

Energy Choice Matters

June 3, 2010

Nazarian Directs Md. Staff to Investigate Affinity/Referral Marketing Agents

Maryland PSC Chairman Douglas Nazarian directed Staff to look into the practice of entities offering affinity and/or referral programs for competitive electric and gas suppliers, stating that the broader issues raised by the application of Ellicott City Investment LLC d/b/a Allied Power Services for a natural gas broker license need to be examined (Only in Matters, 6/2/10).

During the Commission's administrative meeting yesterday, Allied Power Services said that it has been offering its current residential mortgage customers an affinity code to enroll with Washington Gas Energy Services, and directed them to the WGES website, or Allied's own website (which then linked to the WGES website), to obtain service. Allied Power Services said that it engaged in such activities on a limited basis prior to licensure as a broker because it did not believe such affinity-type programs amounted to brokering, since it was merely marketing WGES rather than contracting with customers to procure electric or gas service for them. Allied said that it sought broker licenses because, for commercial and industrial clients, it intends to expand beyond just an affinity partner for a single supplier and actually contract with customers to solicit and evaluate different supply offers, which Allied considers the activities covered under a broker license.

Nazarian said that affinity programs amount to brokering, and require a license, though Staff conceded that the definition of broker is a little bit "gray". However, aside from the affinity program activity prior to licensure, Nazarian was more disturbed that Allied's website, in offering the affinity referrals to WGES, suggested that Allied was seeking the low cost provider for customers, which it was not doing since it was merely funneling customers to WGES. Nazarian called such actions "misleading."

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Pa. OCA Says Managed Portfolio is "Most Consistent" with Act 129 Requirements

The language "least cost over time" in Act 129, "changes the role of the DSP [default service provider] from that of a passive purchaser of default supplies at market prices and places on the DSP an affirmative obligation to assess which products will produce the lowest costs to customers," the Pennsylvania Office of Consumer Advocate said in response to the PUC's rulemaking on default service regulations and its policy statement (L-2009-2095604, M-2009-2140580). Retail suppliers, however, said that Act 129 must be read in concert with other statutes, such as the 1996 Electric Generation Customer Choice and Competition Act, and thus the goal of default service remains the promotion of a competitive retail market.

"The OCA submits that DSPs should purchase default supplies through a portfolio approach to best meet Act 129's requirements," OCA said, noting that a portfolio approach will allow the default service provider to lower the cost of the supply portfolio when customers participate in Act 129's energy efficiency, demand response and Time of Use rate programs. "To the extent residential customers reduce usage or can be called at times of peak demand to lower load, the portfolio manager will be able to incorporate those savings into reduced spot purchases and into reduced

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Briefly:

Duke Energy Retail Sales Offering Residential Service at Duke Energy Ohio

Duke Energy Retail Sales has begun offering retail power to non-aggregation residential (RS) customers at Duke Energy Ohio, with a guaranteed 15% discount off the price to compare through December 31, 2011. The offer ends June 30. Currently, Dominion Retail and FirstEnergy Solutions are the other competitors for non-aggregation residential customers at Duke Energy Ohio. The Duke Energy Ohio price to compare differs both by usage and heating source, but for an RS customer using less than 10,000 kWh annually, regardless of electric or non-electric heat, the price to compare is 9.69¢/kWh.

Clearview Electric Applies for Illinois Electric License

Clearview Electric applied Wednesday for an Illinois alternative retail electric supplier license. A copy of Clearview's application was not immediately available.

Conn. Gubernatorial Candidate Malloy Would Have Signed Energy Bill

Dan Malloy, the Democratic candidate for governor in Connecticut who was endorsed by the party's convention but still faces a primary, said yesterday that he would have signed the comprehensive energy bill vetoed by Gov. M. Jodi Rell, though Malloy insisted that he does not favor re-regulation, at least at this time. Malloy released an energy platform yesterday that, although thin on specific electric market details, did state that Malloy, "will seek to use [the state's] purchasing power to negotiate better prices with energy companies - relief with the ultimate goal of reducing costs for every residential consumer in the state." SB 493, the bill Malloy would have signed, would have, among other things, required the DPUC to assign various costs of utility consolidated billing to competitive suppliers, required a managed portfolio process for standard service procurement with long-term contracts, capped residential termination fees, restricted the hours of door-to-door marketing, and required that electric rates decrease 15% by July 1, 2012 (see

Matters, 5/5/10).

Rendell Nominates Coleman to PUC

Pennsylvania Gov. Edward Rendell has nominated John Coleman Jr., to serve on the PUC for a term expiring April 1, 2012 (filling Kim Pizzingrilli's unexpired term). Since 1999, Coleman has served as president and CEO of the Chamber of Business and Industry of Centre County, based in State College. In this role, Coleman has led various multi-million dollar capital projects, including the construction of business incubator facilities, business and industrial parks, community infrastructure, and related projects. The position requires Senate confirmation.

DPUC Draft Would Affirm Clearview NOV

The Connecticut DPUC issued a draft decision that would adopt the findings of a prior Notice of Violation against Clearview Electric, and fine Clearview \$27,500 for various alleged slamming and compliance violations (09-11-12). A complete discussion can be found in our 4/29/10 story.

ePsolutions Releases New Software Suite

ePsolutions has released its latest backoffice software suite, emPower 4.0, which includes, among other things, support and functionality for "pay as you go" advanced metering solutions, load profile reporting enhancements, and multiple customer notification profiles (SMS/email/outgoing IVR).

FERC Rejects RSG Rate Mismatch Changes in Compliance Filing

FERC rejected in part the December 10, 2008 compliance filing from the Midwest ISO related to Revenue Sufficiency Guarantee charges, specifically discarding the tariff sheet containing proposed revisions to address the rate mismatch as outside the scope of the proceeding (EL07-86-006 et. al.). Adjudication of issues related to the rate mismatch are reserved for another docket.

"Issues involving other aspects of the Revenue Sufficiency Guarantee charge and

charge rate, including whether the tariff sheets made effective upon the start of the Ancillary Services Market correctly reflect the Commission's rulings on the rate mismatch in the November 7 Order, are the subject of a separate proceeding in Docket No. ER04-691," FERC said.

Specifically, MISO's proposed changes to the values included in the denominator of the RSG calculation were rejected as outside the scope of the instant proceeding.

The issues set for the compliance filing were restricted to the compliance requirements of the Order on Paper Hearing, FERC said. "Specifically, the Commission required the Midwest ISO to eliminate the phrase 'actually withdraws energy' and insert the term 'cleared' before 'virtual offers' in the Revenue Sufficiency Guarantee charge provision of the current tariff. We find that the Midwest ISO has complied with those requirements and we accordingly accept these revisions in the compliance filing," FERC said.

Survey Finds Increasing Support in New England for Electric Choice

Some 83% of New Englanders either strongly favor (47%) or somewhat favor (36%) consumer choice in the purchase of electricity, according to a survey conducted for the New England Energy Alliance. Results specific to Connecticut were released in May (see Matters, 5/3/10).

The percent of New Englanders favoring competition has increased from 78% in January 2009 and 77% in April 2008.

Some 63% of New Englanders said that the competitive market will provide adequate incentives to spur new generation, while 24% said that generation adequacy should be in the hands of government agencies.

More than half (56%) of New Englanders said that the next wave of generating capacity should be built by companies whose investors assume the risks of such investment, while only 32% said that such construction should be undertaken by a company whose financial risk is transferred to ratepayers.

The telephone survey was performed for

NEEA by Opinion Dynamics Corporation between April 14-21, consisting of 700 registered voters in New England. The margin of error is +/- 3.7%.

Calif. Draft Suggests ESP Assent Required for Customer Self-Directed Demand Response

A revised California PUC agenda (draft) decision would modify a conclusion of law to state that an Electric Service Provider customer can bid demand response directly into the California ISO market on behalf of itself; however, other parts of the proposed decision suggest that the ESP would control whether the customer could exercise that right. The draft, in R. 07-01-041, maintains the earlier finding that participation in the CAISO markets by customers receiving supply from the investor-owned utilities should be prohibited until ratepayer protections and other rules are in place.

The revised draft states, "[t]his decision does not prohibit electric service providers (ESPs) from engaging in direct bidding of retail DR on behalf of their own customers, either on their own or through third party Demand Response Providers (DRPs), but bars DRP representation of bundled IOU customers for the time being. DRPs, however, may provide direct bidding services *if they contract with an ESP to provide such services for ESP customers*" (all emphasis in this story supplied). Such language suggests that non-load serving curtailment service providers may only aggregate customers upon the assent of the ESP hosting the customer.

This suggestion is reinforced by the draft finding that, "an ESP customer may participate directly in the CAISO market *to the extent that their contract with the ESP allows.*"

However, the revised draft later states, "DRPs can bid on behalf of ESP customers (provided the ESP customer is not in an IOU DR program), and we do not prohibit an ESP customer from bidding on its own behalf or for other ESP customers." As noted above, a conclusion law also states, "Energy Service Providers (ESPs) may engage in direct participation of retail DR on behalf of their own customers and other ESP customers, and an

ESP customer can bid on behalf of itself."

The notion that the ESP acts as a gatekeeper as to whether it will allow its customers to participate in the CAISO market either through the customer's self-directed actions or through a different curtailment service provider is also suggested by provisions regarding the impact of direct CAISO participation on a load serving entities' resource adequacy and other policy obligations.

Specifically, the draft holds that, "[l]oad-serving entities *that choose to engage* in the initial phases of participation may be subject to Commission oversight related to the short and long-term reliability of directly bid resources for Long-term Procurement analysis, counting conventions of directly bid resources for RA credit, environmentally-related procurement statutes and policies, and consumer protection issues." Since LSEs "choose to engage" in direct CAISO market participation, the draft suggests that non-LSE curtailment service providers or customers could not participate absent their LSE's choice.

The draft further cautions ESPs that, "because the Commission does not currently have a counting convention for direct participating load, the ESP will continue to be required to meet all RA and resource portfolio standards," during a customer's participation in the CAISO market, again suggesting that the ESP may control how a customer participates since it will bear the burden of the customer's participation.

The revised draft is more explicit that, until new rules and protections are in place, ESP customers that are enrolled in utility demand response programs may not participate in the utility program and simultaneously bid directly into the CAISO market. If an ESP customer wishes to bid into the CAISO market on their own or through a demand response provider, they must first exit the utility program.

The agenda decision also holds that the Commission may, among other things, resolve customer complaints related to demand response providers, establish financial responsibility standards for demand response providers, and require demand response providers to inform customers that enrolling with a demand response provider will mean that they

will be unenrolled from demand response programs offered by a utility.

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The Commission ultimately granted Allied Power Services a gas broker license, and fined the company \$100 for its limited affinity activity prior to licensure. Staff said that a higher fine was not warranted as there was no intent by Allied to circumvent the licensing rules, though Staff said that higher fines may be appropriate in other situations as suggested by the People's Counsel. The PSC also directed Allied to work with Staff and OPC to modify its website to remove anything which could be construed as confusing or misleading.

Nazarian also expressed concern with WGES' role in the use of affinity or referral-type marketing agents, and directed Staff to reach out to WGES to determine if it is using other such entities that are not currently licensed.

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block purchases, if needed. To the extent that residential customers are able to utilize smart meter technology to reduce peak demand, the portfolio manager will be able to procure less power at peak periods. The end result is a reduction in the supply costs to the portfolio and a reduction in the rates [sic] levels needed to ensure that the DSP recovers all of its reasonable costs," OCA said.

"In contrast to a portfolio approach, full requirements contracts shift the obligation to meet default service load to third party suppliers ... The risks associated with the variation of load are assigned a cost by bidders and are priced into the winning bids and paid for by default service customers. Finally, winning suppliers must incorporate a profit margin to make their participation meaningful. These profit margins are in addition to the profit margins the generation suppliers build in to their supply of the product to the full requirements middlemen. While the bidding process will identify the bidder that prices the risk premium and profit at the lowest level, it will not eliminate the need for full requirements suppliers to incorporate these

costs into their bids," OCA said.

"Under the Portfolio Approach, the DSP can directly access the generation products available in the wholesale market without the need to pay an extra level of profit and risk premiums to full requirements suppliers ... OCA is unaware of any quantitative analysis showing full requirements products to be least cost products. Indeed, it should come as no surprise that the introduction of a third party middleman to take on the default supplier obligation would add, rather than subtract, costs," OCA said.

Constellation Energy, however, noted that an analysis performed by Narragansett Electric for its 2010 default service procurement showed that a managed portfolio approach would result in de minimis savings versus a full requirements approach (\$0.72/MWh), while, "consumers will be faced with considerably more costs due to increased risks," under a managed portfolio.

Constellation further cited the experience of Wellsboro Electric in 2008 which faced a market "surprise" in the form of \$2 million in additional congestion costs due to an unexpected congestion event, because Wellsboro had assumed such risks by undertaking a managed portfolio. These costs were later recovered from customers. The Retail Energy Supply Association noted that at Duquesne Light, Duquesne underestimated the cost of capacity by \$450 million, though under the unique affiliate arrangement used by Duquesne such costs were not passed through. However, RESA noted that under a typical managed portfolio, customers would be exposed to such costs due to incorrect forecasts.

The PJM Power Providers (P3) contrasted the residential rate of \$78.60/MWh recently approved under Duquesne Light's managed portfolio for 2011-13 with the recent result from West Penn Power's competitive procurement for full requirements power, which resulted in a residential rate of \$59.39/MWh.

OCA, in contrast, cited what it called favorable rates obtained by several distribution companies under limited block purchases in their default service plans, compared to rates obtained for full requirements service. While OCA conceded that, "comparisons of block and full requirements products cannot be made on an 'apples to apples' basis," on price alone since

the block load excludes capacity, ancillaries, shaping, etc., OCA did not attempt to quantify what these additional costs would total, to determine the all-in price associated with block purchases plus the additional requirements.

OCA also said that, "[t]here also has been movement away from full requirements approaches in other *states*," (emphasis supplied) but could only cite a single state, Illinois, in which this has occurred. OCA contrasted the significant drop in Illinois default service prices since the Illinois Power Agency assumed procurement with what OCA called a disappointingly small decrease in New Jersey BGS rates in the 2009 full requirements auction despite lower wholesale prices.

RESA said that Act 129 requires default service to meet several goals, one of which, per paragraph 3.1, is providing a back-stop, default service pursuant to a competitive procurement process. This standard must be given equal weight as the "least cost to customers over time" standard, RESA said, while all standards must also comport with the 1996 Choice Act.

Accordingly, RESA argued that the "least cost to customers over time" standard is satisfied by default service plans which result in a sustainable, competitive retail market. "Adopting policies that promote the development of a robustly competitive generation market will, over the long term, drive both competitively priced generation prices and default service rates as low as possible to ensure that all consumers are able to purchase electricity at the 'least cost' in compliance with the statute," RESA said.

"To ensure that default service plans stimulate competition, the Commission should only approve default service plans that will result in default service rates that are as close as possible to the market price of energy," RESA added.

"An overzealous pursuit of an EDC managed procurement process as the means to procure 'least cost' service for customers is contrary to the continuing policy of the Commonwealth to rely on competitive market forces to control the cost of electricity and will inevitably have the opposite effect of stifling the competitive market and robbing customers of the very tool -- retail competition -- that can actually deliver 'least cost'

service to customers," RESA said.

Similarly, the National Energy Marketers Association noted that, "[i]n a true 'least cost' regime the market-based rate will yield the lowest cost over time to consumers with the appropriate time frame for evaluating whether a utility's procurement plan will yield the 'least cost' to consumers correspondingly keyed to current market conditions."

Regarding long-term contracts, NEM observed that, "[t]he Commonwealth has already experienced the impact of prolonged rate freezes followed by significant price increases when utility rates 'catch up' to the market. The harmful impact to consumers in terms of budgeting for utility price increases, delaying the availability of energy choice options, and general confusion caused by utility rates that are not transparent, can be avoided and should not be repeated."

OCA said that as part of a managed portfolio, each default service provider could be required to review the possibility of supplying a portion of its default load through long-term contracts that could encourage the construction of needed generation. Retail suppliers and several competitive generators argued that PJM is the proper forum to determine if there are any reliability needs in the state. Duquesne Light argued a similar position, and said that the regulations should not require utilities to procure new generation capacity, as such procurements may actually defeat the least cost principle.