Energy Choice Matters

March 17, 2008

Ohio Supremes Find PUCO Order On AEP IGCC Plant Violated Choice Law

The Ohio Supreme Court struck PUCO's approval to charge ratepayers of Columbus Southern Power and Ohio Power for AEP's planned integrated gas combined cycle (IGCC) coal plant, in a 7-0 decision hailed by the Ohio Consumers' Counsel.

The Court found that PUCO's order violated Ohio's electric choice law regarding the pricing of electric generation service. The Court also determined that the PUCO's decision to approve the plant was not supported on the basis of its regulation of distribution service, and denied PUCO's argument that generation is ancillary to distribution service.

"The commission's holding blurs the legislative distinctions between electric transmission, generation and distribution," the Court found. "Adoption of its rationale may result in the three functions all being subject to commission regulation, which would negate the legislature's deregulation of the electric-utility industry."

The Court, while sending the decision back to PUCO, stopped short of ordering immediate refunds of $24 million in R&D costs collected to date, but refunds could come in 2011 if the plant's construction does not progress.

A similar IGCC plant AEP is building in West Virginia would cost $2.2 billion, OCC said.

En-Touch Systems Poised to Offer Electricity to Houston Planned Communities

Another Texas telecom provider sees selling electricity as the next part of its bundled package of offerings.

Cable/telecom provider En-Touch Systems completed ERCOT EDI and Market Link certification for the CenterPoint territory earlier this month, paving the way for its active participation in the market.

En-Touch Systems received its REP certificate from the PUCT in September and is 85% owned by private equity firm Boston Ventures.

The firm was founded in Houston to provide bundled telecommunication services to master-planned communities, including high speed internet, digital cable, security services, and local and long-distance telephone services. Since launching in 1996, it has provided service to over 12,000 homes and business in the Houston area.

En-Touch told the PUCT it plans to provide retail electric service to its primarily residential customer base, "as a natural 'next step' in caring for its customers' needs."

President Richard Gerstemeier served a stint at TXU Communications in addition to various telecomm positions.

PNM Buyout of Cap Rock Would Not Impede Retail Choice, Firms Say

PNM Resources formally filed a merger application with the PUCT (docket 35460) reflecting its buyout of Cap Rock Energy. Cap Rock operates three service territories, two in ERCOT and one in SPP, all of which have been exempt from retail competition. When the ERCOT market opened on Jan. 1, 2002, Cap Rock was still a cooperative but completed a transition to a shareholder-

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ComEd Files Blended SOS Prices for June 1 Start

Commonwealth Edison filed with the ICC the blended SOS rates which are to start June 1 and are the result of ComEd's recent procurement (Matters, 3/13/08) plus existing contracts:

June 1, 2008 - May 31, 2009 ComEd Electricity Supply Charges (cents/kWh)

Customer Group	Summer	Non-Summer
Residential Non-Electric Space Heating	7.588	7.410
Residential Electric Space Heating	6.035	4.581
Watt-hour Non-Electric Space Heating	7.748	7.531
Demand Non-Electric Space Heating	7.640	7.481
Nonresidential Electrical Space Heating	7.284	7.167
Dusk to Dawn Lighting	2.756	3.292
General Lighting	7.202	7.179

Rates include the uncollectibles factor applied pursuant to Rate BES - Basic Electric Service. ComEd stresses customers do not have to pay the above rates and can shop for an alternative supplier.

Commentary: Don't Overlook Connecticut Mass Market

In Surges and Circuits last week, we gave a thumbs down to retailers who are bypassing Connecticut's mass market (broadly defined by us as under 100 kW) in search of greener pastures.

It all stems from an innocuous Q&A during a panel at KEMA's executive forum where we asked five mass marketers, three of whom are major players with multi-state footprints, when they were going to offer choices to Connecticut residential and small commercial customers, since the legislature last summer adopted reforms to boost choices available to small customers (Matters, 3/12/08).

The silence we got for an answer surprised us, since we tipped Connecticut a few weeks ago to rival New York as the second-best mass market behind ERCOT, depending on where New York goes with some of its open dockets (long-term contracts, retail access programs, etc.).

Speaking privately with the principals, one replied the reason they weren't in Connecticut was the lack of headroom, which is an understandable consideration. At the same time, we did not press for his definition of headroom, but the comment can be taken several ways. Connecticut standard service prices could either:

(1) Be lower than the retailer's own commodity costs;

(2) Be higher than the retailer's own commodity costs but not high enough to cover acquisition and other expenses; or

(3) Be high enough to cover commodity and acquisition costs, but still only provide a meager return which may not cover risk or otherwise be attractive enough for start-up costs of a new market.

If the Connecticut standard service generation prices are below retailers' internal commodity supply costs, we understand it would be difficult to offer a product.

However, we still believe that headroom represents an old-view of looking at the business which does not recognize the implicit value competitive retailers should be bringing to consumers that would allow them to charge more for power, since competitive service with value-adding features should be vastly superior to "basic" utility service.

We don't often hear Lexus complaining they don't have headroom because Kia is selling cars for $40,000 less than the luxury brand, nor do we see Neiman Marcus refusing to enter markets because there might be a Wal-Mart within 10 square miles that would be undercutting their prices, because obviously their services are not substitutes because one provider is adding significant value for a certain group of customers. But this is all an argument for another day.

Our real problem would be with scenario #3. We're afraid some CEOs just don't like the fact they chose to be in a cutthroat industry where, once the transition to a full competitive model is complete, margins should not be any more than 5% (unless someone finds a truly value-adding product no one else can replicate). All retail sectors (mass merchandise, grocery, traditional telecom, petroleum marketing) suffer from eroded margins, and retail power should be no different, and if companies aren't willing to face that ugly fact, they have a problem.

In other words, companies that sit waiting for an SOS auction to hit consumers with a shocking price hike that allows retailers to offer lower prices while still collecting 10% or so margins are: 1) going to see fewer and fewer opportunities as volatility-limiting portfolios are implemented for SOS; and 2) doing a disservice to retail customers and policymakers who expected retailers to enter the market so long as customers had a transparent, market-based price – not a price that guarantees retailers double-digit margins without accompanying value-added services. Policymakers exposing mass market customers to LMP-based SOS prices are not going to be able to justify such a market design for long if it does not produce the expected entrance of new competitors.

Other CEOs told us they simply weren't aware how attractive the Connecticut market was, and that it offered programs such as POR. Again, we find this a bit surprising, although having worked at a start-up we know how busy it is, but we don't know how a year-long battle at the legislature to pass a very pro-competition bill could go unnoticed. Maybe that's one of the reasons we feel this space needs our publication.

Many of the principals expressed internal limitations on growth and pointed to another state (implicitly Illinois) as their next focus, which was understandable, but at the same time frustrating.

We view Illinois as one of the four top mass markets in the U. S. (along with ERCOT, New York and Connecticut), but we're afraid the state's sheer size is driving retailers' interest, rather than an honest evaluation of market conditions. Because while we view Illinois and Connecticut as nearly equally hospitable to retail choice, it amazes us that Illinois has become the "hot" market, while Connecticut customers are left to wonder what their policymakers have to do to attract retailers.

Some five retailers (Direct Energy, ConEdison Solutions, MXEnergy, Dominion Retail [via Levco] and local startup Public Power & Utility) are serving the Connecticut mass market. South Jersey Energy recently received its license while Pepco Energy Services has a pending application but we understand both would limit their mass market participation to small C&Is. Horizon Power & Light also has a pending application and it would pursue residential customers.

In any event, we thought we'd break down some of the features of both Connecticut and Illinois:

Feature	Connecticut	Illinois	Advantage
SOS	RFPs laddered up to three years	State-managed portfolio procurement starting soon	Push
POR	Mandatory, Non-recourse Currently available	Mandated by law. Utilities in the process of implementation	Connecticut
UCB	Available	Must be offered by law but utilities in process of implementation	Connecticut
Marketer Referral	Operational	Mandated by law; utilities in process of implementation	Connecticut
Office of Retail Market Development	No	Yes	Illinois
Online price website	In Development	None	Connecticut
ISOs	One	Two	Connecticut

We also view Connecticut customers are more eager to buy from a competitive retailer, if one would make them an offer. We were intimately involved with the development and rollout of an Commonwealth Edison mass market (small C&I) campaign during the summer of 2007 which launched just after Labor Day.

What we can say anecdotally about our experience is that many customers were not ready to switch, had not really heard about electric choice (despite more than a year's worth of rate cap stories in the news), and were not clamoring to buy their electricity from someone else.

Thus, even though the rollout was giving customers a locked, *fixed* price at a rate *lower* than the utility SOS (which was not due to change for some nine months), customers were slow to sign up.

Meanwhile, our experience in talking with Connecticut load representatives, is that small businesses especially are craving choice, or anything that would help lower their electric bill.

We think the average Connecticut consumer, even residential, is a bit more sophisticated when it comes to shopping because even though they might not have had commodity supplier choices until recently, they have been actively bombarded with other "choices" to help them take control of their electric bills, given efforts to reduce Connecticut's congestion.

We're thinking programs like the grants for distributed resources, a host of energy efficiency programs, plus the state's Clean Energy Options. Policymakers also tell us their constituents are starved for real choices, so even though Connecticut might have less load than Illinois, retailers may win a lot more deals.

Our aim is not to second-guess retailers choosing Illinois, but it is to publicize Connecticut's market structure and make sure retailers are aware of it.

Because it seems to us, if there is not a strong response to the reforms listed above, state policymakers may just throw up their hands on retail choice and conclude competitors have no interest in offering new products and services to the state's residents.

While we understand the business case for Illinois, we would not want to work for a retailer and have to explain to DPUC Chairman Down Downes and his fellow Commissioners that while the Connecticut's market looks a lot like the Illinois market (if not better), we just aren't going to offer a products in Connecticut because there's not enough load to attract us.

As noted, Direct Energy is one of the five players in the mass market space, which we consider a strong endorsement because Direct isn't in some of the more marginal mass markets (Maryland, Massachusetts, Washington D.C., etc), and for electricity markets only to small customers in ERCOT and New York. (It also has mass market customers acquired through aggregation in Pike County, Penn.)

Chris Kallaher, Director of Government & Regulatory Affairs for Direct, agreed with our concerns that Connecticut's markets, "won't remain static," on the mere theory of electric choice; retailers have to bring value to customers to keep up the positive momentum. Kallaher touted the legal right of any Connecticut customer to call their utility and get an advanced meter for free as giving retailers greater freedom in product offerings than in some of the other mass markets in the U. S.

Kallaher also told us Direct is using a mix of in-person sales calls, outbound telemarketing and web-sales to very actively pursue all of the small customer classes at CL&P and UI.

We had told you about the Conn. price offerings for Direct and Dominion/Levco (Matters. 3/10/2008). Since that time, the remaining retailers have made their compliance filings, and here are their prices. The standard service prices can be viewed in our March 10 story.

CL&P Area

Retailer	**Price ¢/kWh**	**Rate Classes**	**Description**
Public Power & Utility	10.294	All eligible for standard service	Monthly Variable Rate
MXEnergy	11.39	1-30	3-month term, then variable
ConEdison Solutions	11.59	30, 35, All Residential	12 month fixed price
MXEnergy	12.98	1	12 month fixed referral plan

UI Area Retailer	Price ¢/kWh	Rate Classes	Description
Public Power Utility	10.294	All eligible for standard service	Monthly Variable Rate
ConEdison Solutions	11.59	R, RT, GS GST	12 month fixed price
MXEnergy	12.29	GS	3-month term, then variable
MXEnergy	13.49	R	12 month fixed referral plan

NYISO Weighs in on ESCO Overcharges

The New York ISO does not take a position regarding National Grid's petition to rebill several months of 2005 because of a Grid billing error, but urged FERC to, "carefully consider the importance to NYISO customers of both accuracy and financial certainty" (EL08-40).

National Grid, supported by several ESCOs, wants the ISO to rebill the months of March through August 2005 to correct a National Grid billing error introduced late in the billing process which cost ESCOs $7 million (Matters, 3/14/08).

A billing process that promotes the, "finality of prior settlements is vitally important to the effective functioning of the NYISO markets," the ISO said.

NYISO suggested National Grid could address the billing inequities directly with the affected parties in a manner that would not require the NYISO to rebill customers.

The NYISO would have to re-settle all customer invoices issued from March 2005 through August 2005 if FERC granted Grid's petition, since it does not have the capability to limit the scope of adjustments to only those parties or markets that were specifically affected by Grid's error.

NYISO also stressed that while it agrees that FERC or a court could grant National Grid the desired relief, its tariff expressly prohibits it from adjusting final bills on its own, without directives from FERC or a court.

Relationship Between ICR, Capacity Prices "Axiomatic," ISO-NE Says

FERC's power to set installed capacity requirements (ICR) is "unassailable," ISO New England told the Commission in an answer to the Connecticut DPUC's request for rehearing in ER05-715-002 in which FERC accepted the ISO-determined ICR.

The DPUC had claimed that since the ICR does not affect capacity prices under the ISO's Forward Capacity Market, FERC's wholesale price jurisdiction does not allow it to supersede a state's role in determining ICR (Matters, 2/29/08).

But, "[i]t is axiomatic that the level at which ICR is established will have a direct effect on the Capacity Clearing Prices in the FCM," the ISO responded.

In the descending clock auction, the ISO procures an amount of capacity equal to ICR, and stops the auction when quantity offered equals ICR, and sets the Capacity Clearing Price accordingly.

Thus the ICR necessarily affects or controls the capacity price, "bringing it squarely within the Commission's jurisdiction," the ISO explained.

The ISO also stressed that the ICR does not overstep the state's jurisdiction over generation. The ICR does not mandate new generation construction, the ISO observed, and the capacity needed to meet the ICR could come from demand resources or import contracts.

Marketers Seek Seat in Transmission Spat Over Maine-Canada Tie

What once appeared to be a "bilateral dispute over a transmission service agreement" in a case to change the designation of Maine Electric Power's 345-kV line linking Central Maine Power and Bangor Hydro Electric to New Brunswick Power may likely have, "much broader market implications," a coalition of wholesale and retail power marketers told FERC (ER07-1289).

Maine Electric Power had applied to

change its designation from an "Other Transmission Facility" to a Pool Transmission Facility offered through ISO New England Regional Transmission Service.

The marketers group, which includes Constellation Energy Commodities Group and Constellation NewEnergy, Conectiv Energy Supply, Direct Energy Services and Energy America, Strategic Energy, Pepco Energy Services, and SUEZ Energy Resources NA, asked to intervene out-of-time in the case because a settlement among Maine Electric Power, Casco Bay Energy and other parties may impose additional costs on the power marketers.

Casco Bay Energy has protested rolling Maine Electric Power's line into Regional Transmission Service, arguing the plan effectively terminated its 25-year, 500 MW transmission service agreement which it claimed was a hedge against congestion.

Casco Bay Energy requested a grandfathering option that would preserve its existing rights, but the ISO responded such a proposal would not be feasible given the ISO's LMP-based market system.

FERC set the matter for settlement.

Briefly:

Coral Power Seeks Name Change OK

Coral Power asked the PUCT for an amendment to its REP certificate to reflect a name change to Shell Energy North America. The Coral subsidiaries are being merged into their parent unit as Shell seeks to streamline its structure and unify its brand identity (docket 35461). Coral Energy Resources, Coral Power, Coral Energy Management and Coral Gas Marketing will all be known as Shell Energy North America starting June 1.

Md. PSC Wants FERC to Take Notice of PJM Report

The Maryland PSC made a motion to lodge excerpts of the PJM 2007 State of the Markets report (Matters, 3/12/08) in its petition for FERC to remove bid cap exemptions for 56 grandfathered generators in PJM (EL08-34). In the report, the market monitor had argued that "it would be reasonable to remove the exemption on a going forward basis," given revenues available from the Reliability Pricing Model forward capacity market and scarcity pricing.

PSC Asks For Opinion on ConEd DR Compensation

The New York PSC asked stakeholders to comment on the latest updates to Consolidated Edison's Distribution Load Relief Program offered through Rider U. The PSC asked what are appropriate compensation levels, whether compensation should be limited when customers participate in both ConEd's program and the NYISO's Special Case Resources program, and whether compensation should differ for customers using behind the meter generation. Comments are due March 26 in case 08-E-0176. The PSC also posted a report on the ConEd program at http://www.dps.state.ny.us/Case_08-E-0176.htm

PNM - Cap Rock ... *From 1*

owned utility in 2003. PNM Witness Stacy Whitehurst, Supervisor of Regulatory Policy, testified as follows:

Q. WILL THIS TRANSACTION "IMPEDE RETAIL COMPETITION"?

A. No. Cap Rock has three distinct service territories, two of which are in ERCOT and the other is in the Southwest Power Pool ("SPP"). Retail competition, as contemplated under Chapter 39 of PURA, is not available in SPP at this time; and the two territories in ERCOT were originally exempt from competition and still have not moved to competition. Since none of the Cap Rock service territories are in retail competition at this time, this transaction will not impede competition.

What isn't clear is that as Cap Rock, which had previously offered stock and later taken private, becomes owned by a larger IOU whose current ERCOT service territory (Texas New Mexico Power) is open to retail choice, what basis will exist for the current exemption of Cap Rock's two ERCOT service areas from retail choice. We'll follow up with PNM for an answer. Cap Rock serves about 36,000 customers.

Cap Rock President Melissa Davis testified:

Q. WILL THIS TRANSACTION IMPEDE COMPETITION?

A. No. Cap Rock's transition to retail competition is governed by PURA § 39.102(d) & (e). The Commission's authority to transition Cap Rock to competition is not affected by the transaction.

PURA § 39.102(d) & (e) [with (a) included for context] states:

Sec. 39.102. RETAIL CUSTOMER CHOICE.

(a) Each retail customer in this state, except retail customers of electric cooperatives and municipally owned utilities that have not opted for customer choice, shall have customer choice on and after January 1, 2002.

...

(d) The commission shall oversee the compliance with this chapter by electric utilities that were not subject to this chapter before September 1, 2003, and in so doing shall establish schedules and procedures and require commission approvals as it deems necessary to achieve the objectives of this chapter. This subsection does not apply to an electric utility to which Subsection (c) applies.

(e) In establishing a schedule under Subsection (d), the commission shall consider:

(1) the effect of customer choice on the reliability of service provided by the electric utility;

(2) whether the electric utility's service area is located in more than one power region;

(3) whether any applicable power region has been certified as a qualifying power region under Section 39.152(a);

(4) whether other electric utilities in the power region offer retail customer choice; and

(5) any other relevant factor.