Energy Choice Matters

August 11, 2008

Proposed Texas Disconnect Moratorium Would be Broader Than 2006 Suspension

The emergency disconnect moratorium sought by Texas State Sen. Juan Hinojosa (35973, Matters, 8/8/08) would expand the types of customers protected by the moratorium to include, among others, all infants and children up to four years of age, and all customers 65 years of age and older.

The 2006 emergency rule was limited to low-income seniors and critical care customers, as well as low-income customers who entered into a deferred payment plan. As then-Commissioner Barry Smitherman wrote in a memo at that time, applying a moratorium to all seniors would include Texas billionaires such as T. Boone Pickens, grocery kingpin Charles Butt, and others.

Hinojosa also petitioned the PUCT to require REPs to track the number of moratorium inquirers and those who actually use the moratorium, to be filed publicly at the Commission. "This would avoid the unfortunate circumstance which resulted from the 2006 emergency rule where electric companies collected their own unverified data and used it to reject legislative attempts to strengthen disconnection protections," Hinojosa charged.

Under Hinojosa's proposal, disconnects would be suspended from Aug. 14 through Sept. 30 for customers whose households include:

(1) an infant or child who is younger than four years of age;

(2) a person who is at least 65 years of age;

(3) a person who is eligible for lifeline service under Section 55.015(d-1), Utilities Code; or

(4) a person for whom an interruption or suspension of electric service will create a dangerous or life-threatening condition.

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Hudson Seeing Strong ERCOT Sales

Hudson Energy Services just wrapped a big quarter in ERCOT that surpassed even its own expectations, CEO Deryl Brown told us last week.

Hudson posted more than 2 TWh of ERCOT sales, exceeding even Brown's heightened outlook after a big first quarter.

Much of the success can be credited to Hudson's strength with ABC channels.

Although we've heard some REPs in ERCOT have been backlogged because of a spike in pricing requests, due to, among other reasons, MCPE indexed customers looking for fixed rates and customers stranded by REP defaults, Hudson isn't one of them because of its efficient technology and back-office processes.

Despite being "extremely busy" in terms of quote requests, Brown explained Hudson developed a technology with associated business processes which allows ABCs to access real-time, customized pricing, meaning brokers can get refreshed quotes quickly, eliminating any pricing backlog.

Some ABCs have even begged Hudson to bring the technology to Illinois.

When Brown joined Hudson, he was able to assemble a team of very experienced veteran managers who already had solid relationships with ABC channels.

The popularity of Hudson's pricing technology with ABCs also helps in prompting competitive intelligence, Brown added.

ERCOT pricing is down about 2¢/kWh from highs seen in June, Brown reported, though it varies by product and customer load.

"There is still significant M&A activity going on in the industry," Brown observed. "I am still receiving

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DTE Sees Competitive Suppliers Filling Customer Demand for Long-Term Renewable Products?

Detroit Edison believes, "it is time for the Commission to approve recovery of," marketing and administration costs of its GreenCurrents renewable program, because without cost recovery the program would have very little, if any, participation due to its cost of entry, company witnesses reported in reply testimony filed in the utility's rate case (U-15244).

Detroit Ed has lost $900,000 in jump-starting the program, company witnesses reported, and recovering marketing and administrative costs only from customers enrolling in the green tariff, as suggested by Staff (Matters, 7/17/08), would hinder participation, the utility said. Company witnesses compared marketing the green program to utility bill inserts and materials relating to public health and safety, conservation and various billing practices, options and rates, the costs of which are recovered from all customers, even if all customers don't choose a specific service that is promoted (such as credit card billing). GreenCurrents program costs for 2009 are to be $949,000.

Detroit Ed also opposed the Staff's suggestion for a long-term, fixed rate green product. The utility's objections centered on cost risk allocation and pending legislation which may impose new renewable requirements on LSEs.

Alternative Electric Suppliers already have the capability to offer a similar long-term green service to customers, Detroit Ed explained.

In testimony containing a touch of irony, Detroit Ed witness James Byron stated, "An Alternative Electric Supplier is free to contract with any customer that chooses to receive energy from the supplier under terms that are satisfactory to the customer and supplier. If an Alternative Electric Supplier believes that a market exists for a long-term fixed price contract supplied with renewable energy generated from facilities located in Michigan at the cost proposed by [Staff Witness] Mr. Stanton, the Alternative Electric Supplier is free to develop and market such a service. No legislation is required to allow such a proposal to proceed and no additional risk is borne by the Company's customers beyond the risk resulting from stranded resources, which the Commission has previously addressed."

Of course, Detroit Ed is pushing for legislation that would limit the freedom that AES's currently have to offer green (and all other types of) products, and under Detroit Ed's favored proposal, choice sales, and thus green sales by AES's, would be capped at 10% of the utility's load. It's also interesting to note that Byron's concession that the only risk arising from choices sales (stranded costs) has already been "addressed" by the Commission contravenes public assertions still being made by Detroit Ed that "certainty," through a cap on choice sales, is needed to spur generation investment, a claim DTE Energy CEO Anthony Earley made most recently in an Aug. 6 editorial in the *Detroit News*.

Detroit Ed further argued that Staff's proposal implies that the utility is expected to cover the financial risk associated with the long-term green product and cautioned that not all of the costs incurred to serve the long-term renewable energy customer may be recovered. A premium will thus have to be placed on green pricing, Detroit Ed noted, fearing that the PSC's proposal could alternately shift costs of the long-term green product to remaining power supply cost recovery (PSCR) customers, which would, "inappropriately operate to increase participation in Electric Choice service."

Depending on the outcome of renewables legislation, a voluntary long-term green product could simply raise the cost of RPS compliance, Detroit Ed suggested, by locking away cheaper green resources in the voluntary market and making them unavailable to use for RPS compliance.

Detroit Ed also opposed suggestions from Constellation NewEnergy to implement purchase of receivables, arguing that implementation would, "significantly modify the existing Electric Choice program in Michigan," and, "require a costly rework of existing systems and development of new functionality for a market that is currently nonexistent and has an uncertain future."

Detroit Ed also argued Constellation's proposed ban on new special contracts is inappropriate since the Commission retains the opportunity to review each.

Energy Michigan and Constellation both opposed two proposals from Staff relating to an expanded residential rescission period and Staff review of AES residential contracts and marketing materials.

Consistent with gas choice tariffs, Staff had suggested that customers be given up to 30 days to cancel a contract without penalty, expanding the current three-day rescission period.

But that would add risk premiums in prices, Energy Michigan and Constellation noted, since customers would be given an unrestrained right to shop the contract within a 30-day period. "The Staff's proposal gives the customer a chance to lock in a price with one supplier and then to shop that price around to other suppliers to see if they can get a better deal," Energy Michigan explained. Energy Michigan supported expansion of the rescission period to five business days to alleviate Staff's concerns about customers having enough time to receive mailed enrollment notices and possibly rescind contracts after their receipt.

The 30-day rescission period also leaves suppliers guessing about their future load, Energy Michigan added, which will be even more impractical once the Midwest ISO begins its Module E resource adequacy program which requires advance LSE forecasts.

Energy Michigan also noted electric prices are much more volatile than gas prices, arguing that is appropriate that the electric choice tariff have a different rescission period than the gas tariffs. Constellation pointed out that Consumers Energy, which just completed a rate case, does not have the 30-day cancellation period in its electric choice tariff, and the Commission should strive for electric tariff harmony rather than divergence between Consumers and Detroit Ed (similar to Staff's recommendation to have Detroit Ed's return to utility service provisions mirror those newly enacted at Consumers).

Energy Michigan and Constellation protested that Staff's proposal to review residential contracts and marketing materials would only apply to AES's, and not utilities, even though relevant Commission orders regarding marketing rules apply to all utilities, AES's and other suppliers advertising or marketing service.

Under Staff's plan only AES's, Constellation explained, would be saddled with, "elongated marketing planning cycles to build in the need to obtain Staff approval." Staff's proposal would add to the costs of producing the materials and would delay an AES's ability to move quickly in the market, disadvantaging the AES and favoring the utility, Constellation cautioned.

"[T]he failure to impose the obligation on utilities will free those providers to engage in misleading or deceptive practices," Constellation asserted.

Constellation also recommended that while Detroit Ed's Choice Incentive Mechanism may be retained if choice sales are not capped, it should be removed should a legislative cap on choice be imposed, since such a cap would address the uncertainty in load migration the CIM is meant to address, Constellation noted.

Mirant Results Hurt by Fuel Oil Management, Hedging

Mirant's adjusted EBITDA for the second quarter of 2008 fell to $143 million from $230 million a year ago as higher capacity revenues were offset by lower realized gross margins from fuel oil management and proprietary trading activities and lower realized value of hedges. On a GAAP basis, Mirant posted a $783 million loss for the quarter, on $874 million in hedging losses, versus net income of $1.26 billion a year ago.

Total realized gross margin fell from $404 million a year ago to $315 million. Mid-Atlantic realized gross margin for the quarter was $213 million, down from $217 million a year ago. Northeast ($51 million) and California ($31 million) realized gross margin were also flat.

Overall generation fell 21% while dipping 14% in the Mid-Atlantic on pollution upgrades, narrower margins, and higher costs of fuel oil.

Mirant disclosed that at the end of June a party approached the IPP about a possible transaction which Mirant thought had potential to add significant value for shareholders, but after rigorous review, decided not to pursue the deal.

Despite recent volatility, CEO Ed Muller urged shareholders to take a long view of the company, noting that demand-supply fundamentals have not, and will not quickly, change. It's still good to be an incumbent in the marketplace since supply is not growing and demand is, Muller told analysts, especially since it's going to be hard to add supply given the political situation of the country.

Mirant was "active" in putting in hedges during the second quarter to take advantage of higher prices.

In the aggregate, it's now about 90% hedged for 2009 and nearly 60% for 2010. For its coal units, it's nearly fully hedged for next year and close to 70% hedged for 2010.

Execs Like Start of RBS-Sempra Joint Venture

RBS Sempra Commodities recorded second-quarter net income of $130 million, compared with net income of $155 million in 2007 when the unit was fully owned by Sempra.

Quarterly margin at RBS Sempra was $306 million for natural gas and $174 million for electricity.

Sempra CEO Donald Felsinger called it a "great start" for the joint venture, which has proved particularly beneficial given today's challenging credit markets and the strength that RBS provides.

Though natural gas and power have driven results to date, executives reported seeing increased deal flow from new customers as well as new areas of business. RBS Sempra currently has a pipeline of about 50 large deals pending, many of which combine customer needs for financing with their need to hedge some form of commodity related exposure, executives reported.

IPP Sempra Generation posted quarterly profits of $23 million versus $10 million a year ago on fewer scheduled outages.

Parent Sempra recorded net income of $244 million, down from $277 million a year ago.

Higher Prices Buoy Edison Mission

Edison Mission Generation posted GAAP earnings of $112 million, versus a loss $49 million in the year-ago quarter, on higher generation and average realized energy and capacity prices.

All-in average realized prices for the merchant generator rose to $57.53/MWh in the quarter, up from $53.63/MWh a year ago. Average realized gross margin rose to $41.97/MWh from $39.81/MWh.

Generation rose 11% year over year to 6,820 GWh.

Results were partially mitigated by forced and extended outages at Homer City.

Edison Mission continues to focus on diversifying its generation mix, with an immediate focus on adding wind. Solar and gas-fired assets are also part of Edison Mission's strategy.

The wind development pipeline has grown to 5,000 MW, while installed wind capacity grew 34%. As of the end of July, the IPP has 756 MW of wind in service and 429 MW of projects under construction.

While Edison Mission would like to have a portfolio equally weighted among coal, gas, and wind, it has resisted buying gas assets due to valuations which reflected unrealistic beliefs about capacity prices staying at replacement cost levels far into the future.

Edison Mission Marketing & Trading revenues grew to $51 million compared to $36 million in the prior-year quarter.

Parent Edison International posted GAAP quarterly earnings of $261 million versus $93 million a year ago.

TXU Energy Suggests Limiting Demand Ratchets to Customers Over 50 kW

Small customer representatives urged the PUCT to abandon the use of demand ratchets, or make ratchets recognize the time of demand, while industrials and utilities supported their continued use (35855, Matters, 7/9/08).

The current Commission-approved tariffs establish the minimum billing demand for distribution system charges based on the higher of: (1) the Non-Coincident Peak (NCP) kW for the current billing month; or (2) 80% of the highest monthly kW established during the previous 11 months.

The use of such demand ratcheting for small commercial customers results in rates that are not cost-based for certain customers, the Governmental Aggregation Project and the Office of Public Utility Counsel argued, since ratchets do not recognize demand of individual customers during daily and annual off-peak periods.

Demand in such periods has little to no impact on the utility's need to build or expand most distribution system facilities, OPC and

GAP contended. Because the current demand ratchets do not distinguish between peak and off-peak periods, they are not cost-based and thus send uneconomic price signals, OPC and GAP insisted.

Metering limitations for small customers, which do not allow the identification of more precise time periods, make it difficult to properly determine demand charges associated with customers that exhibit their maximum demand on off-peak days, such as churches, or primarily during off-peak hours, such as ball fields, OPC and GAP added.

Accordingly, all small commercial customers should be exempt from demand ratchets, including seasonal and/or non-profit customers, since demand ratchets cannot reflect the time of the demand.

TXU Energy also recommended that the Commission consider moving the TDSP demand billing threshold to demands greater than 50 kW, resulting in TDSP charges for all Secondary Service customers with demands of 50 kW and below to be billed on a kWh basis only.

"This will eliminate customer confusion for a large number of customers, aid REPs in the development of competitive rate plans that are easier to operationalize and explain, and provide a more consistent billing pattern for the TDSP charges," TXU observed.

Texas Energy Aggregation reported that, from its experience, less than 5% of small commercial customers understand how demand ratchets work. "We are aware of no TDU or energy provider that explains to customers how a single 15-minute peak can affect their ratchet and saddle them with increased delivery charges every month for the next year, even during months with no kWh usage," the aggregators said.

A new customer moving into an existing facility should not be subject to inheriting the load profile/usage of the previous tenant of the premise, TEA recommended.

The Texas Cotton Ginners' Association urged the Commission to keep the current exemption for seasonal agricultural load.

But Texas Industrial Energy Consumers argued that demand-related costs must be recovered from the customers that are responsible for those costs, whether through a demand ratchet or through other means. Certain customers should not be allowed a free ride at the expense of other customers, TIEC insisted.

The utilities also supported the continued use of the current ratcheting methods, cautioning that any exemptions should only be conducted in a rate case since other classes will have to be allocated the lost revenues from the exemptions.

Briefly:

Reliant Energy Entering Connecticut

Reliant Energy, under its Reliant Energy Solutions Northeast subsidiary, has applied for a Connecticut electric supplier license to serve commercial, industrial and institutional customers across the entire state. Reliant Energy Solutions Northeast currently operates in New York, and the Connecticut expansion is part of a larger push into more Northeast markets.

N.Y. PSC Set to Consider Iberdrola Case

The New York PSC is to discuss Iberdrola's pending acquisition of Energy East at its next regular session on Aug. 21 as well as a special sessions on Aug. 27 (07-M-0906, Matters, 6/17/08).

Md. PSC Orders WGL to Answer Staff Concerns Over Asset Management Change

The Maryland PSC ordered Washington Gas Light to respond to Staff's Petition for an Investigation into WGL's asset management practices and cost recovery of natural gas purchases by Aug. 25. Staff has requested a review of WGL's recent decision to internalize the management of gas assets, rather than using a third-party manager as had been done previously, and a review of WGL's incentive program related to asset management. Third-party asset managers have expertise and knowledge to engage in off system sales that may provide more efficient management, as well as trading platforms, credit portfolios, hedge fund and risk management expertise, Staff observed. Additionally, Staff argued that as WGL assumes asset management duties, the practice of charging customers based on a index price, rather than the actual cost of commodity purchases, for certain gas commodity purchases to inject gas into storage is not permitted under

Public Utility Companies Article §4-402(c), Annotated Code of Maryland.

Tara Energy, GHRA Settle

Tara Energy and the Greater Houston Retailers Association have reached a settlement in their dispute over the pricing in retail contracts, and GHRA asked the PUCT to dismiss its complaint in docket 33967.

Fuel Diversity Standard Not Appropriate Now D.C. PSC Finds

Implementation of a fuel diversity standard as contemplated by PURPA is not appropriate for the District of Columbia at this time, the district's PSC ruled (FC 1049), because the overall approach to SOS procurement is currently under review in FC 1047. The Commission also noted that SOS procurement is obtained on a least cost basis and implementing a fuel diversity standard may increase costs for SOS service and negatively impact ratepayers.

EnerNOC Loss Grows

EnerNOC posted a net loss for the second quarter of $10.4 million compared with a loss of $8.2 million a year ago, though the loss was lower than analysts' expectations. Revenues rose to $23.7 million from $12.0 million a year ago. Demand response megawatts under management grew to 1,643 MW, and EnerNOC expects to surpass 2,000 MW by year-end. EnerNOC's PJM portfolio now stands at over 500 MW. C&I demand response customer count reached 1,252 customers across 3,067 sites, up from 1,062 customers across 2,864 sites as of March 31, 2008.

AES North American Generation Income Falls

Income from continuing operations before income taxes, equity in earnings of affiliates and minority interest fell for AES's North American generation unit during the second quarter, to $187 million from $272 million a year ago. Revenues for the unit fell to $539 million from $551 million in the prior-year quarter on outages in New York, while gross margin increased 30% to $242 million from $187 million on derivative gains. AES posted overall net income of $903 million on international gains, up from $254 million a year ago.

Disconnects ... *from 1*

Customers under the moratorium are to receive a deferred payment plan that would give customers a period of not less than five months after Sept. 30 for the customer to pay deferred amounts. REPs would have to permit the customers to initiate a renegotiation of the deferred payment plan one time during the deferment period regardless of whether the customer's economic or financial circumstances have changed.

Additionally, a REP would have to offer a deferred payment plan to any low-income customer through Sept. 30, even if the REP is not required to otherwise offer a deferred payment plan pursuant to the provisions of PUC Subst. R. §25.480(j)(3). Such deferment plans shall not require the customer to pay more than 25% of the deferred bill to initiate the agreement, with the remaining balance to be paid in equal installments over the next five billing cycles.

Persistent heat, higher electric demand, and the health threats related to disconnections have created an "imminent peril" which warrant the emergency moratorium, Hinojosa argued.

Hudson ... *from 1*

calls from investors, particularly interested in ERCOT." He also sees a lot of interest among retailers looking to pick up the books of undercapitalized REPs. Private equity firm Lake Capital has provided Hudson with robust financial strength since 2006.

Hudson has maintained a focused growth strategy that has served it well, initially starting in the New York electric and gas and New Jersey gas markets, then entering in ERCOT in late 2006 and Illinois the first quarter of this year. While Brown is watching several interesting markets, he pointed out that Hudson currently serves almost 6 TWh of business in its three current electric markets, which have a combined total of about 450 TWh up for grabs. The New York, ERCOT and Illinois markets are so huge that Hudson doesn't need to enter new territories to keep growing.

Still, Hudson expanded into Illinois so effectively and inexpensively, Brown is confident Hudson can enter new markets cost-effectively when the time is right, but there's no market good enough that Hudson needs to run into right now.

Brown reported Hudson had a "good July" in Illinois and is ahead of expectations. Though Hudson is licensed to sell to all customer sizes, including residential, its Illinois customers thus far have averaged 1 GWh annual usage. Brown confirmed, as seen in the ComEd switching statistics, that below 400 kW (the cutoff for hourly default pricing) there just isn't enough headroom for retailers to find success on a large scale. About half of the 400 kW - 1,000 kW class at ComEd has switched to an ARES, while migration is only 10% for C&Is less than 100 kW.