

STATE OF NEW YORK
PUBLIC SERVICE COMMISSION

At a session of the Public Service
Commission held in the City of
Albany on March 30, 2007

COMMISSIONER PRESENT:

Maureen F. Harris

CASE 07-G-0371 - In the Matter of the Appeal of Olympic Power, Inc. From the Revocation and Discontinuance of Its Eligibility, As An Energy Services Company, to Serve Retail Natural Gas Customers in New York State.

ORDER DENYING APPEAL

(Issued and Effective March 30, 2007)

BACKGROUND

In an Order Adopting ESCO Price Reporting Requirements and Enforcement Mechanisms issued November 8, 2006 in Case 06-M-0647 (Price Reporting Order), it was decided that energy services companies (ESCOs) serving customers in retail electric and natural gas markets must accurately report their prices for posting to our "Power to Choose" Web site. To satisfy that obligation, ESCOs must submit, by the fifth day of every month, for "each generally-available service they are offering to eligible residential customers, the price they would have charged for that service as of the first day of that month."¹ It was also decided that a mechanism for enforcing price reporting requirements was needed.

¹ Price Reporting Order, pp. 3-4.

Under the enforcement mechanisms, when an ESCO fails to properly report its prices, Department of Public Service Staff (Staff) would notify the ESCO of its deficiency and offer it an opportunity to cure the failure to report. If an ESCO fails to timely take advantage of the opportunity to cure, it would be precluded from enrolling new customers. Where an ESCO becomes a repeat offender, however, by continually failing to report prices, its eligibility to participate in retail energy markets could be withdrawn. The Price Reporting Order also noted that Staff was already authorized to revoke and discontinue ESCO eligibility to remedy other serious transgressions ESCOs might commit in violation of the Uniform Business Practices (UBP).²

Olympic Power, Inc. (Olympic), an ESCO serving retail gas customers, failed to report its prices for December 2006, February 2007, and March 2007, three of the first four months the price reporting requirement was in effect. After its first failure to comply in December 2006, the first sanction provided for in the Price Reporting Order was imposed; in a letter from Staff dated December 19, 2006 sent by certified mail, Olympic was denied permission to enroll new customers. On February 7, 2007, Olympic was sent a second certified letter advising it that it had failed to report its prices for a second time, for February 2007, and warning that it could lose its eligibility as an ESCO qualified to serve customers. Olympic did not respond to either of the certified letters.

Other efforts were made to contact Olympic and advise it of its responsibility to report prices. NEXUS Energy Software, which operates the "Power to Choose" Web site, sent

² See Case 98-M-1343, Retail Access Business Rules, Order Modifying Electronic Data Interchange (EDI) Standards and Uniform Business Practices (issued May 19, 2006).

Olympic monthly e-mail reminders that price reports were due. Moreover, Staff discussed Olympic's obligations to report prices in telephone conversations with it during December 2006 and January 2007, and Olympic promised to submit the required information and write a letter confirming it understood its obligations. While Olympic timely reported prices for January 2007, it did not submit the confirming letter requested of it, and then did not report prices for either February or March 2007.

After it failed to report prices for the third time, in March 2007, the Price Reporting Order's second sanction was imposed on Olympic. By certified letter from Staff dated March 15, 2007, Olympic's eligibility as an ESCO qualified to serve retail customers was revoked. The revocation was effective as of the date of the letter, subject to the completion of the process for the discontinuance of service to customers prescribed in the UBP.³

On March 20, 2007, Olympic filed an appeal from the revocation and discontinuance of its eligibility. In its appeal, Olympic apologizes for its failures to properly update prices and asks that those failures be excused.

Olympic's Appeal

According to Olympic, it was apprised of the revocation and discontinuance of its eligibility in an e-mail it received from Consolidated Edison Company of New York, Inc. (Con Edison). Olympic believes that the basis of the revocation was its failure to properly report prices, and its failure to update

³ UBP §2.F.3. Under that process, customers that decline to exercise an option to select a new commodity service provider are returned to utility commodity service without experiencing an interruption of service.

its Retail Access Eligibility Form (Eligibility Application) by January 31, 2007.

Pointing out that it commenced operating as an ESCO nearly seven years ago, Olympic explains it continued in operation even when participants in retail gas markets were encountering significant obstacles. Olympic adds that it has experienced difficult business circumstances since the commencement of the current gas heating season in November 2006, including staffing issues, computer failures, the relocation of its offices, and "zero degree temperatures."⁴ It lists the efforts it says it has made to address its difficulties and correct any deficiencies in its performance.

While conceding that it failed to submit a price report for March 2007, Olympic seeks to excuse its omission by claiming that "a wrong e-mail address was on file so most e-mail communication was heavily delayed."⁵ Olympic attempts to verify its claim that erroneous e-mail addresses caused its failure to report prices by attributing its failure to timely update its Eligibility Application to the same e-mail address errors.

In support of its position, Olympic submits a series of e-mails between it and Staff. Those e-mails document its failure to meet the January 31, 2007 deadline for updating its Eligibility Application, which includes an ESCO's e-mail addresses, and its efforts to comply with that requirement. In the e-mails, Olympic states that nothing in its Eligibility Application has changed, but it nonetheless submits another e-mail address for communicating with it.

⁴ Olympic Appeal, p. 2.

⁵ Olympic Appeal, p. 1.

In conclusion, Olympic asserts its customers rely upon and trust it. As a result, it asks that its appeal of the revocation and discontinuance determination be granted.

DISCUSSION AND CONCLUSION

As discussed in the ESCO Price Reporting Order, the price reporting requirement serves as the vehicle for facilitating the price discovery that is crucial to the further development of retail markets in New York. The price reporting requirement ensures that consumers can obtain the timely and accurate provision of pricing information they need to participate knowledgably in retail gas and electric markets. Olympic failed to timely submit this essential price information in three out of the first four months the price reporting requirement was in effect. It has failed to date to cure any of its reporting failures. Olympic's appeal is therefore denied.

The Price Reporting Order explained that some ESCOs had repeatedly ignored requests that they voluntarily provide price reporting information. As a result, mechanisms that would effectively enforce compliance with price reporting requirements were adopted. To assure that the enforcement mechanisms would be adequate, we decided in the Price Reporting Order that repeated failure to report prices could justify the second level sanction of withdrawing of an ESCO's eligibility to participate in retail markets. Olympic's failure to report prices in three out of four months, and to timely cure its price reporting failures, is precisely the sort of violation that the Price Reporting Order's second sanction was directed against.

Olympic's appeal presents no justification sufficient to warrant reversal of the decision to revoke and discontinue its eligibility, or adequate to support the reinstatement of its eligibility. The only evidence Olympic submits in support of

its appeal are the e-mails related, not to its failure to timely report prices, but to a separate failure to meet the January 31, 2007 deadline for updating its Eligibility Application.⁶ Olympic does not deny that it failed to report prices. It does not deny that it received the certified letters advising it of its failure to meet the price reporting requirements and warning it of the consequences of its continued failure to meet those requirements. It does not deny that, after telephone conversations with Staff, it promised to timely report prices and write a letter confirming it understood its price reporting obligations, and then failed to do either. Instead, Olympic bases its appeal on generalized references to problems with communications arising out of problems with its addresses, and difficulties in resolving problems its business has confronted.

It is an ESCO's obligation, however, to properly update its addresses. Moreover, Olympic's position is inconsistent. In the e-mails it submits in support of its appeal, it claims all of its Eligibility Application information has remained the same as previously reported, without change. Notwithstanding this claim, it then complains that its difficulties arise out of problems with its e-mail addresses, and it designates another e-mail address for contacting it that is different from the sender's address on the e-mail itself. Both of those e-mail addresses, however, had been used by Olympic previously, and both were used by NEXUS Energy Software when it sent monthly price reporting reminders to Olympic.⁷ Olympic also does not explain how it was able to successfully submit prices in January 2007, but was unable to provide the

⁶ That obligation is imposed at UBP §2.D.1. and §2.B.1.b.7.

⁷ As to mailing addresses, the address on Olympic's Appeal and the addresses on the certified mail letters Staff sent to Olympic are all the same.

information in three other months. Therefore, Olympic's position -- that e-mail address errors are the cause of its failure to report -- is not credible.

As to the difficulties in responding to changing business conditions that Olympic references, it is Olympic's obligation to manage its business in conformance with the UBP and our Orders. The staffing, computerization, office location, and cold weather issues it raises are common business problems that all ESCOs must manage, and are not a reason to except Olympic from the enforcement action taken against it, given its repeated failures to comply with the Price Reporting Order.

Therefore, Olympic's appeal raises no new argument and presents no new facts that would justify revisiting the decision to revoke and discontinue its eligibility as an ESCO qualified to participate in retail markets. That determination is confirmed, and Olympic shall cease serving customers at the conclusion of the discontinuance process.

It is ordered:

1. The appeal of Olympic Power, Inc. is denied.
2. This proceeding is closed.

(SIGNED)

Commissioner