

Energy Choice

Matters

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Evanson: FirstEnergy-Allegheny Will be in "Dominant" Position in Pennsylvania

"We like to be in a dominant position in a state, and I think we will be that in Pennsylvania," Allegheny Energy CEO Paul Evanson said in discussing Allegheny's pending merger with FirstEnergy Corp. during a Barclays Capital investor conference yesterday.

The combined FirstEnergy-Allegheny company would serve some 2 million Pennsylvania customers, more than 35% of the state's total customer count, while encompassing 70% of the state on a geographic basis. Its size has raised concern from the Office of Small Business Advocate, Office of Consumer Advocate, and competitive retail suppliers, the latter of whom said that the merger would not result in a workably competitive market absent several conditions (Matters, 8/18/10).

Evanson, "always think[s] it's good to be a large player in a state," and intimated that dominant utilities receive better treatment from regulators or have their preferred policies more readily adopted.

With the merger, "we'll be the largest company in the state [Pennsylvania], and I always think it's good to be a large player in a state. We were, as you know, a trivial player in Virginia and we got treated badly. If you're Dominion, you love the Commonwealth of Virginia, but if you're Allegheny, you didn't," Evanson said.

Evanson downplayed intervenor protests in Pennsylvania regarding the merger, and said that there has been no deal-breaking, blockbuster testimony that he expects will derail the merger.

Updating investors on Allegheny Energy Supply Co.'s increased retail marketing efforts, Evanson said that these are still focused on small to mid-sized non-residential accounts within Allegheny Energy Supply Co.'s affiliated service areas. Target retail margins are on an order of magnitude of \$4, Evanson said.

PUCT Adopts Final Switch Hold Rule, Opponents Weighing Appeal

The PUCT adopted as final new rules governing deferred payment plans and levelized payment plans which expand several eligibility criteria for the plans, and which allow REPs to impose a switch hold on customers entering into such plans (36131).

The Commission did not substantively modify the language presented in Staff's most recent proposal for adoption (Only in Matters, 9/10/10).

The Commission modified the preamble to make explicit the fact that REPs, under the current provisions of another section of the Substantive Rules, must disclose all payment

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NRG Energy to Acquire Green Mountain Energy Company for \$350 Million

NRG Energy, Inc. announced a definitive agreement to acquire Green Mountain Energy Company for \$350 million in cash.

"Aligning Green Mountain's green retail franchise with NRG's growing portfolio of renewable power assets and development pipeline creates the foundation for what will be the preeminent platform of clean energy solutions in Texas, New York and ultimately, other core markets served by Green Mountain and NRG," NRG said.

Notably, Green Mountain will be run as a standalone business within NRG, which also

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Briefly:

PUCT Staff Files Petitions to Revoke REP Certificates of Lahey & Partners; GTC Energy; Lehman Power Services

PUCT Staff have filed separate petitions to revoke the REP certificates of Lahey & Partners, LLC (38680), GTC Energy, Inc. (38681), and Lehman Power Services, LLC (38682). Copies of the petitions were not available yesterday, but the petitions are likely based on the required compliance under the amended Subst. R. §25.107. Lahey & Partners LLC, trading as Verdes Solaris Power, had asked for an extension for complying with §25.107, and has not and is not serving customers.

Energy Savers, Inc. Seeks Expanded Pennsylvania Broker License

Energy Savers, Inc. applied for an amendment to its Pennsylvania electric broker license to expand its license to include serving commercial, industrial and governmental customers in all service areas. Currently, the license authorizes brokering at Duquesne Light and Penn Power.

NetGain Energy Advisors Receives Maryland Electric Broker License; Seeks Virginia Licenses

The Maryland PSC granted NetGain Energy Advisors, organized as NRGing, LLC, an electric broker license to serve commercial and industrial customers in all service areas (Only in Matters, 8/13/10). Additionally, NetGain Energy Advisors is seeking a Virginia competitive service provider license to act as a broker/aggregator for natural gas and electricity in an application which was officially noticed by the State Corporation Commission this week.

Energy Edge Consulting Receives Maryland Broker License

The Maryland PSC granted Energy Edge Consulting, LLC an electric broker license to serve commercial and industrial customers in all service areas (Only in Matters, 8/10/10).

Conn. Draft Would Grant Aggregator License to I. C. Thomasson Associates

A draft Connecticut DPUC decision would grant I. C. Thomasson Associates, Inc. an electric

aggregator certificate to serve commercial, industrial and governmental customers (Only in Matters, 7/8/10).

Energy Hawk Services Receives Texas Aggregation License

The PUCT granted Energy Hawk Services, LLC an electric aggregator certificate (Only in Matters, 8/30/10).

Reliant Energy Joins Retail Energy Supply Association

Reliant Energy has joined the Retail Energy Supply Association, as RESA's 15th member. As has only been reported in *Matters*, Reliant has pending electric supplier applications in Pennsylvania, New Jersey, Maryland and the District of Columbia to serve commercial and industrial customers (Only in Matters, 8/9/10 & 9/9/10)

World Energy Solutions Secures Right to Auction 1,500 MW of Load to Curtailment Service Providers

World Energy Solutions, Inc. has entered into a strategic agreement with Alban Engine Power Systems under which World Energy will auction over 1,500 MW of load, which Alban Engine currently has under maintenance service contracts, to competing demand response providers. Under the agreement, Alban Engine, an authorized Caterpillar dealer, will offer demand response as part of its premium service package for customers, with the curtailment service provider selected through the World Energy exchange. Alban Engine currently manages more than 1,000 power-system service contracts for customers within the PJM Interconnection. Alban offers comprehensive service agreements that include daily remote monitoring, extended warranty provisions, and repairs and maintenance. The partnership with World Energy adds demand response to this suite of services.

Maine PUC Approves Higher Retainage Rate at CMP

The Maine PUC has approved an increase in the adder for uncollectible accounts associated with Standard Offer service for Central Maine Power's residential and small commercial

customers, in approving standard form agreements to be used in the upcoming procurement of supplies for this customer class. Specifically, the PUC approved setting the uncollectible adder for the contracts to be procured in the next RFP at 3.25%. As only reported in *Matters*, the higher retainage rate for these contracts will increase the overall retainage rate for the laddered portfolio to 2.25% from the current 1.7% (Only in *Matters*, 8/20/10).

PUCO Approves Increase in Nonbypassable Deferred Transmission Rider at FirstEnergy Utilities

The Public Utilities Commission of Ohio granted the petition of Ohio Edison, Cleveland Electric Illuminating, and Toledo Edison to increase the amounts charged under the nonbypassable Deferred Transmission Costs Recovery (DTC) Rider (10-1134-EL-ATA, Only in *Matters*, 8/16/10). The rider collects deferred incremental transmission and ancillary service-related charges dating to 2005. The FirstEnergy companies said that the higher amounts are, "designed to fulfill the intent of allowing full recovery," of the deferred charges. The proposed rates, which vary by company and rate class, may be found in Case 10-1134-EL-ATA. PUCO held, consistent with a prior order, that the revised rates should remain in effect only until the deferred balance is collected and no later than December 31, 2010.

D.C. PSC Sets Hearing on Dynamic Rates for Pepco SOS

The District of Columbia PSC has scheduled for September 23 a legislative-style hearing on Pepco's pending proposal to modify the rate design of Standard Offer Service upon the deployment of its advanced meters (FC 1056).

As only reported in *Matters*, Pepco is seeking to transition all SOS customers to a critical peak rebate by 2014, while providing SOS customers with an optional critical peak pricing product (Only in *Matters*, 6/10/10).

Specifically, the hearing will address whether the proposed dynamic SOS rates should include a bill protection mechanism. If so, how should such a mechanism be funded and

implemented?

Also of note, the Commission will investigate under what circumstances, if any, should a 12-month minimum stay requirement be imposed on residential customers.

The hearing will also address the proposed amount for the critical peak rebate under Pepco's proposed default rate option.

Retail Suppliers Say Bill Ready Billing Essential for Smart Grid, Products in N.Y.

Implementation of smart grid initiatives in New York must include the development of bill ready utility consolidated billing, in order to permit customers to be billed on complex and dynamic rates, retail suppliers told the New York PSC in comments on the Commission's smart grid proceeding (10-E-0285).

The National Energy Marketers Association said that utility bill ready billing systems should be assigned a "top priority" in the smart grid implementation process to enable competitive, time-of-use pricing options.

"Time-of-use billing is simply incompatible with the utilities' rate ready billing systems. The value of smart meter installations will be significantly diminished without better utility billing systems. Bill ready billing systems must be accompanied by real-time, equal access to the data by competitive stakeholders," NEM added.

NEM noted that that NYSEG and Rochester Gas & Electric currently provide the most billing functionality to ESCOs with respect to bill ready billing. Accordingly, "[e]fforts should be focused initially on bill ready billing at NYSEG/RGE with the other utilities to follow," NEM suggested.

The Small Customer Marketer Coalition also stressed that the PSC must ensure that utility consolidated billing systems are capable of rating and billing for the more sophisticated rate offerings enabled by smart meters.

Additionally, SCMC and the Retail Energy Supply Association both suggested that customers should be offered shadow billing for a period of time to ease the transition to dynamic rate structures enabled by advanced meters.

SCMC also suggested that the Commission

should examine whether any existing laws would prohibit or hinder certain elements of advanced metering. Specifically, SCMC noted that PSL Section 65(10) prohibits under certain circumstances the imposition of incremental seasonal differentials upon residential customers for the first 250 kWh used by each customer in each month.

The Commission had asked whether utilities should be provided with sole control of the potential commercial opportunities of the Home Area Network. "NEM strongly urges the Commission not to allow the utilities to monopolize the HAN market. The HAN is the gateway to the consumer's home - appliances, in-home displays, are all part of the HAN. By making the HAN a utility-only program, the Commission would discourage the very innovation and new competitive entry in this field that smart grid is intended to yield. Behind-the-meter competition must be allowed to flourish," NEM said.

Utility provision of HAN devices, "would be a divergence from [utilities'] normal provision of regulated distribution evince," RESA said.

NEM also said that its members are committed to serving as the primary demand response delivery channel to help consumers achieve demand response benefits both before and after the smart grid is fully implemented.

Regarding access to customer data under the smart grid, RESA suggested generally applying the current standards in the Uniform Business Practices governing customer data. The Uniform Business Practices permit an ESCO to obtain authorization for the release of customer information in written, telephonic or online form, and the ESCO is not required to produce this authorization to the utility.

NEM stressed that usage from advanced meters provided to third parties must be provided on a "real-time basis."

Suppliers urged the Commission to ensure that smart grid implementation is competitively neutral and, in particular, RESA and SCMC said that all customers should be eligible for any smart grid pilots, as opposed to only full service customers taking commodity from the utility.

Virginia SCC Approves Curtailment Service Providers

The Virginia State Corporation Commission has granted authority to Converge, Inc., CPower, Inc., Energy Curtailment Specialists, EnergyConnect, Inc., and EnerNOC, Inc. to operate as curtailment service providers at Appalachian Power.

Legislation in 2009 directed that any demand response program proposed to be offered to retail customers by the generating electric utility or any other qualified non-utility provider shall be subject to Commission approval. The SCC held that it is required to review and approve each curtailment service provider's specific operations, and dismissed arguments from curtailment service providers that participation in standard PJM programs had previously been approved and thus curtailment service providers simply offering participation in these PJM programs do not need SCC approval.

The SCC imposed reporting requirements on each curtailment service provider, obligating the provider to annually report to the SCC regarding its operations in other states, affiliate relationships, financial integrity, and any adverse actions taken against the provider by regulatory or other entities.

Switch Hold ... from 1

arrangements and assistance programs available to the customer upon the customer expressing an inability to pay. Given this fact, Commissioner Kenneth Anderson said that concerns that customers could be denied a deferred payment plan because they did not say the "magic words" are unfounded, since REPs already must disclose the ability of customers to avail themselves of the option.

Commissioner Donna Nelson urged REPs to proceed cautiously with the switch hold provision initially until the mechanics are shown to work smoothly. The new rules regarding the switch hold and expanded eligibility for deferred payment plans are to take effect June 1, 2011.

Nelson stressed that she is prepared to reverse course on the granting of the switch hold

authority if she sees a problem. Nelson said that there is still work being done among stakeholders to make reporting of switch holds more frequent, such as monthly. The adopted rule requires REPs to list the number of customers who had a switch-hold applied during the year in their annual report filed pursuant to §25.107.

During the rulemaking consumer advocates essentially promised an appeal if the switch hold were adopted (see Matters, 5/4/10), and AARP yesterday reiterated that it was reviewing its legal options. Consumer advocates contend that the switch hold is contrary to PURA §17.004(a)(2) and §39.101(b)(2) since these sections provide that customers are entitled to their choice of electric providers, which would be denied under a switch hold. However, the Commission concluded that it has authority under PURA to impose a switch hold on customers entering into a deferred payment plan because such customers are being extended credit, and PURA §17.004(b) and §39.101(e) grant the Commission the authority to adopt and enforce rules necessary or appropriate to establish standards for REPs relating to the extension of credit and termination of service.

Furthermore, PURA §39.101(a)(1) requires the Commission to ensure that retail customer protections are established that entitle a customer to reasonably priced electricity, and the Commission concluded that the switch hold is necessary to achieve this customer protection entitlement since the bad debt of non-paying customers is borne by those customers who pay their bill on time.

Additionally, PURA §§17.004(a)(1), 39.101(b)(6), and 39.101(e) authorize the Commission to adopt and enforce rules to protect retail electric customers from fraudulent, unfair, misleading, deceptive, and anti-competitive practices, and the Commission concluded that this language includes customer behavior such as abusing the switching rules to migrate to a new provider prior to satisfying the terms of a deferred payment plan.

Finally, the Commission concluded that the right to choose a REP is not the same as the right to switch retail electric service without condition, and that PURA §39.101(b)(2) expressly conditions the exercise of the right of

customer choice on consistency with Chapter 39 of the statute and those provisions of Chapter 39 enumerated above.

AARP said that it is evaluating whether to continue to advise customers to enter into deferred payment plans given the switch hold. Customers not entering into a deferred payment plan may still switch REPs while owing an outstanding balance to their current REP.

As previously reported, major provisions of the adopted rule include the following.

Deferred payment plans must be offered under the following circumstances to all customers regardless of their income status, or prior payment history:

- For bills that become due during an extreme weather emergency, pursuant to §25.483(j)
- During a state of disaster declared by the governor, in areas covered by the declaration, when directed to do so by the PUCT
- For any amount for which a customer has been underbilled

Additionally, customers (1) receiving the Lite-Up discount; or (2) are designated critical care or chronic condition; or (3) have expressed an inability to pay and have not been disconnected during the preceding 12 months; shall also be eligible for a deferred payment plan during the following conditions:

- For any bill that becomes due in July, August, or September
- For a bill that becomes due in January or February if in the prior month a TDU experienced an extreme weather emergency for at least five consecutive days during the month in that customer's county

The adopted rule provides that deferred payment plans shall include an initial payment amount no greater than 50% of the amount due, with the deferred amount paid by the customer in equal installments over at least five billing cycles unless the customer agrees to fewer installments. This contrasts to the prior rule which limited the initial payment to 25%, but only granted the customer three months to pay the remaining deferred balance.

The adopted rule maintains that a customer failing to meet the terms of a deferred payment plan must still receive a separate, 10-day notice of disconnection from the REP if the REP elects

to pursue disconnection. A notice of disconnection included in the bill does not meet this requirement.

The adopted rule also dictates pricing for a customer whose term contract expires while the customer is subject to a switch hold. Specifically, for such customers, if they do not affirmatively select a different product from the REP applying the switch hold, the customer shall be served on the REP's lowest priced month-to-month product offered to new applicants, or, in the event that the REP does not offer such a product, the customer shall be served on a month-to-month basis at a price equal to the REP's lowest priced fixed term product offered to new applicants, except that no cancellation fee could be imposed on the switch hold customer under this product. A REP shall not discriminate against any customer that is on a switch-hold in the provision of services or pricing of products.

If a REP erroneously places a switch-hold flag on an ESI ID, thus preventing a legitimate switch, or does not remove the switch-hold within the timeline prescribed in the rule, the REP shall be considered to have committed a Class B Violation. A Class B violation may result in penalties up to \$5,000 per day per violation.

The adopted rule requires REPs to notify customers three times a year, rather than two times a year, about the availability of the Lite Up rate reduction program, and requires REPs to provide self-enrollment forms to customers upon request.

The Commission also adopted new definitions and procedures related to critical care customers in Project 37622.

Green Mountain ... from 1

owns Reliant Energy.

NRG said that the acquisition, with an anticipated annual EBITDA contribution of \$70 million, is immediately accretive to EBITDA and free cash flow. NRG anticipates funding the transaction with cash on hand upon transaction close, which is expected by mid-November.

NRG CEO David Crane re-emphasized NRG's renewable strategy earlier this week at an investor conference (Only in Matters, 9/15/10), and said that NRG expects that with

the consumer acceptance of electric vehicles, consumers will not want to charge a clean vehicle with "dirty" power.

Green Mountain serves load in ERCOT and New York, and is active as a non-load-serving REC supplier in additional markets.