Energy Choice Matters
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Exelon Passing on Big Mergers; Looks to Smaller, Complementary Acquisitions

Exelon won't be pursuing another blockbuster merger like its attempted merger with PSEG, CEO John Rowe told investors on an earnings call yesterday.

Exelon has listened to investors who have cautioned that any potential combinations would dilute rather than enhance earnings, Rowe reported. After looking very carefully at all the obvious and most attractive possibilities in terms of large mergers, Rowe noted it would be very difficult to find a transaction that would add value to Exelon's low-cost, low-carbon fleet, and that could be executed in a "predictable" way. Regulatory demands over market power and ratepayer benefits ultimately doomed the Exelon-PSEG marriage.

Instead of looking for the headline-grabbing mega-merger, Exelon will keep focusing on small acquisitions or swaps, or potentially adding new generation.

Costs and pricing don't make anything immediately attractive, although Rowe reported Exelon is studying gas-fired generation in Texas and PJM. However, in PJM, the generator has to make sure additions would not create market power problems, and in Texas, Exelon wants to know more about how wind and transmission development will progress before evaluating the economics of gas generation.

California is also on the generator's radar screen, although it's still early to commit to anything.

Exelon is green and wants to stay green in any acquisitions, as Rowe expects much of his company's value will come from its low-carbon nuclear fleet, all of which is in competitive territories, in a carbon-regulated world.

Exelon first quarter earnings were hurt by scheduled nuclear refueling outages, as net income fell to $581 million from $691 million in the year-ago quarter.

Quarterly profits at the IPP unit Exelon Generation were $438 million compared with $560 million in the first quarter of 2007.

Exelon-operated nuclear plants achieved an 89% capacity factor for the first quarter of 2008

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NSTAR Didn't Send Notice of Mirant Deal to Marketers

Gas marketers doing business in NSTAR Gas's service territory were not served with notice of NSTAR's proposal to extend a 5% higher gas imbalance tolerance to the Mirant Kendall gas-fired power plant as the DPU had directed in its original Order of Notice (08-GC-1).

Apparently, NSTAR relied on an incorrect marketers list provided by the DPU. Therefore the DPU directed NSTAR to submit notices to gas marketers in its service territory using a corrected list. Marketers will have until May 2 to intervene and file comments.

A hearing officer suspended the case's procedural schedule pending service of the notice and subsequent interventions.

As first reported here (Matters, 4/16/08), the only parties to file timely motions for intervenor status were the Attorney General and Massachusetts Institute of Technology, aside from NSTAR, Mirant and DPU staff.

No competitive supplier or marketer trade group intervened until Hess became aware of the proposal and filed for late intervention earlier this month. Hess's intervention led to the discovery that NSTAR had erred in sending out notices to marketers.

Surges and Circuits

A weekly review of what's up and down in energy markets.

Power Surges

Duquesne Zone Generators and all PJM Load: FERC sets process for generators in the Duquesne Zone to obtain transmission rights to participate in May's RPM auction, which will prevent price spikes caused by excluding such generation. The generators had been in limbo since Duquesne is leaving PJM but hasn't yet done so, making it unclear, prior to FERC's order this week, from whom they could obtain the needed firm transmission rights to participate in RPM as external resources.

Push

Ohio Retail Market: Aside from the FirstEnergy territory, the legislation creating electric security plans should not produce any measurable change in the state's retail power markets for the utilities which still own generation (AEP, Duke, Dayton Power & Light), but the bill also prevents any backward movement. Additionally, the attractive FirstEnergy (Cleveland, Toledo, Akron) territory could see market-based rates as soon as 2009, depending on whether PPAs in its electric security plan can be beaten by competitive market procurement.

Short Circuits

NSTAR: The utility did not serve notice of its proposed Mirant-only imbalance tolerance expansion on gas marketers in its service territory, prompting the DPU to halt the case's procedural schedule to give marketers a chance to intervene.

ConocoPhillips Files Formal Complaint Against Entergy Over Revoked TSAs

ConocoPhillips filed a complaint against Entergy at FERC for Entergy's, "unilateral termination of two firm point-to-point transmission service agreements ('TSAs')," under Entergy's OATT (EL08-59).

ConocoPhillips had made the TSA reservations under Entergy's OASIS, and the reservations were accepted and therefore binding on Entergy, ConocoPhillips reported.

But three and a half months after Entergy had confirmed the firm transmission reservations, Entergy annulled the reservations. In one case, service had already started; in the second case, termination was only days before service was to have begun.

According to ConocoPhillips, Entergy claimed that the termination of the TSAs was appropriate because Entergy had erroneously oversubscribed its transmission system.

But in cases of oversubscription, FERC expects transmission providers to promptly discover and correct such errors, ConocoPhillips argued, by offering alternative transmission solutions. The OATT, ConocoPhillips added, requires the transmission provider to have sufficient facilities in place to provide firm service, or, if not, to curtail firm users on a pro rata basis or offer redispatch.

Entergy did none of those, ConocoPhillips told FERC. "[A]rbitrary bumping of the entirety of firm transmission reservations is an impressible way to handle a system constraint," ConocoPhillips said.

Entergy has also not explained why its error persisted for months, nor does such action justify ConocoPhillips enduring the entire burden of Entergy's error, ConocoPhillips said.

Entergy's error and subsequent terminations deprived ConocoPhillips of moving power from a 350 MW cogeneration facility out of Entergy's system into the Midwest ISO markets. Instead, ConocoPhillips had to sell the power to Entergy at the avoided cost rate, which is a lower price that what is available in the MISO market, ConocoPhillips reported.

ConocoPhillips wants FERC to find that Entergy violated its OATT, at which time ConocoPhillips will determine what relief to seek. It is not seeking damages for breach-of-contract in its complaint, noting FERC precedent.

BPU Says Scarcity Pricing Meaningless in World of Static Retail Rates (So Asks FERC to Not Raise Offers Caps)

The New Jersey BPU opposed FERC's proposal in the wholesale competition NOPR (Matters, 4/21/08) to create greater scarcity pricing in RTOs if such a policy results in increasing or removing energy offer caps (AD07-07).

Offer caps, FERC has noted, act as barriers to demand response, but the BPU cautioned that eliminating the offer caps won't produce the Commission's desired result of greater demand resources if customers cannot or do not react.

Demand-side resources that pay a fixed seasonal or annual retail price for electricity will have no reason to respond to a dramatic increase in hourly prices, the BPU pointed out.

And under the BPU's regime, virtually all residential customers pay fixed retail prices, as do virtually all C&I customers below 1,000 kW.

"In other words, a major increase in wholesale electricity prices during peak hours cannot be expected to attract new demand resources from the large majority of New Jersey customers," the BPU observed.

"Under the Commission's proposal, all customers paying fixed retail prices would pay more for their electricity, but would have no additional information or incentive to reduce their demand at peak times."

The BPU didn't address the potential for changing retail tariffs to accommodate price response.

Calif. Court Deals Setback to Irrigation District's Quest to Take PG&E's System

A California state appeals court backed Pacific Gas & Electric in attempts by the South San Joaquin Irrigation District (SSJID) to enter the retail electric business by seizing the utility's assets.

The court ruled that the irrigation district needed approval from the San Joaquin County Local Area Formation Commission (LAFCo) to enter the retail power business by condemning PG&E's wires by eminent domain.

LAFCo had denied a petition from the irrigation district, which sells wholesale power, to expand into retail service. The irrigation district then argued that it did not actually need LAFCo's approval for its plan, and the commission's overview was only permissive. The court disagreed.

"Interpreting Article 1.5 (SJ LAFCo's authority) as entirely permissive would be nonsensical," the court found.

"There would be no point in establishing a detailed, timely and costly procedure for LAFCo approval if a disappointed applicant could simply disregard the decision of LAFCo and proceed with its plan to provide a new or different service," the court held.

The court also rejected attempts by the irrigation district to depose two former LAFCo commissioners.

PG&E hailed the decision and noted LAFCo review ensures checks and balances to protect customers.

The utility called the irrigation district's pursuit of PG&E's assets, "unfortunate," as the district has, "frivolously squandered more than $8 million since 2006 and is committing more than $11.5 million more of public dollars to pursue an unsound business plan that has been denied by multiple regulatory and judicial bodies in which it has applied."

The irrigation district is to consider its options Tuesday but PG&E promised to "vigorously" continue its defense of its system.

Briefly:

Texas Power Joins Home Services Website WhiteFence

Mass market REP Texas Power joined a growing list of electric retailers seeking customers through utility service website WhiteFence, which provides consumers with online comparisons of prices for phone, cable/ satellite, internet, gas and electric service. The website attracts over 100,000 home service shoppers in Texas per month. Other REPs listed on WhiteFence include Commerce Energy, Direct Energy (plus CPL and WTU), First Choice Power, Gexa Energy, Green Mountain Energy, Reliant Energy, Spark Energy, and TXU Energy.

N.Y. PSC Tweaks Estimation Method for NYSEG/RGE Bills

The NY PSC approved NYSEG and Rochester Gas & Electric's requested change in how they will estimate bills of non-residential electric and gas heating customers when a meter read is not available (07-M-1052). The utilities will estimate bills based on the customer's year-ago usage, rather than using the previous month's usage as a reference, as had been done previously. Using the prior year's month as the basis for the estimate, which is currently done for residential heating customers, is preferable because usage of heating customers varies significantly from month to month, the utilities noted. Non-residential electric or gas non-heating customers will still receive estimated bills based on the prior month's usage, except where the customer's historic usage pattern indicates that use of the same billing period in the prior year would yield a more accurate estimate, such as for a seasonal customer.

Conn. AG Says CL&P Can't Back Bill for Longer than One Year

Connecticut AG Richard Blumenthal opposed Connecticut Light & Power's proposed back billing plan for time-of-use customers who did not receive bills for several months earlier this year because the plan would violate state statutes (08-02-06). Blumenthal argued that Conn. Gen. Stat. § 16-259a prohibits utilities from collecting monies from billing errors past one year after the date of error. Thus, proposed billing arrangements that would allow customers to pay their back billing over more than 12 months (such as paying for December 2007 usage through February 2009 to make the costs manageable) would contravene the law's prohibition on collecting billing errors more than one year after they occur, Blumenthal reasoned. December 2007 billings can only be collected through December 2008, he claimed. Although Blumenthal did not specifically cite back billing arrangements of competitive suppliers (Matters, 4/21/08), his view of the legislation would apply to them as well, since suppliers are subject to the same statutory rules.

ISO-NE Sees Adequate Summer Supplies

ISO New England projected adequate power supplies and demand response to meet summer demand yesterday. The ISO expects a peak of 28,000 MW under "normal" weather conditions (90 degrees). An extended heat wave of 95 degrees could push the peak to a record 29,900 MW. The ISO anticipates 31,100 MW of generating capacity available during the summer plus 1,700 MW of demand response, nearly a doubling of last year's demand resources.

DPUC OKs CL&P Default Service Procurement

The Connecticut DPUC approved Connecticut Light & Power's RFP procurement for standard service and last resort service conducted on April 23 (06-01-08PH02). The bidding was for three separate standard service terms: July through December 2008 (filling the open 20% of the portfolio), calendar year 2009, and calendar year 2010. Last resort service was procured for the periods of July through September 2008, October through December 2008 and January through March 2009. In recommending approval of the RFP results, the Office of Consumer Counsel noted that the, "wisdom of Connecticut's laddered procurements are [sic] clear." "By spreading procurements over several rounds, CL&P customers will have lower prices in late 2008 (and probably 2009) than if all their power were purchased this week," the OCC noted, pointing to record high energy prices. Winning bidders and prices remain confidential.

Exelon *... From 1*

compared with 96.4% for the first quarter of 2007. Exelon-operated nuclear plants completed four scheduled refueling outages and began a fifth in the first quarter of 2008 (104 days), compared with completing one refueling outage and beginning a second in the first quarter of 2007 (40 days).

Exelon's fossil fleet also had lower availability of 74% in the 2008 quarter versus 92.8% in the year-ago quarter, primarily from outages at the Eddystone coal units.