll and care for them, he explained.

Work on back-office infrastructure is complete and First Choice is opening the acquisition floodgates.

Sterba boosted the REP's marketing budget five-fold to $10 million.

First Choice plans a multi-channel marketing effort relying on affinity and co-branding as key elements, Sterba told investors, declining to share any more secrets.

But he projects customer growth back in the 12-15% range, estimating ending 2008 with 289,000 customers.

Last year's average retail margin returned to a more "normal" level with the end of the price to beat and increase in competitive pricing, Sterba added, at $23.47/MWh vs. $28.60 in 2006. He expects the same level for this year, in the $20-25 range.

In 2006 First Choice was also helped by $9 million in trading gains while losing $3.6 million last year as the cool, wet summer in ERCOT drove gas prices down and against the positions First Choice had taken.

First Choice is a "wholesale-led retailer," Sterba reminded, which is different from many players in ERCOT. Sterba explained that when prices rise First Choice tends to suspend active acquisition faster, but when prices fall it is more aggressive to win new customers than its competitors.

PNM is to examine moving First Choice into EnergyCo, its competitive joint venture with Cascade Investment, the private investment firm for Microsoft founder Bill Gates.

Putting the REP in EnergyCo would consolidate competitive operations under one management team and also bring economies of scale to trading, since both First Choice and EnergyCo have their own, smaller trading operations.

EnergyCo contributed $4.6 million to ongoing earnings in 2007.