Energy Choice Matters

June 29, 2010

Columbia to Cease Offering Price Protection Service in Pennsylvania Under Settlement

Columbia Gas of Pennsylvania would agree to cease making offers under Pilot Rider PPS (Price Protection Service) and agree not to renew the fixed-price tariff under a settlement filed in Columbia's current rate case and a complaint proceeding filed by several competitive gas suppliers (R-2009-2149262).

Pilot Rider PPS is a 12-month fixed offering from Columbia, which it began offering in March 2009. As of last fall, Columbia served approximately 2,000 residential and small business customers under Pilot Rider PPS.

Under the settlement, Columbia would agree to make no further offers under Pilot Rider PPS and agree not to seek to extend the Pilot Rider after the expiration of the initial two-year term, which concludes February 28, 2011. Columbia would be permitted to continue to serve existing customers until the expiration of their contracts.

Additionally, Columbia would agree not to engage in further mass advertisement of Rate NSS (Negotiated Sales Service), including radio, television, newspaper, and billboards. Columbia would still be permitted to offer Rate NSS, but would not use direct mail to solicit any Rate NSS-eligible customer that is taking service from a competitive supplier.

Columbia would be permitted continue to promote Rate NSS on its website; however, any link could not be placed in a more favorable location than links to competitive supplier websites. The supplier complainants (Interstate Gas Supply, Shipley Energy, Dominion Retail, and Stand Energy) agree not to file a complaint related to Columbia's continued provision of Rate NSS for a period of three years as part of the settlement. As of last fall, Columbia served approximately 14 commercial

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PUCT Staff Issues NOV Against dPi Energy Seeking $76,250

PUCT Staff have recommended that the Commission fine dPi Energy $76,250 for alleged violations of 25 consumer protection and other Substantive Rules, in a Notice of Violation filed yesterday (38384).

The allegations result from a Staff audit of dPi initiated in September 2009.

Of note is that among the allegations is Staff's conclusion that so-called "setup" fees charged by several REPs offering "advance pay" products (e.g. prepay products using estimated usage and not an in-home device) that are waived if the customer takes service for a minimum term are in fact early termination fees, and therefore cannot be included in a month to month product. Staff alleged that dPi charged a $250 setup fee to customers that was waived if the customer remained with dPi for six months.

"This fee takes the characteristics of a termination fee which is not permissible for month-to-month contracts pursuant to P.U.C. SUBST. R. 25.475(b)(7)," Staff said. Staff recommended a fine of $3,000 related to the setup fee.

Staff alleged that dPi did not include a statement, on its bill for its variable product, on how to obtain information about the price that will apply on the next bill, as required by §25.475(d)(2)(C).

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Md. PSC Staff Issues Data Requests to Suppliers Concerning Agents

The Maryland PSC Staff has issued a set of data requests to competitive suppliers concerning their use of sales agents.

Among other things, Staff has directed suppliers to provide a list of all entities with which the supplier has contracted, or to whom the supplier otherwise pays compensation, for the purpose of obtaining or soliciting customers. For each of these agents, suppliers must provide to Staff the contract between the supplier and agent, or, if no contract exists, an explanation of the relationship between the supplier and agent.

As only reported in *Matters*, the Commission directed Staff to conduct a review of the agents, particularly affinity-type agents, used by suppliers to ensure that such agents were properly licensed as brokers if need be (Only in Matters, 6/3/10).

TDUs Argue PURA Grants PUCT Authority to Pre-Approve REP Changes in Control

Although the use of multiple trade names can be used to distinguish between product offerings, "it can also be used to hide and confuse," the AEP companies and CenterPoint Energy said in reply comments regarding proposed changes to the REP certification requirements (37685).

As only reported in *Matters*, the proposed rule would limit REPs to one registered and one assumed name, versus the currently allowed five trade names (Only in Matters, 6/15/10). Additionally, the proposed rule would require pre-approval for changes in control of a REP.

"If a REP operates under multiple names, a consumer may think it is switching REPs only to find it is still doing business with the same entity," CenterPoint and the AEP companies said.

The proposed limitation on names, "will allow consumers to have more clarity about who they are dealing with and to more easily make an educated choice between REPs. It will also allow the Commission to have more ability to track REPs," the AEP companies and CenterPoint added.

The Texas Energy Association for Marketers and Texpo Energy noted that no party filed initial comments supporting the more restrictive trade name language, as REPs reiterated their arguments against the provision.

Also not present in initial comments was any party making a case that PURA grants the Commission with power to require pre-approval for a change in control of a REP certificate, while, as reported by *Matters*, several REPs argued PURA does not vest the Commission with such authority.

On reply, the AEP companies and CenterPoint argued that PURA 39.352(a) is clear that a person, "may not provide retail electric service in this state unless the person is certified by the commission as a retail electric provider, in accordance with this section."

"This is more than a registration function; compare it for example to the registration that is required for aggregators under PURA 39.353. Instead, before a person may sell electricity at retail it must 'demonstrate' that it has the resources necessary to do a proper job," the AEP companies and CenterPoint said, arguing that such language authorizes a Commission requirement for pre-approval of changes in control.

"The Commission is authorized to devise appropriate methodologies for carrying out its gatekeeper function regardless of the person's method of entering the market. It is irrational to interpret PURA as giving the Commission the duty of being the gatekeeper, but as not having the power to control entry through the back door. After-the-fact review and certification amendment is not consistent with the Commission's gatekeeper function in which the Commission should be reviewing, and approving or denying, the new [controlling] entity's entry into the market before it occurs," the AEP companies and CenterPoint added.

CenterPoint and the AEP companies also dismissed REPs' arguments that requiring Commission pre-approval of a change in control would chill investment, due to the uncertainty created by a prolonged contested case. "In fact, pre-approval actually decreases the risk for potential investors or new entrants. If an entity who acquires a REP business finds after the

deal closes that it does not/cannot meet the requirements, it will be subject to decertification and the potential loss of its investment. With pre-approval, the buyer will know what is required and have assurance that it has the resources necessary to maintain its certification. In the end, the only entity served through after-the-fact approval is the seller, who may be long gone with money in hand before the Commission determines that the buyer cannot meet market requirements, and the buyer fully understands what is required to operate as a REP," the AEP companies and CenterPoint said.

The Office of Public Utility Counsel, which did not file initial comments, filed reply comments generally stating that the proposed rule provides, "additional transparency and give[s] the Commission the necessary tools for scrutinizing the financial and operational viability of REPs." OPC did not provide any detailed arguments for either the trade name limitation or the change in control provision.

Aside from those two provisions, which are the heart of the proposed rule amendments, TXU Energy reiterated opposition to other amendments to subsection (g)(2) which are, "impermissibly and unconstitutionally vague as they fail to provide sufficient guidance and objective criteria to the Commission in determining whether a REP satisfies P.U.C. SUBST. R. 25.107's technical and managerial requirements."

Specifically, by allowing the Commission to consider any "information discovered by staff during its review of an application," the "results of an independent background investigation," and "any other information found by the commission to be relevant," the proposed rule, "provides no guidance as to what would serve as the basis for a finding that the REP lacked the requisite managerial and technical requirements," TXU said.

"Consequently, if these proposed subsections were adopted, REPs would have no standards by which to ensure their continued compliance with the Commission's technical and managerial requirements," TXU added.

Briefly:

Reliant Energy Selected by HCDE as Provider for Choice Facility Partners

Reliant Energy has been chosen by the Harris County Department of Education (HCDE) as a Texas electricity provider for Choice Facility Partners, which provides cooperative purchasing services for schools, education-related organizations and other governmental entities across the state. The Choice Facility Partners Energy Purchasing Program combines the public procurement process with wholesale market pricing and metrics provided by the program coordinator, Tradition Energy.

dPi Energy, Frontier Utilities File Notices to Offer Prepaid Service Using Customer Prepayment Device Or System

dPi Energy has submitted to the PUCT a notice of intent to provide prepay service using a customer prepayment device or system. dPi's filing was made confidentially. Currently, dPi offers advance pay service without the use of an in-home device. Frontier Utilities, Inc. also recently filed a confidential notice of intent to provide prepay service using a customer prepayment device or system.

Complainant Against Gexa Variable Pricing Moves to Withdraw Outstanding Claims

The complainant against Gexa Energy's variable rate pricing, David Upham, has moved to withdraw all outstanding claims in the case (37569), noting that an ALJ has cautioned the complainant that little practical relief could be granted for the outstanding non-compensatory claims (Gexa has already settled the compensatory claims for just under $1,000). Should the motion to withdraw be accepted, issues of first impression which arose in the complaint would not be answered; specifically, the obligations placed upon REPs by incorporating the Uniform Commercial Code into their contract, and whether the UCC calls for variable rates to be set contemporaneously with wholesale prices, due to the UCC's provisions for fair dealing (see Matters, 3/4/10).

PUCT Staff, AllStar Near Settlement on Revocation, Amendment Proceedings

PUCT Staff and AllStar Energy (TexRep5 LLC) have reached a settlement in principle and are working on drafting a mutually acceptable settlement agreement concerning AllStar Energy's petition for a certificate amendment and Staff's petition for certificate revocation, in requesting an abatement in the cases' procedural schedule (37801). Staff is seeking revocation of AllStar Energy's certificate for, among other things, failing to disclose that several of its principals were involved in a settlement that saw Horizon Power & Light relinquish its Delaware supply license (Only in Matters, 1/15/10). AllStar Energy is seeking an amendment to its REP certificate to correct the listed owner to reflect its ownership by The George Corporation, rather than Horizon Power & Light, as was erroneously listed by AllStar Energy in a previous amendment application.

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and industrial customers under Rate NSS.

Concerning the rate case, settling parties agree to make the unbundling of Columbia's commodity-related uncollectibles permanent (such unbundling had been undertaken on a pilot basis), with the uncollectible rate included in the Price to Compare updated to 1.66%. The percentage charge will be updated in future distribution base rate proceedings.

Additionally, Columbia would agree to raise the volumetric limit under Rate SCD (Small Commercial Distribution) to 4,000 Mcf/year, from the current cutoff of 600 Mcf/year. This change would expand the Choice program to additional commercial customers who are currently only eligible for transportation service. Suppliers said that Choice service is much simpler for smaller commercial customers than the transportation programs, and the expansion of Rate SCD will allow for broader participation of these small commercial customers who often do not have the wherewithal to participate in transportation programs.

Customer charges under Rate SCD will be equal to the two tiers of customer charges under Rate SGSS. Eligible customers will be permitted to switch between General Distribution Service (GDS) and Choice once every annual period, with such periods commencing April 1. Eligible customers will be required to provide notice of their intent to switch between GDS and Choice by January 2 of each year.

For General Distribution Service (GDS) customers and suppliers, the Operational Flow Order/Operational Matching Order penalty charge will be reduced from $30/Mcf to $25/Mcf. In addition, the GDS customers/suppliers will be responsible for payment of all other charges or costs incurred, as provided in the current tariff.

For the Choice program, Columbia will reduce the current penalty for Operational Flow Order/Operational Matching Order periods from $60/Mcf to $50/Mcf. For periods where there is not an Operational Flow Order/Operational Matching Order in effect, the Choice program penalty would be reduced from $40/Mcf to $25/Mcf. Choice suppliers will be responsible for payment of all other charges or costs incurred, as provided in the current tariff.

The present GDS cash-out/in mechanism for bank imbalances would remain the same.

Columbia agrees to modify its proposed definition of "Upstream Pipeline Scheduling Point" to the following:

"Pipeline Scheduling Point" or "PSP" means a single delivery point or set of delivery points grouped or designated by an upstream pipeline for purposes of scheduling gas supplies for delivery by such upstream pipeline and shall consist of the following: Interconnections with DTI Transmission, Inc., Equitrans, L.P., National Fuel Gas Supply Corporation, Tennessee Gas Pipeline Company, Texas Eastern Transmission, LP and Columbia Gas Transmission, LLC. The interconnections with Columbia Gas Transmission, LLC include the Market Areas and Master List of Interconnections as defined in the General Terms and Conditions of the FERC Gas Tariff of Columbia Gas Transmission, LLC. As of May 1, 2010, the Columbia Gas Transmission, LLC Pipeline Scheduling Points included: 25E-25 (Lancaster); 25-26 (Bedford); 25E-29 (Downingtown); 25-35 (Pittsburgh); 25-36 (Olean); 25-38 (Rimersburg); 25-39 (New Castle) and 25-40 (PA/WV Misc).

The settlement was signed by Columbia, the

Office of Trial Staff, Office of Consumer Advocate, Office of Small Business Advocate, Columbia Industrial Intervenors, Dominion Retail, Shipley Energy, Interstate Gas Supply, and Stand Energy, among others.

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Staff recommended a penalty of $3,000 for this alleged violation.

Staff alleged several violations regarding the information provided on the Electricity Facts Label, alleging that dPi, for its variable product, did not provide the total average price for the first billing cycle reflecting all recurring charges ($3,000 penalty), and Staff further alleged that dPi did not disclose on the EFL a specified statement concerning where customers could obtain information on the pricing history of the variable product ($3,000 penalty).

Staff further alleged that dPi failed to make several required disclosures prior to verification, including the name of the specific electric service package; the total price stated in cents per kilowatt-hour; the term or length of the term of service; and the presence or absence of early termination fees or penalties and applicable amounts ($3,000 penalty for each allegedly absent disclosure)

Other notable allegations cited by Staff are (recommended penalty in parenthesis):

- For voice verified enrollments, "Dpi did not electronically record the applicant's verification of authorization and did not inform the applicant that any such verification was being recorded" ($3,000).
- "Dpi's telephonic solicitation script does not require the customer service representative to obtain or confirm the applicant's service address ... [and] ESI-ID" ($3,000 for address, $3,000 for ESI ID).
- "Dpi's telephonic solicitation script does not require the customer service representative to disclose the applicant's rights of rescission" ($3,000).
- "Dpi's [Your Rights as a Customer] states 'instituting a dispute will not prevent your being disconnected for failing to pay your bill,'" contrary to §25.485(e)(2)(A) which states that, while an informal complaint process is pending, a REP shall not pursue collection or disconnection for the disputed amount ($3,000).

Staff also alleged that dPi filed a "false and/or misleading" affidavit with the Commission, recommending a penalty of $5,000 for this violation. Specifically, Staff alleged that dPi said in an affidavit that it was in compliance with all but four of the Substantive Rules, but Staff alleged there were 21 more violations.

Furthermore, upon information and belief, Staff believes that dPi is violating other Substantive Rules, including but not limited to §25.107(f)(2), regarding Protection of Customer Deposits and Advance Payments. However, Staff said that it must conduct discovery to confirm such allegations.