

# Energy Choice Matters

*August 12, 2010*

## **Blumenthal Seeks DPUC Investigation of Positive Energy Electricity Supply**

Connecticut Attorney General Richard Blumenthal has petitioned the DPUC to open an investigation into the manner of operation and conduct of Joseph Ventura, President and Chief Executive Officer of aggregator Positive Energy Electricity Supply, LLC, alleging that information provided by certain investors and former employees of Positive Energy, "appears to indicate that Positive Energy may have made material misrepresentation of fact both: (1) in its application to become a licensed electric aggregator; and (2) in its solicitations and contracts with its customers."

The Attorney General requested that the Department consider the imposition of fines as well as the possible revocation of Positive Energy's registration as an electric aggregator due to the allegations (Docket 10-08-09).

The Attorney General said that on August 1, 2008, the Connecticut Department of Banking found that Ventura committed fraud in connection with a mortgage application by making false statements. The Department of Banking ordered Ventura to pay a civil penalty in the amount of \$100,000.

Ventura was not listed as CEO of Positive Energy in its original application for an aggregator certificate filed with the DPUC on February 5, 2009, nor was he listed as any other officer, partner, or director. The only officers listed were Elena Cahill, Chief Executive Officer, and Francie Gingrich, Chief Financial Officer.

Positive Energy also stated in its original application that neither it nor any affiliate had ever been fined, sanctioned, or otherwise penalized for violation of any consumer protection law or regulation.

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## **Maryland PSC Staff Requests Hearing on Licensing Curtailment Service Providers**

The Maryland PSC Staff has requested a hearing to investigate the licensing of curtailment service providers, as Staff argued that curtailment service providers could be regarded as "electricity suppliers" under the Public Utility Companies Article of the Maryland Code and thus required to be licensed.

PUC Article § 7-507 prohibits a person from engaging in the business of an electricity supplier in Maryland without first obtaining a license from the PSC.

PUC Article §1-101(j) defines "electricity supplier" as, "a person: (i) who sells: 1. electricity; 2. electricity supply services; 3. competitive billing services; or 4. competitive metering services; or (ii) who purchases, brokers, arranges, or markets electricity or electricity supply services for sale to a retail electric customer." The code further provides that an, "electricity supplier includes an electric company, an aggregator, a broker, and a marketer of electricity."

The PSC has recently interpreted this provision liberally, finding that any marketing agent, even if not a traditional broker, requires a license, and potentially suggesting that even affinity-type partners of suppliers require licenses.

Staff noted that the PUC Article does not define curtailment service provider (CSP), "but CSPs

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## Connecticut DPUC Suspends Approval of Aggregation Applications

The Connecticut DPUC approved an interim order which temporarily suspends the acceptance of applications for electric aggregator certificates, "in order to ensure that all electric aggregation activities are consistent with the state statutes and legislative intent" (Docket 10-06-24).

The interim decision, which was not changed from an earlier draft, was first reported by *Matters* yesterday, and comes in the DPUC's investigation of retail supplier, aggregator, and agent issues.

In approving the interim decision, DPUC Chairman Kevin DeGobbo said that the order should not be viewed as any adverse action, but is instead prompted by the "success" of the retail market, and need for the Department to exercise due diligence to evaluate what is happening in the market and how the Department can undertake its responsibilities.

As more fully reported in our 8/11/10 and 3/12/09 issues, the temporary suspension is prompted because the DPUC has learned that many registered aggregators are acting as marketing agents for suppliers, while the DPUC has interpreted statute as requiring that aggregators may only represent the customer's interest, and may not represent a supplier's interest.

All certified aggregators may continue their current operations until the DPUC reaches a final determination in its investigation.

## Pa. ALJ Recommends Approval of PECO Gas POR Program with 1% Discount

A Pennsylvania ALJ has recommended approving a settlement to implement PECO's natural gas Purchase Of Receivables program with an initial discount rate of 1%, finding that uncollectibles are appropriately recovered in base rates. The gas POR program would begin January 1, 2012 under the recommended decision (P-2009-2143588).

As only reported in *Matters*, all parties except the Office of Trial Staff supported or did not oppose recovering uncollectibles in distribution rates, and imposing a discount of 1% to recover implementation and IT costs (Only in *Matters*, 6/16/10). The recovery of any outstanding balance of implementation costs not recovered through the discount would be addressed in PECO's next base rate case, and could take the form of recovery through base rates, or a continued or higher discount rate.

Over Trial Staff's objections, the ALJ concluded that the proposed cost recovery method is "reasonable," citing the diverse range of parties supporting the stipulated cost recovery, including PECO, suppliers, and consumer interests. The ALJ noted that the Commission recently approved a similar cost recovery methodology for PECO's revised electric POR program.

Trial Staff had been seeking a minimum discount rate of 5%, with uncollectibles unbundled and included in the discount rate.

The lone issue reserved for litigation by settling parties was whether PECO should be permitted to terminate customers for non-payment of supplier charges incurred prior to January 1, 2012.

The ALJ agreed with PECO and suppliers that, consistent with the recent PECO electric POR decision, PECO should be permitted, starting January 1, 2012, to terminate customers for any unpaid receivables prior to January 1, 2012. The ALJ noted that as PECO is not purchasing receivables currently, only a limited amount of customers will be affected.

Other terms of the settlement were not contested, and were recommended for approval.

The stipulation provides that only receivables associated with basic gas supply will be eligible for purchase by PECO. Basic gas supply does not include a non-gas supply product (e.g., service contract for appliances, or payment for usage reductions), or carbon-neutral products not tied to the actual provision of natural gas to customers (e.g., carbon offsets derived from forestry programs), or security deposits assessed by a supplier. For residential customers, basic gas supply shall also not include early contract cancellation fees or late fees.

For residential customers only, any supplier utilizing utility consolidated billing shall be required to utilize utility consolidated billing for all of the supplier's residential customers, and all such residential accounts shall be included in PECO's gas POR program. However, if a supplier is providing a residential customer with a service or product that does not meet the definition of "basic gas supply," or if the supplier is providing a service or product to residential customers that PECO's consolidated billing system cannot accommodate, the supplier shall be permitted to issue a separate bill for such service or product, if the supplier provides written certification to PECO that the service or product cannot be billed under utility consolidated billing.

## **WGES Says Allegheny SOS Comparison Information Creates Uneven Playing Field**

Allegheny Power's treatment of the new Maryland SOS supply price comparison information requirement, "will lead to additional customer confusion and create an unlevel playing field for retail suppliers," Washington Gas Energy Services said in comments on Allegheny's compliance filing (Case 9228).

As only noted by Matters, Allegheny Power is not including the bypassable transmission rate as part of the SOS price provided in the new SOS supply price comparison to be included on all residential bills. Allegheny has requested to list the transmission rate separately, and inform customers that this transmission rate should be added to the SOS supply rate to formulate a Price to Compare (Only in Matters, 8/3/10).

Allegheny is the only utility to interpret the PSC's order as excluding the transmission rate from the SOS supply price comparison.

WGES noted that COMAR 20.52.05.02 requires the SOS price to be calculated as the sum of several components, including the federally approved transmission rate.

"It is not at all clear to WGES why Allegheny Power believes that the SOS price does not include the transmission price or why this element should be broken out. This is especially troubling given the fact that retail suppliers are

required to include the transmission price when quoting prices to customers in comparison to current SOS prices," WGES said.

"The Commission's rules are quite clear that when comparing competitive offers to utility offers, competitive retail suppliers are required include in their electric commodity services price the price of transmission. To suggest to customers that the SOS price does not include the transmission price is to mislead customers about the true cost of utility service and potentially create the false impression that the utility price is lower than a supplier offer," WGES added.

While certain SOS charges, such as reconciliation charges or credits (known by varying names across utilities), can change monthly and are thus difficult to include in a forward-looking disclosure of SOS prices, the transmission rate is typically fixed for a year.

WGES also raised concern about the new "annual weighted average" supply price being provided to customers as part of the PSC's new SOS supply pricing comparison in addition to the actual SOS prices for the known summer and winter periods. Pursuant to COMAR 20.53.07.09, suppliers are not explicitly permitted to use the "Price to Compare" or the new "weighted average" supply price in communications with customers, but utilities will now be calculating and communicating a "weighted average" annual supply price for customers in addition to the SOS price, WGES noted.

"In order to ensure that retail suppliers can make the appropriate comparisons to utility rates, WGES requests the Commission permit retail suppliers to also use the utilities 'weighted average' prices in price comparisons when applicable," WGES said.

## **Constellation Names Technology, Consumer Product Vet as Chief Marketing Officer**

Constellation Energy named Bruce J. Stewart to the position of managing director and chief marketing officer for the company's retail energy business. Stewart has served as a senior executive for several consumer-facing brands,

and his background is weighted towards technology and digital enterprises.

Most recently, Stewart served as chief executive officer of the mobile and digital division of kgb, a provider of retail information services including directory assistance, mobile text, apps, and web services. Prior to kgb, Stewart was vice president and general manager for Yahoo! Inc.'s Connected Life division which oversaw Yahoo's broadband, mobile & wireless, digital home, and PC desktop application businesses in the Americas. Previously, Stewart was senior vice president for America Online and vice president for Netscape. Stewart has also had stints at web hosting companies Exodus Communications and Globalcenter Inc., and at cable provider InterMedia Partners.

As previously reported by *Matters*, Constellation NewEnergy has expanded into several residential markets (Maryland electric and gas, Ohio gas), and Constellation CEO Mayo Shattuck has previously said that the supplier remains interested in any residential market where headroom supports customer switching (Only in *Matters*, 5/3/10).

Constellation confirmed that its interest in such residential marketing was a factor in the selection of Stewart, a veteran of several consumer-facing brands, as chief marketing officer.

Stewart's background with various technology firms will also be relied upon in integrating Constellation's commodity supply with value-added services. Stewart's team will, "combine the basics of supplying power and gas at competitive prices with innovative solutions that give our customers - from the largest commercial and industrial energy users to individual households - new ways to use energy more efficiently and sustainably," said Mark Huston, managing director of Retail Energy at Constellation.

## **Briefly:**

**Interstate Gas Supply to Market as Columbia Retail Energy; Also Seeking Virginia Supplier License**

Interstate Gas Supply has filed an amendment

to its Ohio natural gas supplier certificate to include the use of the trade name Columbia Retail Energy, which Columbia Gas' parent, NiSource, is licensing to Interstate Gas Supply. The *Columbus Dispatch* reported the licensing agreement is for three years. It was not immediately clear whether Interstate Gas Supply will seek to use the trade name in other jurisdictions such as Pennsylvania, Kentucky, Maryland, or Virginia. In Virginia, Interstate Gas Supply has applied for a Virginia natural gas competitive service provider license to serve residential and small commercial customers in the service territories of Washington Gas Light, including its Shenandoah Gas Division service area, and Columbia Gas of Virginia. The State Corporation Commission Staff issued a favorable report on Interstate Gas Supply's application on August 10, stating that it does not appear that IGS's financial position warrants the need for any additional form of financial security as a condition of licensure.

## **Blue & Silver Energy Consulting Drops Blue Star Trade Name**

Blue & Silver Energy Consulting, LLC has filed at the PUCT to amend its electric aggregator certificate such that it will no longer use the trade name Blue Star Power Consulting, and will instead trade as Pro-Star Energy Services. Illinois-based supplier BlueStar Energy Services had filed a lawsuit against Blue & Silver Energy Consulting over use of the Blue Star Power Consulting name.

## **PUCT to Hold Workshop on QWETR Reports**

The PUCT will hold a workshop on September 8 regarding changes to the Quarterly Wholesale Electronic Transaction Report to align the report with the new nodal market design (35444).

## **R.I. PUC Approves Deepwater PPA**

A split Rhode Island PUC approved a 20-year power purchase agreement between Deepwater Wind and National Grid, after legislators narrowed a law governing long-term PPAs to ensure approval, which had been prompted by the PUC's earlier rejection of the Deepwater contract. The PPA includes a price of 24.4¢/kWh in 2013, with the price rising 3.5% annually thereafter. Commissioner Mary Bray,

the lone dissenting vote, said that the PPA will force ratepayers to bear \$370 million in above-market costs. Chairman Elia Germani and Commissioner Paul Roberti voted to approve the PPA, citing the more restrictive law now governing the PPA. Attorney General Patrick Lynch said that he would appeal the decision to the state Supreme Court.

### **FERC Finds J.P. Morgan to Have Market Power in Cleco Area**

FERC has concluded that, based on a delivered price test analysis, J.P. Morgan Ventures Energy Corporation and several affiliates have horizontal market power in the Cleco balancing authority area, and instituted a section 206 proceeding to determine whether J.P. Morgan's market-based rate authority for the Cleco balancing authority area remains just and reasonable (EL10-73). J.P. Morgan was directed to show cause as to why the Commission should not revoke its authority to sell power at market-based rates in the Cleco balancing authority area. A long-term sales agreement between J.P. Morgan's BE Louisiana LLC unit and Cleco Power LLC terminated at the end of 2009, under which J.P. Morgan was selling 450 MW from the Evangeline generating facility to Cleco. The termination of this agreement gave rise to a change in conditions that, according to FERC, provides J.P. Morgan with market power. In reaching its conclusion, FERC rejected J.P. Morgan's use of proxy data for the Simultaneous Import Limit used in the market power analysis. J.P. Morgan said that it did not have market power when using seasonal average Available Transfer Capability (ATC) from the Entergy balancing authority area into the Cleco balancing authority area as a proxy for the Simultaneous Import Limit, but FERC found the proxy to be an inappropriate metric.

### **FERC Finds Dogwood Energy to Have Market Power in GMO Area**

FERC has concluded that Dogwood Energy LLC has horizontal market power in the KCP&L Greater Missouri Operations Company (GMO) balancing authority area, and instituted a section 206 proceeding to determine whether Dogwood's market-based rate authority for the GMO balancing authority area remains just and

reasonable (EL10-74). Dogwood was directed to show cause as to why the Commission should not revoke its authority to sell power at market-based rates in the GMO balancing authority area. FERC based its conclusion on Dogwood failing the market share screen test when using the available economic capacity measure. Dogwood is an indirect subsidiary of Kelson Holdings LLC, which is owned by several Harbinger Fund companies.

### ***Positive ... from 1***

The Attorney General alleged that, "Ventura and Positive Energy may have deliberately withheld from the Department material information concerning the banking Commissioner's findings of fraud and its imposition of civil penalties of \$100,000."

"That information is directly material to the Department's consideration of whether to approve Positive Energy's application to be licensed as an electric aggregator," the Attorney General said.

Furthermore, the Attorney General alleged that on August 5, 2010, "Jesse Batista and Thomas Sayers, investors and former employees of Positive Energy, presented to the Office of Attorney General a number of allegations that, if true, may indicate that Positive Energy may have made misrepresentations in its solicitations and contracts with its customers."

According to the allegations cited by the Attorney General, Positive Energy representatives allegedly solicited new customers with a variable competitive supply offer from Viridian Energy. However, the Attorney General said that Ventura subsequently entered into an agreement with ResCom Energy LLC, which filed for a supplier license on August 28, 2009.

"Although Positive Energy representatives continued to subscribe customers to Viridian's supply offer, Ventura did not process those subscriptions with the electric distribution companies. Instead, Ventura waited as long as six months until the Department had approved ResCom's electric supplier license, and when ResCom's license was finally approved, Ventura instead subscribed those customers to ResCom

and not to Viridian. As a result of these misrepresentations, as many as 30,000 to 40,000 customers experienced significant delays in contracting for a competitive electricity supplier," the Attorney General alleged.

"The Attorney General has no additional information to verify the accuracy of these allegations. Nonetheless, if these allegations are true, Ventura's conduct may have substantially injured many thousands of customers and may constitute an unfair trade practice within the meaning of Conn. Gen. Stat. §§ 42-110a et seq. and 16-245u," the Attorney General alleged.

"The Department should therefore open an investigation to determine whether these allegations are in fact true and, if so, the Department should order that these customers should be reimbursed for their losses. The Department should also consider imposing penalties on Positive Energy, including fines, the termination of its electric aggregator license, and a referral to the Office of Attorney General and the Department of Consumer Protection pursuant to Conn. Gen. Stat. § 16-245u(5)," the Attorney General said.

## **CSPs ... from 1**

could be considered to be a person that provides 'electricity supply services.'"

Staff said that the demand response services provided by curtailment service providers are often seen as part of a supply portfolio and as a substitute for increased generation or transmission.

"CSPs provide a large and growing portion of Maryland's demand response activity and essentially form the bulk of new electricity supply resources, but the Commission is currently unable to assess the size and distribution of these resources," Staff noted.

"In turn, without this knowledge, the Commission cannot accurately determine the need for new supply and the reliability and relative cost of demand response efforts. As a result of this lack of knowledge, the Commission could order excessive utility investment in demand response and conservation programs," Staff said.

Staff noted that the PUC Article requires the Commission to ensure the adequacy of electric service in Maryland and requires the Commission to engage in long-term planning and cost-effectiveness analyses of utility demand-side programs.

"Licensing CSPs would ensure that the Commission knows which CSPs are operating in Maryland, and further ensure that the Commission would have the ability to require them to provide information necessary to assess the adequacy of Maryland's electricity supply," Staff added.