Energy Choice Matters

July 22, 2010

Direct Energy to Unveil Texas Prepaid Product

Direct Energy is to formally announce today the offering a Texas electric prepaid product utilizing the usage information from advanced meters. Direct's prepaid product was first reported by *Matters* in May (Matters, 5/3/10).

According to an Electricity Facts Label on Direct's website, the prepaid product for the Oncor service area currently carries an average price of 11.5¢/kWh, based on 1,000 kWh usage per month. The rate represents an Energy Charge of 10.0¢/kWh and daily Base Charge of 50.0¢.

Direct is quoting the price in some marketing materials as 10.8¢/kWh, reflecting the EFL's average price per kilowatt-hour based on monthly usage of 2,000 kWh. The use of the 2,000 kWh EFL price in marketing (which lowers the unit rate since flat monthly costs are spread over more kilowatt-hours) is becoming an increasingly used tactic among REPs in presenting their products. In contrast, the Power to Choose website lists prices based on 1,000 kWh monthly usage.

Per a Terms of Service on Direct's website, Direct may change the Energy Charge and daily Base Charge up to twice a month at Direct's discretion. For each price change during the month, Direct Energy will limit each increase to the Energy Charge and/or the daily Base Charge to no more than 30% from the prior price charged.

Direct's smart meter-based prepaid product includes standard provisions for such products, including no deposit or contract term, and daily SMS text message or email updates regarding the account's status. A warning notice will be sent three to seven days before the account balance is estimated to reach zero.

Direct is accepting prepayments online (debit/credit card) and at hundreds of payments centers

Continued P. 6

Fuel Oil Distributor HOP Energy Expanding to Electric Supply

Northeast fuel oil distributor HOP Energy, LLC applied for a Connecticut electric supplier license to serve residential, commercial, and industrial customers.

HOP Energy has over 85,000 residential and commercial customers in its retail oil distribution business in Massachusetts, Connecticut, Rhode Island, New York, New Jersey, Pennsylvania, Delaware, and Maryland. HOP Energy indicated in its application that it plans to offer electric supply services over its entire New England and Mid-Atlantic footprint.

Stephen Fabiani, most recently Vice President and General Manager of New England operations for Pepco Energy Services, will lead HOP Energy's electric supply operations as Vice President, Electric Business. In under two years at Pepco Energy Services, Fabiani built the New England book from start-up to a peak load of 185 MW.

Fabiani was previously president of Freedom Partners, LLC and Vice President of Retail Sales and Marketing at Select Energy, and has also had stints with KBC Energy Services and Xenergy

In addition to fuel oil, diesel fuel, and gasoline, HOP Energy also offers various heating and cooling services to customers.

Commerce Energy Updates Status of Return to Georgia Gas Market

Commerce Energy now expects that it will start marketing to potential Georgia customers and start processing customer enrollments no later than January 31, 2011, it informed the Georgia PSC in an update on its market re-entry process.

As only noted in *Matters*, Commerce had reported to the PSC in March that it expected to re-enter the market by the end of 2010 (Only in Matters, 3/23/10).

Commerce, now owned by Just Energy, reported that its re-entry has been organized into three separate phases.

In Phase I, Commerce will file a new application for a natural gas marketer certificate with the PSC and obtain agreements and credit requirements from the utility. Commerce said it is near the "final stage" of this phase, and anticipates that this phase will be completed no later than August 30, 2010.

In Phase II, upon approval of Commerce's application, Commerce will complete utility agreements and third-party vendor agreements and will set up internal system requirements. Commerce will also post financial guarantees with the utility and undergo technical testing. Commerce anticipates that this phase will be completed no later than November 30, 2010.

In Phase III, Commerce will finalize marketing materials and submit the materials to the Commission for approval. Upon approval of the marketing materials, Commerce will start marketing to potential customers and processing customer enrollments. Commerce anticipates that this phase will be completed no later than January 31, 2011.

In May, the PSC granted Commerce a 12-month extension of its Interim Certificate. Commerce has not served Georgia customers since April 2009, and the extension (or waiver of the following rule) was sought because Commission Utility Rule 515-7-3-.07(1)(g) allows the PSC to revoke, suspend, or modify a marketer's certificate if the marketer has not provided gas service to one or more delivery groups for which it is certified for a 12-month period.

In November 2006, the Georgia PSC approved the sale and transfer of the majority of Commerce's 6,500 Georgia customers, including its entire residential book, to Georgia Natural Gas (SouthStar). At that time, Commerce said that the only Georgia accounts it would continue to serve would be those associated with its national account commercial and industrial customers.

Accordingly, Commerce withdrew from the Georgia residential market, and ceased enrolling new commercial accounts except to continue serving its national account customers.

After Universal Energy's acquisition of Commerce Energy in December 2008, Universal elected to release the remaining Commerce customers from their contracts. As a result, the remainder of Commerce's customers in Georgia transferred to various competitors by the end of April 2009.

Brenner Suggests Review of $100 Fine for Unlicensed Md. Brokers

Maryland Public Service Commissioner Lawrence Brenner encouraged the Commission to re-examine its current approach of fining unlicensed brokers the greater of $100, or their unpaid Commission assessments (based on revenues) from the time their Maryland operations began, given the efforts of the Commission to make brokers aware of the licensing requirements.

"As some point, it's not just a matter of, 'Gee we didn't know,'" that licensing was required, Brenner said. Brenner noted that the PSC has been actively pursuing brokers to become compliant with the licensing requirements for over two years (since the NCG Energy Solutions application), "and the word should be out on the street," that the Commission expects brokers to be licensed.

Brenner said that he will start questioning brokers' managerial ability if, "they are not plugged in enough to know what the requirements are."

As only reported in *Matters*, the Office of People's Counsel recently encouraged the Commission to raise penalties for non-compliant brokers (Only in Matters, 6/2/10).

Brenner's comments were prompted by the Commission's decision to grant a license to Open Market Energy (see related story), but Brenner said his comments were general and not directed at Open Market Energy.

Pa. ALJ Would Accept Higher Retainage Factors at Peoples Natural Gas

A recommended decision from a Pennsylvania ALJ would find in favor of Peoples Natural Gas on the issue of retainage rates and Lost and Unaccounted for Gas (LUFG), finding that Dominion Retail and the Office of Small Business Advocate have not sustained their objections (R-2010-2155608).

Peoples, adopting the position of the Office of Trial Staff, has proposed increasing the retainage rate for GS-T customers (small transportation) to 7.8% from 7.3%, and increasing the retainage rate for Rate T customers (large transportation) to 5.6% from 5.2% (Only in Matters, 6/25/10).

The ALJ accepted these proposed rates as reasonable, and said that Dominion Retail, "has not presented evidence that would justify overriding this agreement between OTS and Peoples on this issue."

Dominion Retail has argued that the retainage rates should remain at their current level given that, in Dominion Retail's view, Peoples has not adequately addressed the Lost and Unaccounted for Gas problem which has led to the higher retainage rates.

However, the ALJ also found that Peoples' Lost and Unaccounted for Gas levels are reasonable, and rejected calls from the Office of Small Business Advocate to cap the LUFG amounts. OSBA had said that the unabated increase in LUFG from 5.26% in 2006 to 7.45% in 2009 shows Peoples' management of its LUFG has not been reasonable.

However, the ALJ concluded that, "Peoples demonstrated that it is complying with various Commission orders directing it to mitigate its LUFG levels. None of the parties presented any evidence that Peoples is violating any Commission order directing Peoples to mitigate its LUFG levels. If Peoples were violating any of the Commission orders directing it to mitigate its LUFG levels, it could form the basis of a finding that Peoples is not taking reasonable steps to mitigate its LUFG levels and therefore that its LUFG levels are unreasonable. Since Peoples is complying with Commission orders to mitigate its LUFG levels, it should form the basis of a finding that Peoples is taking reasonable steps to mitigate its LUFG levels and therefore that its LUFG levels are reasonable."

"I disagree with OSBA's contention that, by presenting evidence that Peoples' LUFG levels are increasing, it has rebutted Peoples' evidence that its LUFG levels are reasonable. OSBA's evidence only demonstrates that Peoples' LUFG levels are increasing, which Peoples acknowledges, not that those levels are unreasonable. OSBA has not cited any industry standard, Commission regulation or Commission order stating that a particular level of LUFG is unreasonable. Furthermore, OSBA has not cited any Commission decision ordering a LUFG cap similar to what it is proposing," the ALJ added.

"OSBA does cite statements in several cases involving different NGDCs by Chairman James H. Cawley regarding the need for them to reduce their LUFG levels. While Chairman Cawley's statements are entitled to great deference and ignored at one's peril, they are advisory to the extent that they represent the thinking of one Commissioner unless they receive the support of two other Commissioners and are incorporated into Commission orders. While a party would be well advised to heed the statements of the Chairman of the Pennsylvania Public Utility Commission, such statements by themselves carry neither evidentiary weight nor precedential value," the ALJ added.

The ALJ also recommended that provisions regarding cash-outs and other retail access measures resulting from a settlement among parties should be adopted without modification.

Under the cash-out provisions, Peoples has committed to the following:

1. Peoples will increase the imbalance trading to 4 days;

2. Peoples will provide estimates to each NP-1 supplier about anticipated cash out pricing and the supplier's imbalance level for each given month prior to the imbalance trading period;

3. Peoples will post imbalance levels to its bulletin board if requested by the NP-1 supplier/customer;

4. Peoples will accept suggestions from other suppliers on managing imbalances and consider implementing other administrative changes that may be helpful; and

5. Peoples will modify its current transportation balancing provisions in its tariffs for P-1 and NP-1 customers to provide for a maximum 20% multiplier.

Under the settlement, issues raised by Dominion Retail surrounding the Price to Compare (such as the inclusion of the Gas Cost Adjustment factor in the price) are deferred to the rulemaking under L-2008-2069114.

PJM Seeks to Allow Employees to Invest in Market Participants With De Minimis PJM Activity

PJM has sought a FERC declaratory order authorizing, under "limited circumstances," employees and board members of PJM to hold a financial interest in certain companies or their affiliates that are defined by FERC as "Market Participants," but whose participation in PJM's markets are, "miniscule in relation to their overall business activities."

Specifically, PJM is seeking approval of a methodology that would determine, "when an entity does not have an economic or commercial interest that would be significantly affected by PJM's actions or decisions."

PJM said that FERC can, under its regulations, exclude an entity from being defined as a market participant (as that term is used in Commission regulation), and hence exempt that entity from the general prohibition against financial investment, if the entity, "does not have an economic or commercial interest that would be significantly affected by the [RTO's] actions or decisions."

In summary, PJM would, under the proposed methodology, examine publicly available information concerning PJM members, or their publicly traded affiliates, to determine whether they are engaged in generation, transmission or distribution of electricity and, if not, whether their transactions in PJM's markets compared to their non-PJM related business activities are commercially and financially de minimis.

PJM said that the current prohibition on its personnel owning the stock of market participants or their affiliated publicly traded parents has become burdensome given the proliferation of "non-traditional market participants," including large industrials, large consumer product retailers, and financial institutions, "that likely were not contemplated as market participants when the Commission issued its RTO rulemaking and adopted its RTO regulations."

When the financial conflict rules are, "applied so indiscriminately," to include these non-traditional market participants which are commonly regarded as running a business wholly unrelated to the business of electricity, "the rule meets no underlying policy or conflict of interest objective because no action that PJM personnel could take in their role with the RTO could conceivably affect the stock price of the PJM market participant," PJM claimed.

PJM's proposed methodology would allow it to remove a company from the list of prohibited investments if (i) the company's primary business purpose is not electricity-related and (ii) the company's revenues and expenditures in PJM markets are not significant in relation to the company's total revenues over the same time period.

PJM would determine whether the primary business purpose of the market participant or its affiliate is electricity-related according to the company's code(s) under the North American Industry Classification System, and whether the NAICS code indicates the company's primary business purpose concerns the generation, transmission, or distribution of electricity (i.e., 221111 to 221122).

If the market participant or the affiliate is not an electricity-related company, PJM then will determine whether the company's revenues and expenditures in PJM's markets are insignificant in relation to the company's total revenues over the same time period. A market participant's total "activity" shall equal the sum of the absolute value of all of its purchases and sales in the applicable ISO/RTO markets during the relevant time period. For this determination, PJM will evaluate only those companies for whom reliable, public information is available (e.g., companies whose securities are registered with the Securities and Exchange Commission).

For market participants or their subsidiaries, PJM will determine whether the market participant's total activity in its markets is less than 1% of its gross revenues over a set period of time (e.g., the company's most recently completed fiscal year). Where the publicly traded company is a parent of the market participant, PJM will determine whether the market participant's total activity in the PJM markets is less than 1% of the parent company's gross revenues over a set time period.

Finally, if there is more than one market participant with the same parent company participating in PJM's markets, PJM will aggregate these market participants' purchase and sale data in applying the test to this class of companies.

PJM is seeking to apply this methodology to the following companies to determine if they can be removed from the prohibited investment list:

- Air Liquide Industrial US
- Air Products & Chemicals, Inc.
- ArcelorMittal USA Inc.
- Bank of America, NA
- Citigroup
- Domtar Paper Company, LLC
- Elkem Metals Company - Alloy, LP
- Gerdau Ameristeel Energy, Inc.
- HSBC
- Kimberly Clark Corporation
- Lehigh Portland Cement Company
- Bank of America (Merrill Lynch)
- Proctor & Gamble
- Royal Bank of Canada
- Safeway
- SeverStal
- Societe General
- Target
- UBS

Briefly:

North American Power and Gas Receives Maryland Electric License

The Maryland PSC granted North American Power and Gas LLC an electric supplier license to serve residential, commercial, and industrial customers at Baltimore Gas & Electric, Pepco, and Delmarva Power & Light (Only in Matters, 6/10/10).

Open Market Energy Fined $100, Receives Md. Broker License

The Maryland PSC fined Open Market Energy, LLC $100 for operating as an electric broker without a license, and granted Open Market Energy an electric broker license to serve residential and non-residential customers in all service areas (Only in Matters, 6/10/10). Through June 7, 2010, Open Market Energy reported $84,509 in revenues from Maryland electric brokering and $36,566 from Maryland gas brokering, resulting from brokering 15 customers with 195 electric accounts and 95 gas accounts.

Conn. Draft Would Grant Aggregator License to Integrity Communications of Ohio

A draft Connecticut DPUC decision would grant Integrity Communications of Ohio, LLC an electric aggregator certificate to serve commercial, industrial, municipal, and governmental customers (Only in Matters, 4/20/10).

Infinite Energy Withdraws Objection to Extension of Scana Energy Marketing's Regulated Provider Term

Infinite Energy has withdrawn its objection to the extension of Scana Energy Marketing's contract to serve as the regulated provider at Atlanta Gas Light for an additional year. The PSC has the option to extend the current agreement with Scana Energy Marketing for an additional year (through August 31, 2012), and Scana Energy Marketing has said that it is willing to serve as the regulated provider for an additional year under the same rates and terms (Only in Matters, 6/16/10). Infinite originally asked the PSC to conduct an RFP for the next regulated provider term, but has withdrawn its objection and says that it, "looks forward to the opportunity of a competitive bid next year," for the term beginning September 1, 2012.

BOMA of Chicago Enters MOU for Smart Grid Pilot Including PJM Market Participation

The Building Owners and Managers Association of Chicago (BOMA/Chicago) has entered into a Memorandum of Understanding with the Korean Smart Grid Association and two of South Korea's largest energy and technology companies, KT Corporation and LG Electronics, to develop a commercial smart grid pilot program involving nearly a dozen office buildings in downtown Chicago. The pilot program will pioneer the construction of a virtual generator using buildings as electric grid resources. Of note is that the pilot also includes the creation of a Network Operating Center, which will interpret wholesale electricity market signals from PJM and convey them to the participating buildings, allowing participants to respond to market signals by scheduling and implementing curtailment strategies that

Direct ... from 1

(cash or debit/credit card). Direct does not accept checks for the prepay product through any payment channel.

In an online Frequently Asked Question regarding the prepaid product, Direct says that it does not currently offer an in-home device to monitor electric usage, but continues to research additional options and technologies.