Energy Choice Matters

November 12, 2009

Pennsylvania PUC Cites Complaints, Lawsuit in Denying Just Energy Electric/Gas Licenses

Citing a lawsuit and other complaints filed in Illinois and New York, the Pennsylvania PUC denied Just Energy's applications for electric and natural gas supply licenses, stating that it is not apparent that, "similar issues will not arise in Pennsylvania." The denials were first reported in *Matters* earlier this week, but written orders with the PUC's findings were only recently published (Only in Matters, 11/9/09).

Although the PUC cites the relatively high number of customer complaints recorded by various Just Energy subsidiaries in Illinois, New York and Texas, the Commission noted that Just Energy, "is not unique among energy service companies in New York (in terms of complaints)," and that, "there were other companies with significant totals," of complaints in Illinois in addition to Just Energy.

The Commission orders, therefore, seem to base their denials not on customer complaint volumes, but on broad actions brought by the Attorneys General of Illinois and New York, though both actions were settled with no admission of wrongdoing.

Specifically, the Commission cited the 2008 lawsuit brought against Just Energy by the Illinois Attorney General concerning the marketing of long-term fixed rate contracts. The suit was settled with Just Energy paying $1 million in restitution but admitting no wrongdoing. Of greater concern to the PUC is a still-open complaint brought in 2008 by the Illinois Citizens Utility Board against Just Energy before the Illinois Commerce Commission, which raised similar marketing complaints as the

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Cirro Energy Services Expands Geographic Footprint Under Dominion Ownership

Since being acquired by Dominion Retail last year, Cirro Energy Services, the broker-consultant arm of Cirro, has expanded its footprint beyond Texas, offering various procurement and energy management services to customers in several PJM and NEPOOL states.

Key new markets for Cirro Energy Services include Illinois and Pennsylvania, Michael Cozzi, Director of Cirro Energy Services, told *Matters*. For its demand management products, Cirro Energy Services is typically focusing on areas where there is overlap with Dominion Retail's existing footprint.

The Cirro Energy Services side of the business was an important factor in Dominion Retail's valuation of Cirro and decision to buy the retailer last year, Cozzi said, with Dominion encouraging the expansion into new territories.

As would be expected, Cozzi said that initial growth has focused on signing existing ERCOT customers to serve their locations in other states, both for energy supply procurement, and demand response and energy management.

Cirro Energy Services, which started as a supply broker and bill auditor confined to ERCOT in 2005, soon added demand response and management products to its portfolio, offering access to ERCOT's Load Acting as a Resource (LaaR) program, and also working with customers to reduce load during the ERCOT four coincident peaks or avoid load at those peaks altogether. The demand management side of the business in ERCOT has grown such that it represents about 50% of Cirro

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Spring Township, Wyomissing Deny Dominion Retail Letterhead Request

Spring Township and Wyomissing, Pennsylvania, have denied a request from Dominion Retail to use the municipalities' letterhead in sending out residential electric offers to customers.

Dominion Retail, under its new Dominion Energy Solutions trade name, is the first electric supplier to confirm an offer of residential service at PPL when rate caps expire. Dominion Retail is offering residential customers a guaranteed price 10% off of PPL's price to compare through the December 2010 meter read date. Based on the estimated PPL price of 10.55¢/kWh (subject to final adjustments in December), Dominion Retail's price would be 9.495¢/kWh. Dominion Retail's product does not include a termination fee.

Dominion Retail asked Spring Township and Wyomissing to use their respective letterheads in soliciting customers, in hopes of improving the response rate. In return, Dominion Retail would discount its price another percentage point in addition to its 10% discount for residents of the municipalities, and offer the municipalities discounted generation supply or other contribution.

The Wyomissing Borough Council, in a meeting this week, denied the request, concerned that the use of town letterhead would appear as an endorsement. Spring Township also denied the request, but said it will make information about Dominion Retail's offer on its website.

BGE Residential Offer

Dominion Retail has also renewed residential electric marketing efforts at Baltimore Gas & Electric, offering customers a fixed rate of 10.37¢/kWh through December 2010. The price is 12% lower than the BGE Price to Compare, which is an annualized number and distinct from the generation rates actually charged to customers. Dominion Retail's BGE offer expires November 30, and does not include a termination fee.

EnerNOC Says ISO-NE Filing Creates Special Exemption for Utility Demand Response

EnerNOC protested an ISO New England Order 719 compliance filing at FERC, claiming that the ISO's proposed tariff language on the aggregation of retail customers for demand response, "explicitly creates an ISO sponsored alternative, one that may not be authorized by any relevant state law or regulation, for the host utility to have a special exemption from an otherwise generally applicable prohibition on retail aggregation or, in the absence of any general prohibition, a federally sponsored right to appoint themselves or their selected agent as the exclusive ARC [Aggregator of Retail Customers] for their customers."

Order 719 generally permits retail customers to directly participate in RTO markets except where prohibited by the laws or regulations of the relevant electric retail regulatory authority.

At issue is ISO language (ER09-1051) which holds that assets cannot be registered into the demand response programs if they are comprised of:

"(a) The customers of Host Utilities that distributed more than 4 million MWh in the previous fiscal year if the relevant electric retail regulatory authority prohibits such customers' demand response to be bid into the ISO-administered markets or programs unless the Market Participant registering the Real-Time Demand Response Asset, Real-Time Emergency Generation Asset or asset associated with an On-Peak Demand Resource or Seasonal Peak Demand Resource is the Host Utility serving the customers...," or

(b) The customers of Host Utilities that distributed 4 million MWh or less in the previous fiscal year, unless the relevant electric retail regulatory authority permits such customers' demand response to be bid into the ISO-administered markets or programs or the Market Participant registering the Real-Time Demand Response Asset, Real-Time Emergency Generation Asset or asset associated with an On-Peak Demand Resource or Seasonal Peak Demand Resource is, or is acting on behalf of, the Host Utility serving the customers..."

EnerNOC suggested that the provisions

would allow host utilities to aggregate customers into RTO demand response programs regardless of any finding from a state retail regulatory authority.

EnerNOC further claimed that, "These revisions contain language that creates or condones the ability of utilities who are host to the retail customers aggregated by an ARC, to restrict customers to participate only through the host utility or its designated agent." While such restrictions may or may not be within the authority of a particular retail regulator, "they are inconsistent with the Commission's Order regarding what may be included in the ISO's own rules regarding ARC participation," EnerNOC said.

Even though FERC, in Orders 719 and 719-A, did not seek to rule upon any particular restrictions that may be imposed by a retail regulator, "EnerNOC believes that the Commission has a continuing duty under the Federal Power Act to address undue discrimination in particular cases if it does arise."

State restrictions on demand response activities or aggregation, "should be narrowly tailored to accomplish legitimate state purposes rather than broadly drawn to simply favor local utilities or customer groups in provision or monopolization of [demand response] services," EnerNOC said.

Fort Stockton Asks PUCT to Deny TNMP Billing Error Declaratory Order

The City of Fort Stockton, Texas, urged the PUCT to not grant a request for declaratory judgment from Texas-New Mexico Power regarding TNMP's errors in billing information for retail delivery service provided to Fort Stockton and the retail electric providers serving the City (Only in Matters, 10/21/09).

TNMP said that the errors in its billing information resulted in over-billing and under-billing for various street lighting services provided by TNMP.

As only reported in *Matters*, TNMP asked the PUCT to exercise its jurisdiction over the matter and issue an order (1) declaring that TNMP is not required to refund to the City any additional energy or other non-TDU charges that were assessed directly against the City by the REPs and (2) determining any dispute regarding the amount to be refunded. TNMP said that it believed it had reached an agreement to provide $654,000 in refunds to the City, but the City is now seeking upwards of $1 million.

The City said that TNMP's request, "in essence seeks an advisory opinion whether it has been engaged in unlawful practices which are more appropriately suited for the civil District Court."

Stating that PURA does not give the PUCT jurisdiction over the complaint, the City said that, "the dispute between the parties relates to how much TNMP should pay to Fort Stockton for its admitted over billing, and how much it should pay for its admitted practice of providing false billing information to REP's who also billed Fort Stockton for electric service using TNMP's faulty information."

Briefly:

Just Energy Agrees to drop "U.S. Energy" Trade Name as Part of Agreement with New York AG

Just Energy has agreed to end the use of "U.S. Energy" as a trade name in New York and to change the color scheme of its sales agents' uniforms under a settlement with New York Attorney General Andrew Cuomo. Cuomo said both actions were sought to reduce customer confusion and so that customers do not believe Just Energy's sales agents are affiliated with the LDC. The agreement also implements a $50 cap on cancellation fees for consumers who cancel contracts after 30 days. A prior agreement had prohibited termination fees in the first 30 days. The Attorney General's Office recently began receiving complaints from consumers who indicated that the name of the company and the dark blue color scheme of the representatives' uniforms led homeowners to mistakenly think that the agents were affiliated with the local regulated utility. The agreement requires Just Energy to stop using the name "U.S. Energy" and to change its representatives' uniforms from dark blue to green to avoid confusion.

Weaker Generation Performance Offsets Retail Gains at UGI Energy Services

UGI Energy Services posted lower net income for the fourth quarter of fiscal 2009, ending September 30, 2009, of $2.7 million, down from $5.6 million a year ago. For the year fiscal 2009, net income at Energy Services was down at $38.1 million from $45.3 million in fiscal 2008. Total margin for Energy Services for the year fiscal 2009 increased $2.1 million to $126.2 million, as greater total margin from peaking supply services and retail electricity sales were partially offset by lower electric generation margin. The decrease in electric generation margin reflects lower spot-market prices for electricity and lower volumes generated. During an earnings call, executives reported that UGI Energy Services added 5,500 small commercial and industrial customers in 2009 through direct sales and telemarketing. For 2010, UGI Energy Services will continue its small business focus, with plans to grow the business in existing markets as well as at new LDCs. A 10-K for UGI Corp. has not been filed yet.

Direct Energy Results Tracking Centrica Expectations

Direct Energy's mass market and commercial and industrial businesses continue to perform well despite weak economic conditions, parent Centrica said in an interim management statement (Centrica reports half-year and not quarterly results). Overall, Direct Energy is trading in line with full year expectations, Centrica said. Low wholesale energy prices continue to impact the financial performance of Direct Energy's upstream gas production business and its Texas combined-cycle gas turbines.

Lincoln Energy Group Seeks Pa. Broker License

Lincoln Energy Group applied for a Pennsylvania electric license as broker/marketer to serve commercial customers over 25 kW, industrial customers, and governmental customers in all service areas. Lincoln Energy Group was started in January 2007 by Blair Hutton and Aaron Bernstien, both of whom were formerly directors of sales at Choice Energy Services. Lincoln Energy Group has initially focused on the Illinois market.

Additional Brokers Seek Illinois Licenses

The following brokers applied for Illinois electric ABC licenses:

- Aim Retail Energy Group Inc.
- GEV Corp.
- Progressive Energy Group LLC
- The Cornerstone Energy Group, Inc.
- The Loyalton Group, Inc

Of note is that Progressive Energy Group is currently licensed as an Illinois alternative retail gas supplier.

CQI Associates Seeks Md. Broker License

CQI Associates, LLC applied for a Maryland natural gas aggregator/broker license to serve all customer classes at Baltimore Gas and Electric, Washington Gas Light, Columbia Gas and Chesapeake Utilities.

Six Texas Cities Seek to Withdraw Aggregation Certificates

Six Texas cities that had sought to develop an opt-in residential aggregation pool have asked to withdraw their aggregation licenses at the PUCT, stating that no further aggregation efforts are intended. The pool, managed by the Cities Aggregation Power Project, abandoned aggregation efforts in the spring of 2008 after it was unsatisfied with pricing from REPs. Cities filing to withdraw their certificates include Cisco, Comanche, Dublin, Eastland, Hamilton and Snyder.

Md., Del., Va. Sign Offshore Wind MOU

Maryland, Delaware and Virginia have entered into a Memorandum of Understanding to aid the development of offshore wind resources, with one of the key goals being to, "discuss ways to encourage sustainable market demand for this renewable resource." A news release from the three state governors noted that Delaware is currently the only state which has a long-term, ratepayer-backed power purchase agreement to develop offshore wind power.

Publication Note: Energy Choice Matters published an issue on Nov. 11. Stories included:

- O&R Requests More Time for Report on Alternative Referral Program Cost Allocations

- Mich. ALJ Recommends Maintaining Choice Incentive Mechanism at Detroit Edison
- CenterPoint Says PUCT Should Consider Repealing Rules for Choice Pilots, Initiation
- Integrys Energy Services Sells 75 MW of Maine, New Brunswick Generation
- RRI Wary of LSE-determined Load Forecast Standard Deviation in MISO
- Md. PSC Tolls Deadline for Long-Term Contract Proposals
- And more

Just Energy ... from 1

Attorney General's action. The PUC noted that the 2008 CUB complaint followed a 2006 complaint which was settled.

The PUC also cited an inquiry into Just Energy by the New York Attorney General which resulted in a 2008 agreement under which Just Energy paid $200,000 and waived termination fees for certain customers, though not admitting to any wrongdoing. Though not cited by the PUC, Just Energy reached another agreement this week with the New York AG concerning its trade name and the colors of its sales agent uniforms (see related story).

"The conduct of the Company's affiliates in other states, where independent contractors have been used, raised consumer protection concerns ... The continuing consumer protection issues in other jurisdictions lead us to question the Company's overall fitness, since they provide insight into [Just Energy's] potential conduct as a licensee in Pennsylvania," the PUC said.

"Upon review, we do not believe that [Just Energy] has sufficiently demonstrated the necessary technical fitness to be granted an electric generation supplier license ... [Just Energy] has not provided sufficient information to demonstrate that its conduct would not replicate the problematic history of its affiliates, since some of these concerns have arisen fairly recent," the Commission added. Similar language was contained the PUC's gas license order.

During the application process, Just Energy noted that it has made several remedial changes to its customer acquisition and marketing process, some as the result of various settlement agreements, and some on its own volition. Among these improvements are an extended 30-day, no-fee cancellation period, use of telephonic verification for all sales or a follow up written verification letter requiring a signed return if the customer cannot be reached by phone, simplified exit fee amounts, and increased agent training.

However, the PUC found that, "based on the repetition of events in Illinois and the lack of a resolution in the most recent complaint in Illinois, it is not apparent that the issues have been resolved and that similar issues will not arise in Pennsylvania."

As the PUC denied the licenses due to the complaints, the Commission did not address an issue raised during the case regarding the use of independent contractors as sales agent for electric suppliers (Only in Matters, 5/26/09).

As only reported in *Matters*, Staff had asked Just Energy to justify its use of independent contractors who were not PUC-licensed brokers in its electric solicitations, with Staff suggesting that such independent sales contractors must be licensed as brokers/marketers. On the gas side, Pennsylvania regulations clearly exclude independent sales contractors (known as marketing services consultants) from registering as brokers if they are under contract to the supplier, and they do not collect natural gas supply costs directly from retail customers, are not responsible for the scheduling of gas supplies, and are not responsible for the payment of costs for natural gas to suppliers, producers, or natural gas distribution companies. No parallel provisions address electric independent contractors.

PUC Staff cited Section 2803 of the Electric Generation Customer Choice and Competition Act to support its position that, as brokers or marketers, each of the potentially hundreds of independent contractors utilized in door-to-door marketing need to be individually licensed as an electric generation supplier.

Just Energy had argued that individual contractors, unlike businesses, do not require PUC authorization to perform electric sale solicitations on behalf of a certified supplier. Just Energy had noted that under Section 2803, a broker or marketer is defined as "an entity" licensed by the Commission. While the term entity is not defined in Act, Just Energy contended that had the General Assembly intended to define broker/marketer as including individuals, it would have done so, given an explicit definition was used in the Gas Competition Act. Citing Black's Law Dictionary, Just Energy added that the term entity cannot generally be construed to include an individual, and thus, individual contractors cannot be required to be licensed as brokers/marketers when acting on behalf of a certified supplier. Just Energy noted that suppliers remain responsible for their actions of their agents under Commission rules.

Just Energy had been seeking an electric supply license to serve residential and commercial customers at Duquesne Light, and a gas supply license to serve residential and commercial customers at Columbia Gas. Just Energy currently owns Commerce Energy's Pennsylvania electric and gas licenses, and serves legacy Commerce customers under those licenses.

Cirro ... from 1

Energy Services' business, with the balance representing its brokering-consulting.

In its new PJM and NEPOOL markets, Cozzi reported that Cirro is having greater success in enrolling customers onto demand management products. Aside from demand response's attractive revenue stream potential, customers' more immediate acceptance of Cirro Energy Services' demand management products versus brokering reflects the fact that many customers may be on existing broker contracts, but had yet to engage any provider for load management services.

As customers roll-off of existing supply contracts, Cozzi expects to cross-sell supply brokering to existing demand management customers. Cozzi cited Pennsylvania, particularly the PECO region, as a growth territory for brokering, as businesses anticipate the end of rate caps at PECO and the remaining Pennsylvania distribution companies on January 1, 2011.

While Cirro Energy Services uses proprietary technology for its ERCOT demand management, it is currently offering its PJM and NEPOOL demand response service as a channel partner for other curtailment service providers. Cirro Energy Services offers any available RTO load response program, energy, capacity or ancillaries, though Cozzi said that the capacity programs have proven to be the most popular.

Aside from procurement and demand response, Cirro Energy Services' suite also includes bill auditing, energy conservation, power factor correction, tariff rate studies, and alternative energy sourcing.