Energy Choice Matters
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Paetec Acquires U.S. Energy Partners for $3 Million in Cash

Paetec Holding Corp. said that it has acquired New York electricity ESCO U.S. Energy Partners, LLC, for approximately $3 million in cash. U.S. Energy Partners serves over 3,500 customers in western New York, and also offers demand response services.

Paetec, which is expanding its electric brokering/consulting business nationally (Only in Matters, 1/5/10), said that the acquisition will allow it to, "provide additional complementary services to its core communications customers."

Paetec, which is foremost a communications and telecomm service provider, said that it has over 44,000 medium and large business customers nationwide, and has found that its average customer spends four times as much on energy as they do on telecommunications. Paetec said that it currently has telecomm clients in each of what it considers to be the active deregulated territories, which it pegged at 14 states.

Paetec said that expanding U.S. Energy Partners beyond New York will be part of its strategy.

"Now that customer data centers and IT departments have become a primary user of energy, both telecom and energy are becoming increasingly complementary," said Paetec Chief Operating Officer, E.J. Butler, Jr., who was unavailable for an interview yesterday due to travel to the Channel Partners Conference & Expo in Las Vegas, but will be speaking with *Matters* today.

"We've seen a trend towards energy decisions being made by the office of the CIO, and this acquisition further supports that strategy," Butler said

Recommendations for Conn. Electric Rate Relief Include Ending Residential Choice

A panel convened by Connecticut House Speaker Christopher Donovan released a report yesterday summarizing several recommendations for electric rate relief, including (as tipped in yesterday's issue), ending retail choice and creating a state power authority.

The report merely aggregated all of the individual recommendations of the panel's members, which included: the DPUC, Connecticut Light & Power, United Illuminating, the Office of Consumer Counsel, Attorney General's Office, AARP, Manufacturers' Alliance of Connecticut, Connecticut Business and Industry Association, several legislators, including Energy & Technology Committee Co-Chair Vickie Nardello, and other cooperative power and consumer interests.

The report itself does not endorse any of the recommendations per se, but says that the Energy and Technology Committee will raise a bill on electric rate relief that includes, "the individual recommendations listed" in the report (presumably all will be considered in some fashion since none are specifically included/excluded).

Recommendations from various panel members include:

- Revise distribution companies' procurement to permit them to buy power components separately (e.g., baseload, intermediate and peaking power), contract directly with generators, and also permit long-term contracting
- Reduce the time period now required for laddered contracts in the procurement of power for

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Suppliers Say Order Requiring Duke PAR Discount in Tariff Implicates PUCO Jurisdiction

The Public Utilities Commission of Ohio's direction that the electric purchase of accounts receivables (PAR) discount at Duke Energy Ohio shall be included in Duke's tariff removes the discount rate for the realm of utility-supplier negotiation and places it within PUCO's jurisdiction, Dominion Retail said in comments on Duke's application to increase the discount rate. Direct Energy, in reply comments, suggested that, given the history of electric PAR at Duke, it could even be argued that receivables are to be purchased without a discount, based on a rehearing order which removed an electric uncollectible expense tracker, but did not specifically strike a requirement for non-discounted PAR.

As only reported in *Matters*, Duke has filed to raise the PAR discount rate to 2.02% from 1.87% (09-1026-EL-ATA). In response to a protest from Direct, Duke said that PUCO lacks jurisdiction over the discount rate, and has previously held, in Case 00-813-EL-EDI, that the discount rate shall be subject to negotiations between Duke and the suppliers (Only in Matters, 2/18/10).

However, both Direct and Dominion Retail noted that the PAR program was later addressed in the Duke-Cinergy merger proceeding (05-732-EL-MER), under which an initial PUCO order (based on a settlement among some parties) established non-discounted PAR programs for both electricity and gas, with uncollectibles to be recovered via a tracker for each commodity.

However, in response to a rehearing request from the Ohio Consumers' Counsel, PUCO later found that the electric uncollectible rider should not be approved in the context of the merger case. With the ruling, the joint parties' stipulation that Duke institute a non-discounted electric PAR program, "apparently fell by the wayside," Dominion Retail said. While Dominion Retail said that the non-discounted PAR provision "was obviously linked to approval of the uncollectible expense riders," Dominion Retail noted that PUCO's order on rehearing did not expressly address the status of the purchase of receivables requirement.

Indeed, Direct said that PUCO's rehearing order only found that the uncollectible expense rider should not have been approved. "Had the Commission intended to rescind the directive that CG&E [Cinergy] must purchase accounts receivables of electric marketers without a discount, it could have done so. But the fact remains, it did not," Direct noted.

"Thus, technically since the Commission pulled only the electric uncollectable [sic] expense rider and not the purchase of receivables without discount, Direct Energy could claim that Duke must purchase not only gas but electric receivables from suppliers without discount. Put in its most favorable light for Duke, there is some ambiguity surrounding the purchase of receivables," Direct argued.

In any event, Dominion Retail noted that in Case No. 08-709-EL-AIR, et al., the Commission ordered that Duke, "shall include within the competitive retail electric service provider tariff the formula it uses to determine the discount at which it purchases receivables from competitive retail electric service providers."

"Duke's PAR program is now a tariffed offering and, thus, is subject to Commission oversight," Dominion Retail argued. "Because this [PAR] formula and the components are now contained in the Duke tariff, it is entirely appropriate for the Commission to examine, for the first time, the reasonableness of such a formula and the reasonableness of the proposed component parts," Direct added.

Aside from the jurisdictional question, Dominion Retail agreed with Direct that the proposed increase has not been adequately justified. In particular, Dominion Retail cited the carrying costs included in the discount rate.

Based on information provided by Duke, Dominion Retail said that, "it appears that the indicated 'Annual Base Carrying Cost Component' of 12.39% reflects a tax impact-adjusted weighted cost of capital calculation utilizing the return on equity allowed by the Commission in Case No. 08-709-EL-AIR."

"Leaving aside, for the moment, whether the formula should include any carrying cost component, serious questions exist as to whether the Duke methodology for calculating this component is reasonable in this context,"

Dominion Retail added.

"First, Dominion Retail believes that the use of a tax-adjusted cost of capital to determine the carrying cost component is theoretically inappropriate in view of the tax treatment accorded [to] any amounts ultimately written off as bad debt. Second, although there is a cash working capital requirement associated with [the] lag between Duke's payment to the CRES [competitive] provider to purchase the receivables and the collection of the revenues from the CRES provider's end-user customers, the rate case-type revenue requirement model that Duke is apparently attempting to mimic by applying a carrying charge based on its overall cost of capital is inapposite in this setting. Not only is there no rate base asset involved, but, in actual practice, Duke likely finances the lag dollars in question through short-term borrowings," Dominion Retail argued.

"Dominion Retail submits that, if the discount factor formula is to include a carrying cost component, that component should be based on Duke's cost of short-term debt so as to reflect the reality of the manner in which revenue lag is financed."

Dominion Retail also took issue with Duke's description of its PAR program as being provided at "cost" to suppliers, as Dominion Retail said that the inclusion of an equity return element in the carrying cost calculation generates shareholder profit.

Should PUCO nevertheless agree that an equity return component should be included in the carrying cost calculation, Dominion Retail said that it would prefer that the payment due date under the Duke PAR program be extended so as to avoid incurring carrying costs at the level resulting under the current "buy it an bill it" instant payment approach.

Direct and Dominion Retail both urged the Commission to re-examine the use of an uncollectible electric commodity expense tracker, given that gas commodity, gas distribution, and electric distribution costs are all subject to uncollectible riders at Duke.

"As a result of the Commission's decision, Duke's electric commodity service is not subject to a rider that tracks the post-rate case incremental increase in uncollectible expense, whereas, under the tariffed purchase of receivables discount factor formula, a CRES provider is subject to a discount rate that is intended to protect Duke fully from the risk of undercollection from the commodity service provided to shopping and aggregation customers. Although not rate-regulated, a CRES provider must reflect this additional cost in their rate offers, which, in turn, inhibits their ability to compete," Dominion Retail said.

Maryland Customers Warn of Higher Costs from Rate Regulated Generation

Gov. Martin O'Malley's proposal for the Maryland PSC to order new power plant development under the "abandoned" monopoly cost-of-service model, "will impact the ability of customers to leverage the benefits of competition and experience the cost savings, cost control and innovation inherent in competitive power markets," several commercial customers said in a letter to the Maryland PSC filed in Cases 9117 and 9214.

"[T]he Governor's proposal will lead to higher costs for Maryland businesses and consumers," said the group, which included PetSmart, Wal-Mart, Big Lot Stores, Leggett & Platt, 7-Eleven, and Safeway. In Maryland, these end users operate over 600 facilities, provide 29,600 jobs, and spend $61 million annually for electricity.

"Allocating the costs of new utility generating plants to all rate payers will act as a tax on those who participate in the competitive market, thereby immediately raising our cost for power and inhibiting the independent power producers from building power plants in the PJM market. The impact on competition from this policy will chase competitive suppliers from the market, thereby decreasing the competitive pressures that keep costs down and spur innovation. This proposal would negatively impact the stability and certainty that Maryland's electric power market needs to attract investment, promote competition and increase jobs," the businesses said.

"The reality is that Maryland businesses can get fixed market prices for electricity for multiple years under contractual terms designed to fit our operations. In a period of economic uncertainty,

thousands of Maryland businesses, from the very largest to the smallest, have realized appreciable savings by selecting new electric supply sources. These savings can be reinvested and provide Maryland businesses with a competitive advantage," the customers added.

Edison Mission Earnings Lower on Weak Power Prices

Edison Mission Group reported lower fourth quarter earnings of $56 million, versus $81 million a year ago, on lower realized power prices for merchant coal sales and lower proprietary trading results primarily because of less transmission congestion.

For the year, Edison Mission posted a net loss of $395 million, versus income of $561 million a year ago. The 2009 results include a $610 million charge related to a global tax settlement with the IRS. Excluding this item and discontinued operations, core earnings for fiscal 2009 at Edison Mission were $222 million, versus $561 million a year ago, on lower income from merchant coal and gas-fired projects driven by lower energy prices, as well as lower trading income.

For the Edison Mission Energy generation subsidiary within Edison Mission Group, 2009 net income was $200 million, versus $501 million a year ago.

Adjusted operating income for Midwest Generation was lower for 2009 at $340 million versus $688 million a year ago. Homer City adjusted operating income was $186 million for the year, versus $202 million in 2008. The renewable energy projects segment posted adjusted operating income of $53 million in 2009, versus $60 million a year ago. The energy trading unit recorded lower adjusted operating income of $49 million, down from $164 million for 2008.

Edison Mission Energy's wind pipeline decreased to 4,000 MW at the end of 2009 from 5,000 MW a year ago. About half of the decrease represents projects moving out of the pipeline and into construction, while the remainder reflects Edison's previously reported cash conservation strategy.

Md. PSC Approves RFP for Solar RECs for Part of 2009 SOS Supplies

The Maryland PSC has approved an RFP to procure about 456 Tier 1 solar RECs for a portion of SOS supplies for Baltimore Gas & Electric, Pepco, and Delmarva for the 2009 compliance year. The RFP is not seeking bids which would require a contractual obligation for Tier 1 solar RECs beyond the 2009 compliance year (Cases 9056/9064).

Bidders are required to propose fixed pricing for the solar REC offering, in terms of an all-in dollar amount per solar REC. Solar RECs priced above the alternative compliance payment of $400 per solar REC will not be accepted. Fractions of solar RECs will not be accepted.

Costs of the procured solar RECs will be allocated between the utilities, "most probably based on load."

Eligible solar RECs include those located in PJM or an adjacent area if electricity is delivered into PJM. However, solar RECs not connected to the Maryland distribution system will only be procured if there is a shortage of Maryland-connected solar RECs. Solar RECs generated from January 2006 through December 2009 are eligible for the RFP.

The procurement is required as some of the earlier laddered wholesale supply agreements did not include a component regarding responsibility for the solar REC compliance obligation, as it did not exist when the contracts were executed.

EnerNOC Asks Michigan PSC to Take Notice of FERC Demand Response MBR Order

EnerNOC petitioned the Michigan PSC to take notice of a FERC ruling which EnerNOC claimed, "deliberately and specifically repudiated the sale for resale argument" which was proffered by proponents of the temporary suspension of direct customer participation in RTO markets pending a PSC investigation (excluding current contracts for such customer participation).

The PSC, in September 2009, ordered that,

"only LSEs within Michigan [shall] be allowed to aggregate retail customers to whom they supply electric retail supply service for RTO wholesale market participation," until further Commission order, to allow the Commission to determine what rules, if any, are required to govern such participation by non-LSE entities (U-16020, Matters, 9/30/09).

EnerNOC said that, in petitioning the Commission for such a suspension, Indiana and Michigan Power Company represented that demand response participation in wholesale markets is a sale for resale. EnerNOC cited FERC's January 2010 order on EnergyConnect's market-based rate application as supporting EnerNOC's argument that demand response is not a sale for resale.

EnerNOC quoted FERC's order as saying, "where an entity is only engaged in the provision of demand response services, and makes no sales of electric energy for resale, that entity would not own or operate facilities that are [within the] Commission's jurisdiction and would not be a public utility that is required to have a rate on file with the Commission ... we do not regard agreements to provide services from only demand response resources to be jurisdictional facilities because they involve agreements to reduce demand, i.e., agreements not to purchase electric energy under certain circumstances, rather than agreements to sell electric energy at wholesale. Such agreements are not jurisdictional facilities that cause a seller to be a public utility."

However, the PSC never addressed the sale-for-resale argument in its suspension order or used it for justification. Rather, the PSC cited the utilities' concerns that curtailment service providers' aggregation of retail customers, "could create conflicts with existing demand response programs and have unintended detrimental financial consequences for non-participating retail customers," while also hindering accurate forecasting of energy and capacity by utilities.

Briefly:

Citizens' and Wellsboro Post Updated Generation Rates

Citizens' Electric Company filed with the Pennsylvania PUC an updated Generation Supply Service Rate of 9.0550¢/kWh for the three-month period beginning April 1, 2010. Citizens' current generation rate is 8.2687¢/kWh. Wellsboro Electric Company filed an updated Generation Supply Service Rate of 8.6542¢/kWh for the three-month period beginning April 1, 2010. Wellsboro's current rate is 7.3017¢/kWh.

Freedom Choice Energy LLC Seeks Conn. Aggregation License

Freedom Choice Energy LLC applied for Connecticut electric aggregator certificate to pool all classes of customers in all service areas. Freedom Choice Energy LLC is not associated with Freedom Energy Logistics, LLC of New Hampshire.

Interstate Gas Supply Withdraws Request to Market in Several Additional Pa. Territories

Interstate Gas Supply has withdrawn its request to expand its Pennsylvania gas supply license to include the territories of Peoples Natural Gas, Equitable Gas, PECO Gas, and Philadelphia Gas Works. Interstate Gas Supply said that it may seek to expand to these territories in the future. In Pennsylvania, Interstate Gas Supply is currently active at Columbia Gas, and is still seeking to expand its license to include National Fuel Gas Distribution Corporation.

Md. PSC Fines Field Personnel Services $100, Grants Broker License

The Maryland PSC fined Field Personnel Services, Inc. (d/b/a Vanguard Engineering Services) $100 for electricity brokering in Maryland without the requisite license, and granted the broker a license to serve commercial and industrial customers in all service areas. As in most cases involving unlicensed brokering, the fine was set at the higher of the broker's unpaid Maryland PSC assessments for its period of brokering (based on Maryland revenues), or $100.

Cianbro Energy Would Receive Conn. License Under Draft

A draft Connecticut DPUC decision would grant Cianbro Energy an electric supplier license to self supply the Cianbro Companies (Only in Matters, 12/30/09).

PUCT Grants 10K Energy Additional Trade Name

The PUCT granted 10K Energy LLC's request to add the trade name Mission Power to its REP certificate (Only in Matters, 1/21/10).

PUCT Staff Recommends Maintaining Current Level of SBF Charge

PUCT Staff have recommended retaining the current System Benefit Fund fee of 65¢/MWh (the maximum amount allowed) for fiscal 2011, which is the level contemplated by the legislature's budget (28073).

D.C. PSC Posts Updated Net Metering Draft Rule

The District of Columbia PSC issued a revised proposed rule to related to net metering, though the rule does not change any provision in the previous draft related to competitive electric suppliers (FC 945). Competitive suppliers would still be allowed to negotiate the rate paid for excess distributed generation, and would not be compelled to purchase such generation (see exclusive story in Matters 10/6/09).

San Francisco Board to Vote on Updated CCA Implementation Plan Today

The San Francisco Board of Supervisors is scheduled to vote today on a revised implementation plan for the CleanPowerSF community choice aggregation. Likely to be approved, CleanPowerSF plans to send the implementation plan to the California PUC on Wednesday. The PUC has 90 days to review the plan, though it completed its review of the Marin Energy Authority's plan in 60 days. The San Francisco PUC is currently negotiating with Power Choice LLC to supply the aggregation, after selecting it from several companies in an RFP.

CMS ERM Reports 2009 Sales

CMS ERM, CMS Energy's marketing unit, marketed 23 bcf of natural gas and 1,726 GWh of electricity for the year ending December 31, 2009, CMS Energy said in a 10-K (the parent of Consumers Energy). In 2008, CMS ERM marketed 22 bcf of natural gas and 1,778 GWh of electricity. CMS ERM's operating revenue included in Income From Continuing Operations in CMS Energy's consolidated financial statements was $198 million in 2009 versus $343 million in 2008.

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Standard Service to take advantage of market price declines

- Allow distribution companies to purchase power for a portion of Standard Service without the current restrictions on purchasing to determine if rates could be lowered under a more flexible scenario, and to provide a comparison to current model.
- Establish a public power authority to procure power for small and medium customers
- Adopt a code of conduct for participants in the retail electric market (competitive suppliers, aggregators, and brokers)
- End retail competition for residential customers, but maintain competition for business customers
- Expand educational programs by the DPUC to assist businesses to operate successfully as consumers in the competitive market, addressing credit and contract issues
- Impose an assessment on "highly profitable" in-state generators and use the revenue to reduce electric rates
- Develop generation to be sold on a cost of service basis, either through new power plants or by entering long-term contracts with existing plants
- Develop renewable generation to meet the RPS, which would be sold on a cost of service basis

No retail suppliers were represented on the panel, though the Connecticut Business and Industry Association recommended retaining customer choice for all classes.

In comments to the panel, DPUC Chairman Kevin DelGobbo said that the Department "sees value" in alternate procurement strategies, including long-term contracts and even greater

flexibility in procurement. "We should be mindful however that while certain changes could offer the opportunity for ratepayer reward they also introduce additional ratepayer risk," DelGobbo said. The distribution companies continue to engage in market discovery concerning long-term contracts, which they have been authorized to use for Standard Service supplies since 2008.

DelGobbo also noted the "significant growth in customer migration" to alternative electric suppliers over the last year. "An ever growing number of Connecticut residents have seen value and an opportunity to reduce their energy costs by availing themselves of this 'choice,'" DelGobbo said.

DelGobbo stressed that the continued growth of the retail market and enhanced consumer safeguards go hand in hand. "Accordingly [the DPUC] will be submitting as part of its legislative package, a proposal to provide for a supplier code of conduct, as well as mechanisms to ensure that all parties involved in this market (aggregators, marketers etc.) are held accountable for their business practices."