

New York PSC market whitepapers draw mixed reviews

Direct Energy, Infinite, PULP weigh various proposals

While many of the retail firms in New York are still locked in a court battle with the PSC over regulations designed to guarantee savings compared to utility prices, they and other stakeholders took time yesterday to respond to a series of whitepapers in the case recently released by staff (PMT, May-6). The whitepapers laid out ways retailers could comply with the regulation which included a place for fixed-price deals in a state where utility rates fluctuate often.

The lawsuit is ongoing and several of the comments were preceded by filings noting the retailers are reserving their rights in the litigation. The National Energy Marketers Assn (NEM) only filed a response from that court case in the PSC docket.

Direct Energy told the PSC it was happy with some parts of the whitepapers but urged major changes for others. The staff came up with an increased notice requirement – modeled on Pennsylvania’s rules – for contract expirations in lieu of “affirmative consent” requirements that would have required a specific answer to get customers to switch onto products that comply with the proposed new regulations.

“In the absence of such a mechanism, Direct Energy estimates that it would lose between 80-90% of its mass market customer base in New York,” the firm said. That part of the order was the main reason the firm took part in the ongoing court case, it added.

Direct is grateful the whitepapers kept fixed-price products in place as they are important to small-business customers and give gas customers another option since the 30% renewable product is unavailable in that market. But the firm is not happy with the staff’s proposed benchmark for the 12-month, fixed-rate supply product, saying it would take New York into uncharted and unwelcome territory.

The retailer argued the reference price is an attempt to control energy service companies’ (ESCO) prices and thus goes beyond the PSC’s powers.

“Neither the Feb 23 order nor the reference-price whitepaper present any evidence that would support the conclusion that there is a market failure with respect to fixed-price service in markets for electric or gas service to residential or small commercial customers,” Direct Energy said. “In the absence of any such findings, even if the commission had the authority to regulate in this arena, it would be compelled to forbear from doing so.”

Direct also took issue with the formulas staff proposed to come up with the reference price in the first place, saying they were full of inaccuracies, ambiguities and false assumptions.

Infinite Energy told the PSC ideally it would like New York’s retail market to look at lot more like Texas, but it has heard back from staff and the commission that that was very unlikely. The firm’s filing yesterday came with a middle-ground proposal urging the PSC to make utilities create “arms’ length regulated affiliates to manage all commodity-related functions” for non-shopping customers.

Those regulated providers would continue to serve and offer monthly rates regulated by the PSC, ensuring its concerns with utility service are addressed.

“By separating the accounting that underlies utility ratemaking, the commission can ensure that its ratemaking responsibility is properly applied to utility delivery rates and, on a fully unbundled basis, utility commodity rates,” Infinite said. “Such regulated providers would be required to operate on the utility’s system in the same manner as ESCOs, fully unbundling commodity costs from delivery charges, thus ensuring that New York customers are paying no more or less for either service than is appropriate, thereby providing a level playing field for all suppliers,” it added.

That would solve many of the issues in the New York

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market and would immediately address the concerns of consumers, market participants and the PSC, the firm said. The completed unbundling of delivery from supply and the appropriate allocation of costs would reveal that retailers' prices are already competitive with utilities and can be more so, Infinite said.

PULP calls whitepapers weak

The Public Utility Law Project (PULP) has been advocating for stronger regulations in the retail market for years and argued the staff's whitepapers would water down what the PSC's initial order called for (PMT, Feb-24). "This order neither creates nor discusses an exception from the savings guarantee based on the type of ESCO contract for commodity service, eg, whether the ESCO rates vary monthly or are ostensibly fixed for the duration of the contract," PULP said.

The whitepapers were an attempt to compensate for

the failure to come up with any added products beyond the 30% renewables plan that constitute "value-added," PULP said. They are also trying to deal with two major arguments that retailers have brought to court – that utility pricing is almost impossible to figure out and that the guaranteed savings was excessive and unneeded.

The whitepapers were a compromise and undercut the strong stance taken in the reset order, it added.

The reference price that would let retailers keep offering fixed-price deals amounts to a gateway for continued overcharging, PULP said. The fixed-rate products could be set higher than utility rates and customers could be lured into them on false pretenses.

PULP also argued against the proposal to replace affirmative consent with three notices, saying it completely negates the requirement from the reset order by turning it into "implied consent" or "negative consent."

"The Consent Whitepaper proposal is unacceptable," it added. "It would allow switching a customer to a new contract for renewable energy that does not guarantee savings with no express or affirmative action on the part of the customer."