Energy Choice Matters

January 8, 2010

Infinite Attacks, Gas South Defends Cobb EMC-Gas South Marketing Agreement at Ga. PSC

Infinite Energy contends that the operation of a marketing agreement between Cobb EMC and subsidiary Gas South provides Gas South with an unfair competitive advantage, but another Cobb subsidiary, Cobb Energy Management Corporation, said that granting the relief sought by Infinite would be anticompetitive by singling out a specific provider for regulation, the parties said in direct testimony before the Georgia PSC (Docket 30446).

Infinite has filed a petition with the PSC to enforce O.C.G.A. §§ 46-2-20(b) and 46-4-153.1 against Gas South, Cobb Energy Management Corporation, and Cobb EMC due to the marketing services agreement among the affiliates. Under O.C.G.A. § 46-4-153.1, the Commission, "may require that any customer service that an electric membership corporation provides to its gas affiliate be offered to all marketers at the same rate and on the same terms and conditions as provided to the gas affiliate," in order to provide equal access to captive electric customers. SouthStar Energy Services originally joined in the petition with Infinite, but later withdrew.

Cobb EMC is an electric membership corporation providing retail electricity under a monopoly franchise in its service area. Cobb EMC serves approximately 195,000 residential and commercial customers.

Cobb Energy Management Corporation (Cobb Energy) is a wholly owned subsidiary of Cobb EMC which provides various customer service, billing, and marketing functions. Cobb Energy also provides call center services to Cobb EMC through Cobb Energy's wholly owned subsidiary,

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PUCT Staff Asks Milagro Power if Principal Is Same Individual Subject to Past SEC Investigation

PUCT Staff have asked Milagro Power (TexRep3) to clarify whether one of its principals is the same individual that was subject to a 2002 settlement with the Securities and Exchange Commission.

Specifically, Staff asked whether Milagro Power President William G Wydler is the same person as the person that is the defendant in the *Matter of Guillermo Wydler* in the Security and Exchange Commission's Administrative Proceeding File No. 3-10989. If so, Staff asked what is the status of Mr. Wydler's compliance with the SEC's order in that matter.

An SEC complaint had alleged that a broker-dealer and investment advisor under the control of Guillermo Wydler and another principal sold to approximately 560 of their brokerage and/or advisory customers/clients, nearly $70 million in interests in two affiliated offshore funds whose prospectuses represented that the funds would invest in safe investments and that the return of customers' principal was guaranteed. However, according to the SEC complaint, the two funds instead engaged in a highly risky investment strategy, by investing in volatile emerging markets debt instruments from countries such as Russia, Venezuela, Brazil, Argentina and Mexico. Ultimately, both funds collapsed, resulting in losses of approximately 50% of investors' principal.

As part of a 2002 settlement, the SEC barred Guillermo Wydler from association with any broker, dealer, or investment adviser, with the right to reapply for association after five years to the

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Pepco, Delmarva File Type I Rates for Period Starting June 1

Pepco and Delmarva filed updated Maryland Type I SOS rates for the period June 1, 2010 through September 30, 2010.

Pepco Type I SOS (6/1/10 - 9/30/10)

Rate	**¢/kWh**
R	11.842
R-TM	
On Peak	11.354 [sic]
Intermediate	11.738 [sic]
Off Peak	10.708
GS, EV, T	11.833
SL	9.857
TN, SL-TN	11.236

Delmarva Type I SOS (6/1/10 - 9/30/10)

R	11.1237
R-TOU-ND	
On Peak	11.1237
Off Peak	11.1237
SGS-S, TN, OL, ORL, Separately Metered Water Heating (SGS-S, LGS-S)	11.2005
Separately Metered Space Heating (SGS-S, LGS-S)	11.3085

Dominion Retail, MXenergy Raise Residential Rates at PPL

Electric suppliers at PPL have followed ConEdison Solutions' lead and have raised their residential electric rates this week, according to rates obtained by the Pennsylvania Office of Consumer Advocate.

For example, Dominion Retail is now offering a fixed rate of 9.90¢/kWh through December 10, versus the prior rate of 9.40¢/kWh.

MXenergy has raised its fixed rate through December 2010 to 9.891¢/kWh, versus 9.37¢/kWh. MXenergy has also added a six-month product at a rate of 9.849¢/kWh.

As previously reported, ConEdison Solutions raised its rate to 9.95¢/kWh from 9.38¢/kWh.

Rates are still about 5% off of the PPL Price to Compare of 10.448¢/kWh.

As of early January 8, Direct Energy has not raised rates for any of its three products, including a 12-month term product with a three-month introductory rate of 8.99¢/kWh, followed by a rate of 9.49¢/kWh for the balance of the term.

FERC Approves NYISO Day-Ahead Reliability Unit Authority

FERC accepted, subject to clarification, the New York ISO's tariff revisions which will allow NYISO to commit generators for statewide reliability purposes prior to the close of the Day-Ahead Market (ER10-231).

The NYISO had previously received authority to modify its Day-Ahead Market commitment software, also known as the Security Constrained Unit Commitment (SCUC) software, to allow Transmission Owners to request that specific units needed for local reliability requirements be committed prior to the close of the Day-Ahead Market. However, NYISO did not have similar authority to address statewide reliability, and was only able to address statewide reliability issues after the close of the Day-Ahead Market through its Supplemental Resource Evaluation (SRE) process.

NYISO said that expanding its authority by permitting it to commit Day-Ahead Reliability Units for statewide reliability is expected to increase market efficiency and reduce uplift.

FERC granted NYISO such authority, subject to the clarification that a request for a local reliability commitment must be posted on the NYISO website immediately upon receipt of the request, while a commitment of a generator by the NYISO for statewide reliability must be posted at 5:00 a.m. after the close of the Day-Ahead Market.

Shell Energy North America had asked that, if a natural gas-fired generating facility is committed to meet reliability needs under the Day-Ahead Reliability Unit process, NYISO should be required to provide notice to such facility as early as possible, to ensure that the generator has the best opportunity to procure natural gas in the interday market, not the intraday market. Shell Energy noted that earlier notification would allow the generator to avoid cost premiums associated with natural gas purchased in the intraday markets.

However, FERC agreed with NYISO that earlier notification raises market power concerns. NYISO had argued that providing advanced notification prior to the close of the Day Ahead Market carries market power risks because the competitive market thresholds for upstate units are established based on the market principle that resources will offer at their marginal costs of operation. NYISO asserted that, since reliability generators committed early would already be aware of their guaranteed commitment to run and their certainty of recovering their as-bid costs, such resources would have no incentive to provide economic offers.

The Commission also denied requests from generators to clarify that NYISO's new Day-Ahead Reliability Unit authority will not be its first preference to resolve a statewide reliability need, and rather will only be a last resort. NYISO, in a reply, said that while it will prefers modeling reliability constraints instead of committing Day-Ahead Reliability Units for statewide reliability, the Day-Ahead Reliability Unit provisions will not be a "last resort." While NYISO continues to prefer to address certain reliability concerns in its SCUC model, "it recognizes that there are some types of reliability issues that cannot always be accurately modeled in the SCUC (e.g., the commitment of generating units for voltage related reliability requirements)." Additionally, NYISO argued that when a reliability issue can be addressed in the SCUC model and solved by only one supplier, that supplier will have the ability to exercise market power unless there are additional mitigation measures that can address the supplier's market power. FERC agreed with the NYISO's stated reasons for not characterizing the Day-Ahead Reliability Unit process as a last resort.

Briefly:

Avalon Energy Services Seeks D.C. Broker Licenses

Avalon Energy Services applied for both electric and natural gas broker/aggregator licenses with the District of Columbia PSC, to serve commercial, industrial and governmental customers. As only reported in *Matters*, Avalon is seeking a Pennsylvania electric broker license as well (Only in Matters, 1/6/10).

StonePillar Energy Seeks Ohio Gas Broker License

StonePillar Energy LLC applied for an Ohio gas broker license to serve all classes of customers at all LDCs. StonePillar Energy was spun off of StonePillar Capital, which is a utility bill auditor, to expand services to energy procurement.

Paetec Energy Receives Maine Broker License

The Maine PUC granted Paetec Energy (Technology Resource Solutions) an electric aggregator/broker license to service medium and large customers throughout the state (Only in Matters, 1/5/10).

ERCOT: Garland Spencer Units May be Needed for Reliability

One or both of the City of Garland's Spencer 4 and 5 units, for which Garland has submitted a Notice of Suspension of Operations, may be needed for Reliability Must Run service, ERCOT said in an initial determination. ERCOT will continue to evaluate its initial study results and will issue its final determination in February 2010.

Nodal Exchange Offers Real-Time Contracts

Nodal Exchange, LLC and LCH.Clearnet Ltd announced the addition of 8 new contracts settling against Real-Time Locational Marginal Price at four locations: PJM Western Hub, PJM AEP-Dayton Hub, PJM Northern Illinois Hub, and MISO Cinergy Hub. Contracts for both peak and off-peak time periods are available at each location. Trading availability began yesterday for the June 2010 through January 2014 expiries. In addition, the new Real-Time contracts are also available over-the-counter for submission to Nodal Exchange for clearing by LCH.Clearnet.

EFH Increases Debt Offering

Energy Future Holdings increased the amount of notes due 2020 to be issued in its previously reported offering to $500 million from $300 million (Matters, 1/7/10).

Cobb EMC ... from 1

ProCore Solutions.

Gas South is a wholly owned subsidiary of Cobb EMC which markets competitive retail natural gas. According to Infinite, Gas South serves 225,000 customers in Georgia, making it the third largest marketer after SouthStar and Scana Energy.

In addition to serving its parent Cobb EMC, Cobb Energy also provides enrollment, customer care, billing, payment processing, credit and collections, revenue accounting, technology, reporting and regulatory compliance services to Gas South. More importantly with respect to the petition, Cobb Energy and Gas South also engage in certain joint marketing and promotional efforts, which take advantage of Cobb Energy's relationship with the monopoly electric customers of its parent, Cobb EMC.

Specifically, Cobb Energy distributes marketing materials developed and provided by Gas South in Cobb EMC electric bills. These materials direct electric customers to a special website and phone number established by Gas South. Also, customer service representatives in ProCore's call center inquire as to whether Cobb EMC electric customers calling into the call center would be interested in discussing receiving natural gas services from Gas South. Additionally, Cobb EMC includes an advertisement for Gas South's services on its website and includes a hyperlink on its website directing interested persons to Gas South's website. Finally, Cobb Energy's commercial sales representatives promote Gas South's services to existing and potential Cobb EMC commercial electric customers.

At issue in Infinite's petition is the availability of the joint marketing and promotions to Cobb EMC customers provided by Cobb Energy. Cobb Energy makes such services available to other marketers, but only as part of a bundled package under which the marketer must also use Cobb Energy for billing services and customer service functions. Cobb Energy and Gas South argue that this arrangement meets the requirements of O.C.G.A. § 46-4-153.1, since Gas South receives the services as a bundled package, and they are being made available in the same manner to competitors.

However, Infinite called the bundling of the services anticompetitive, and petitioned the PSC to either require Cobb Energy to provide the services a la carte, to permit marketers to elect only the joint marketing services, or, in the alternative, prevent Cobb Energy from providing such services to Gas South.

Infinite said that it has, "invested millions of dollars and more than 10 years developing a proprietary billing system that accommodates our multiple rate plans."

"It is unfair to require Infinite Energy to invest the time and financial resources necessary for Cobb EMC to attempt to develop a billing system capable of handling the vast array of rate plans offered by Infinite Energy with no guarantee of success, simply to market to Cobb EMC's captive electric customers. Even if Cobb EMC could develop their system to accommodate the 47 rate plans we currently offer in Georgia, Infinite Energy has no interest in having one billing system exclusive to its Cobb EMC electric group of customers in Georgia while using its current billing system for the rest of its customers in Georgia, New York, New Jersey, and Florida," Infinite said.

"In competitive retail markets, energy marketers compete with each other on the quality and efficiency of these core [backoffice] systems. By tying its marketing services to billing and call center activities, Cobb EMC is severely restricting the way in which it offers marketing services to non-affiliated gas marketers. First, a gas marketer would have to write off investment in its own billing systems if it were to sign up for Cobb EMC's 'bundle.' Second, if it were required to sign up for Cobb EMC's bundle, then competition would be harmed because choice and innovation with respect to billing systems and other services would be diminished ... Cobb EMC's offer of a 'bundle' is essentially the same as if it refused to offer any services to non-affiliated gas marketers," Infinite claimed.

However, Cobb Energy countered that bundling was part of its business plan and investment strategy for recouping costs of various backoffice systems. Providing services a la carte would also reduce efficiency and increase costs, Cobb Energy argued.

"Providing only the marketing and promotional services to a natural gas marketer does not comport with Cobb Energy's business objectives because neither Cobb Energy nor the customer can obtain sufficient value from receiving the services on an unbundled or 'stand alone' basis. Not providing an integrated set of services adds unnecessary complexity and expense to the daily call center operations and in the training of customer service agents, which in turn increases Cobb Energy's operational costs and would force Cobb Energy to raise its prices to natural gas marketers - ultimately, this cost increase would also be passed on to natural gas consumers," Cobb Energy said.

For example, because billing/enrollment service is bundled with the marketing referral program to customers calling Cobb EMC, only one customer information system is required for the call center to seamlessly enroll a prospective customer with the marketer. Additionally, requiring new carve-out procedures for a la carte services would add time for the training of agents, and would potentially require changes to software and systems, Cobb Energy said.

Infinite doubted that a la carte service would create additional expenses, especially for simple stand-alone marketing and referral services not requiring billing systems. "The telephone referral services and co-branded marketing materials require little or no expense, and any such expense incurred should be more than covered by the finder's fee and royalty payments to be charged by Cobb EMC," Infinite suggested.

Gas South downplayed the benefit of the marketing services provided by Cobb Energy, noting that approximately 75% percent of all natural gas customers within the Cobb EMC service area are served by natural gas marketers other than Gas South.

Gas South began the joint marketing efforts on May 1, 2008. Between that date and the end of December 2009, approximately 15% of Gas South's new residential enrollments were customers located within the Cobb EMC service area, while 85% of such new enrollments were located throughout the rest of Georgia, Gas South said. Approximately 12% percent of Gas South's total customer base is in the Cobb EMC service area.

Gas South further attributed its growth in the territory to its vigorous pursuit of affinity marketing with school systems within the Cobb EMC service territory. Additionally, since initiating the marketing services agreement with Cobb Energy, Gas South also purchased the Georgia book of Vectren Retail, accounting for a sizable number of its acquisitions.

Gas South said that its statewide market share as of May 1, 2008 was 12.7%, which grew to 16% within a year, and 18% by the end of December 2009. New customers added in the Cobb EMC service territory using the Cobb Energy promotional code amounted to less than one-sixth of the total enrollments from May 1, 2008 to present, Gas South said.

However, Infinite pointed to the relatively high success rate of a March 2009 Cobb EMC/Gas South co-branded direct mailer, which included an inducement of 12 days of free electricity for enrolling with Gas South before April 5, 2009. Gas South gained 175 enrollments based on 3,500 letters, resulting in a five percent take rate. Industry response rates for unsolicited direct mail typically average one-half of one percent, Infinite noted. "This 10-fold higher response rate versus typical industry averages (5% v. 0.5%) underscores the value of leveraging Cobb EMC's brand," Infinite added.

"As a small marketer in Georgia, it is difficult for Infinite Energy to compete against companies with the resources of Gas South. Adding to that an exclusive marketing relationship with its parent company, Cobb EMC, hinders our ability to compete in the Cobb EMC service territory. Having exclusive use of the Cobb EMC name is an influential tool in direct mail solicitation and telephone referrals. Furthermore, these practices may confuse Cobb EMC customers who do not realize they have a choice of gas providers within the Cobb EMC territory," Infinite contended.

Gas South noted that the bundled package of marketing and customer service functions was used by Scana Energy in the past, and is available to any marketer willing to use the package.

Cobb Energy stressed that Gas South pays market rates for the bundled services. For marketing referrals, Cobb Energy receives a one-time "finders fee" for each sales prospect who enrolls with Gas South. Cobb Energy also receives a monthly fee from Gas South based on the total number of sales prospects who are customers of Gas South during that month.

Moreover, Cobb Energy said that the market for promotional and customer support services is competitive, with various vendors and affiliate avenues open to suppliers. However, as Infinite notes, none of these other providers can grant access to captive customers of a franchised monopoly.

Cobb Energy countered that, "[s]ingling out a specific provider for regulation in a competitive market is unfair and could have anti-competitive impacts."

"[F]orcing Cobb Energy to act uneconomically and unbundle the customer support services would in effect create a regulatory-imposed subsidy for the Petitioner and other natural gas marketers and insulate them somewhat from the market discipline consequences of bad business decisions," Cobb Energy said.

"[I]f the alternative request of prohibiting Cobb Energy from providing marketing and promotional services to Gas South is granted, then the Petitioner will have used the regulatory process to hamstring a competitor by interfering with a market-based contract between firms in competitive markets," Cobb Energy added.

Gas South likewise claimed that, "Infinite seeks to have the Commission abrogate a binding, market-based contract that was negotiated at arm's length between two parties."

Infinite reiterated that by denying requests for stand-alone marketing services, and only offering the bundled package, Cobb Energy has refused to provide other suppliers with the referral, marketing, and promotional services that it provides to its gas affiliate, which constitutes ant-competitive behavior.

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appropriate self-regulatory organization, or if there is none, to the Commission.

Staff's request came in response to Milagro Power's application for a REP certificate amendment to reflect a corporate restructuring which combined TexRep3 LLC into its immediate parent, Milagro Power Company (Only in Matters, 7/23/09). The transfer of the TexRep3 REP certificate to Milagro, led by William G Wydler, was previously recognized by the Commission in July, after the certificate was purchased from Energy Services Group (Only in Matters, 7/23/09).