Restructuring in the Rearview Mirror – a 10-Year Retrospective of California's Doomed Experiment with Electric Deregulation. By The Energy Overseer

Reorganization of Commonwealth More Complex Than Its News Release Indicates

The story behind Commonwealth Energy's corporate reorganization announcement this week takes the form of a settlement between the aggressive energy services provider and the Consumer Services Division of the California Public Utilities Commission. The agreement, submitted for CPUC approval January 7, specifies that company founder and former chief executive officer Fred Bloom will be precluded from "business practices, management or operations of Commonwealth in California for at least two years."

In addition, Commonwealth has agreed to issue refunds to thousands of customers who were presented with adjusted, supplementary bills for power between July and December 1998, and it will contribute $100,000 to a consumer education fund administered by the non-profit National Low Income Energy Consortium.

If approved without alteration by the CPUC, the stipulation will effectively terminate an investigation into Commonwealth's marketing practices launched last year. If commissioners want to change any part of the agreement, either of the parties will be free to walk away--but the agency's enforcement branch would likely pursue evidentiary hearings.

The case against Commonwealth focused on complaints from "a growing number of customers dissatisfied enough to write or call the commission," stated the order instituting the investigation. Most of the complaints centered on Commonwealth's "back-billing" of customers for power sales "as long as seven months after initial billings."

While the company contended that it should be able to adjust billings because of delayed settlements of pricing through the California Power Exchange, commission staff said the ESP did not have authority to do so because it had not notified its customers of such a possibility when they signed up for service.

At the time, CSD estimated as many as 19,000 of Commonwealth's customers had been sent supplemental bills, "ranging from just a few cents to over $2,000." The adjusted bills reportedly wiped out their promised savings compared to Power Exchange prices that Commonwealth had touted in its marketing effort.

Later, CSD was on the verge of broadening the investigation to include allegations that the company had "supplied false information" in its ESP registration form. Specifically, a September 21 report from CSD investigator Richard Chan alleged that Commonwealth's ESP registration filing had failed to reveal that five states, including California, had taken "administrative actions" against Bloom since 1988--essentially ordering him to cease selling unregistered securities or commodities.

Though listed on commission agendas during October and November, the additional charges were never formalized and may have been used by CSD as a tactic to pressure the company into a settlement.

Nonetheless, the settlement allows Chan's investigative report into the record but specifically resolves any claim by CSD against Commonwealth or its officers or directors for making any false or misleading registration statements. The company agreed to file an updated registration within a month of the commission's approval of the settlement.

In contrast to the wording of the settlement document, Commonwealth's public announcement of corporate changes tended to accentuate the positive and omitted any mention of the CPUC investigation. The company on January 12 said it was establishing a new "national branding program" called electricAmerica in retail power markets outside of California. As president of the new entity, Bloom will lead its marketing effort in Pennsylvania, where the group operates as an electric generation supplier. The firm is also planning to enter the New Jersey market as well as to operate in other states as they open their retail power markets to competition. Commonwealth currently claims 91,000 direct-access customers in California and Pennsylvania; in California nearly all 89,000 customers are receiving green power.

Somewhat buried in the news release was the fact that Commonwealth's CEO is now Ian Carter, who previously served on the company's board of directors. Carter, identified as a "West Point graduate and seasoned businessman" in the release, praised Bloom for establishing Commonwealth as the leader in California's residential direct-access marketplace. "I can tell you that he is more excited than ever about the possibilities that exist in the new electricity markets," Carter said of Bloom. "Our existing management group is well qualified to continue operations here, leaving Mr. Bloom free to do what he does best-- developing new marketplaces."

In a separate announcement, Commonwealth named James Oliver as its new chief financial officer. Oliver will help the company to implement its plans to become a publicly traded company later this year.

Bloom was said to be unavailable for comment to CALIFORNIA ENERGY MARKETS this week. Commonwealth's senior vice president of marketing Jay Goth, however, confirmed the terms of the settlement with CSD and its linkage to Bloom's departure from the CEO seat and the California market.

"He's going to be 100 percent involved in national expansion," Goth told CEM. "We're just happy the issues have been resolved, and we want to get on to selling and quit dealing with the regulatory issues."

Without admitting to any of CSD's allegations, Commonwealth has agreed to "fully refund the difference between the adjusted bill and the amount originally billed for the period July 1998 to December 1998," stated the stipulation. Customers who did not pay the adjustment will have the supplemental charge deleted from their accounts. For customers who paid neither the original bill nor the adjusted bill, Commonwealth agreed to write down the amount owed. The company has already begun processing customer credits and refunds and anticipates completing the process by March 1, after which its relevant accounts will be subject to an independent audit.

The company this week said it expects that about $250,000 in disputed billings will be credited back to customers or not collected.

There can be no doubt that Bloom and company expanded the California direct-access marketplace with assertive marketing and novel approaches. The firm introduced price competition to the green power market and won several key contracts with government agencies in San Diego and Santa Monica.

But Bloom's brashness earned him a powerful enemy in the person of state Senator Steve Peace, who attacked Commonwealth from his seat on the Senate Energy Committee and in critical letters to the San Diego government pool that signed up for Commonwealth's services. Peace even set the California Energy Commission on an investigation of the company's marketing claims about certain energy-saving devices.

We don't know how Bloom will fare in the national marketplace, but it is safe to say that, despite his departure from California activities, his story is far from over [**Arthur O'Donnell].**

This article originally appeared in California Energy Markets, January 14, 2000.