Energy Choice Matters

August 14, 2008

Dominion Retail Buys Cirro Energy to Enter ERCOT Market

Dominion Retail yesterday entered the ERCOT market in a big way by buying Richardson-based Cirro Energy, one of the original start-up independents in the ERCOT market.

Cirro's book includes 52,600 residential and commercial customers with usage of 2.3 million MWh.

Dominion Retail had been eyeing the ERCOT market for some time and Cirro was the "right company at the right time," company officials said.

The acquisition gives Dominion Retail a strong brand with six years of building customer recognition in ERCOT, which should prove to be "very valuable" to a new entrant, Cirro CEO Tim Rogers told us. Operations will continue under the Cirro brand, and Rogers and his team will remain during a transition period.

Cirro has, "been around since day one," Rogers noted, a fact that has taken on greater importance to customers given recent volatility and REP exits.

For Cirro, it caps six years of smart growth, and Rogers touted the financial strength of Dominion, as well as its similar philosophy, as being a good fit for Cirro.

Rogers also called Dominion's investment a showing of investor confidence in the ERCOT market, answering recent criticisms stemming from volatility and REP defaults.

Texas will be Dominion Retail's 12th state, and its customer base grows to 1.7 million under the deal.

Comparisons were immediately drawn to three large deals last year in which multi-state, dual fuel retailers expanded into the ERCOT mass market by buying a strong local brand (U.S. Energy

... Continued Page 6

Smitherman Cites PUCT Authority to Enforce Voluntary REP Disconnect Protections

The PUCT is able to enforce voluntary commitments made by certain REPs, such as TXU Energy, Reliant Energy and Direct Energy, that give certain customers disconnect protections similar to emergency protections enacted in 2006, PUCT Chairman Barry Smitherman suggested in a memo to his colleagues in advance of today's open meeting (26793).

Smitherman fully agreed that certain vulnerable customers need protection but noted TXU, Reliant and Direct, with a combined market share of 77%, have committed to offer assistance to low income, elderly, and critical-care customers by allowing customers who participate in a deferred payment plan to avoid having their electricity disconnected this summer. Through these programs, customers already have the ability to avoid disconnections by working with the REPs on a deferred payment plan, Smitherman pointed out.

Since the programs have been publicly advertised, the Commission has authority under PURA and the substantive rules to enforce the commitments, under rules prohibiting deceptive or misleading business practices.

Meanwhile the Alliance for Retail Markets and Texas Energy Association for Marketers opposed various petitions for a disconnect moratorium (35984, 35973, Matters, 8/12/08, 8/11/08), noting that the proposals seek to expand protections even beyond the scope of the 2006 emergency rule, and include aspects that would not be operationally feasible to implement in a timely enough basis to have any significant impact by the end of September.

... Continued Page 6

PUCT Staff Clarifies Commercial Customers Would Need to Affirmatively Waive Protections

The PUCT Staff has clarified its proposal regarding customer protection waivers for commercial contracts, recommending that all commercial customers over 50 kW that are offered a contract not governed by the PUCT's customer protection rules would have to be given a list of the customer protection rights they are waiving, and affirmatively choose to waive those rights (35768).

The new language clarifies Staff's proposal for publication (Matters, 8/8/08), which originally was not clear as to whether Staff meant to address brokers' and load's concerns about the kW cutoff for small commercial customers being too small and necessitating expanded affirmative waiver consent, or REPs' desire to expand customers' ability to waive certain rules.

The proposed disclosure shall inform customers that they have the right to choose a product from the REP (if applicable) and other REPs that does not require a waiver of the customer protection rights.

The other major change in Staff's proposal relates to auto-renewals, and tweaks the disclosures REPs would need to include in their original contracts.

In order to utilize an auto-renewal with a price that is different from the original contract price, the REP would have to disclose in the original contract the renewal pricing and the corresponding EFL, or state that the month-to-month renewal price and EFL will be provided 60 days prior to the expiration of the contract.

Green Mountain Leads Texas Customer Satisfaction in J.D. Power Survey

A survey conducted by J.D. Power and Associates tipped Green Mountain Energy as the market-leader in residential customer satisfaction, in an assessment that asked customers about pricing, billing and payment, communications and customer service.

Green Mountain posted a score of 716 on a 1,000-point scale in J.D. Power's 2008 Texas Residential Retail Electric Provider Customer Satisfaction Study, and performed particularly well in billing and payment, communication and customer service, J.D. Power said. Stream Energy (687), Reliant Energy (659) and Gexa (655) followed Green Mountain in the rankings, with Stream performing "particularly well" on pricing.

The study, based on 2,500 online surveys with customers during June, ranked only eight REPs, a reflection of the splintered nature of the ERCOT market.

Over 8,000 customers were contacted, but about 6,000 respondents were with dominant providers TXU or Reliant, and such customers were not asked further questions after a quota had been met for customers of a particular REP, explained Jeff Conklin, senior director of the energy and utility practice at J.D. Power. The survey limited rankings to REPs that had at least 100 customer respondents, to ensure a robust sample size, which is why some recognizable mass market REPs were not reflected in the rankings.

Conklin noted Green Mountain's "superior levels of customer satisfaction" have promoted high levels of customer advocacy and loyalty, as a high percentage of Green Mountain customers say that they would definitely recommend their electric retailer to family and friends.

The survey found that 43% of customers initially signed up with their REP more than four years ago while 35% of respondents have switched providers within the past 24 months.

Respondents who have switched providers in the past 24 months are more satisfied (with satisfaction scores averaging 674) than customers who have remained with their provider for more than four years (609), J.D. Power reported.

Customers on fixed price plans report spending $178 per month, on average, while customers with variable price plans report paying an average of $170 per month and customers subscribing to green power plans report paying an average of $202 per month. However, green power customers are also more satisfied with their electric service, on average. Overall satisfaction for customers on green power plans averages 716, higher than satisfaction of fixed-price plan subscribers (674) and variable-price plan subscribers (606), the survey found.

	Customer Satisfaction Index Ranking (Based on a 1,000-point scale)	J.D. Power.com Power Circle Ratings For Consumers
Green Mountain Energy Company	716	5
Stream Energy	687	4
Reliant Energy Retail	659	4
GEXA Energy Corporation	655	4
Direct Energy	648	3
Industry Average	638	3
First Choice Power	630	3
TXU Energy Company	606	2
CPL Retail Energy	558	2

Power Circle Ratings Legend:
5 - Among the best
4 - Better than most
3 - About average
2 - The rest

Source: J.D. Power and Associates 2008 Texas Residential Retail Electric Provider Customer Satisfaction Study

Md. PSC Staff Suggest POR/ Proration Option for Gas LDCs

The Maryland PSC Staff filed their proposal for natural gas customer protection rules in RM35, which mostly mirror similar existing electric provisions, or those under consideration under RM17.

COMAR 20.59 would cover natural gas utility-supplier relations, non-residential protections and residential protections, including advertising, marketing and contracting rules.

As under RM17, a utility providing utility consolidated billing would be directed to either purchase the receivables of a supplier, or prorate customer partial payments between the utility and a supplier.

Suppliers would not have to offer either residential customers or C&Is a rescission period under the proposed rules.

A supplier soliciting residential customers by telephone would need to comply with all applicable state and federal laws, including the Maryland Telephone Solicitations Act, Commercial Law Article, §§14-2201 - 14-2205, Annotated Code of Maryland. That code, currently in effect for electricity enrollments as well, requires contracts made pursuant to telephone solicitations to be reduced to writing and signed by the consumer, except in certain cases where the supplier has a pre-existing business relationship with the customer, or the customer is responding to a television, radio, or print advertisement or a sample, brochure, catalogue, or other mailing material of the merchant.

All material contract terms and conditions would have to be disclosed to the customer over the telephone.

The proposed codes would allow a supplier to impose a "reasonable" early cancellation fee on residential contracts if a customer cancels the contract before the expiration date.

Ohio Electric Retailers Urge Collaborative on POR

Ohio should implement a Purchase of Receivables program for electricity supply billing, competitive suppliers and NOPEC urged in comments on PUCO Staff draft rules for competitive electric service (06-653-EL-ORD, Matters, 7/24/08).

Constellation NewEnergy, Direct Energy Services and Integrys Energy Services ("Competitive Suppliers") and Dominion Retail both urged adoption of POR in separate comments. Competitive Suppliers suggested implementing POR with no discount through a collaborative process, and pointed out that the gas choice tariffs currently offer POR. Dominion Retail further added the Duke Energy also offers POR through its electric supplier tariff.

NOPEC recommended that the utility purchase 100% of the receivables of a governmental aggregator's competitive provider, noting that it is unfair to allow utilities to use bad debt trackers on the generation side of the bill, such as FirstEnergy's proposed nonbypassable uncollectible rider in its electric security plan.

Non-mercantile customers should be prohibited from switching if they have a past due balance on an EDU bundled bill, Competitive Suppliers recommended.

Staff's draft stops short of POR, but would give competitive supply charges in arrears first priority under partial payments, a change from the current rule which pays past due EDU charges first.

The Ohio Consumers' Counsel and other consumer advocates objected to the revised payment order, arguing that the rule should clearly state that partial payments are to be applied in a manner that is most advantageous in avoiding disconnection of service. Having partial payments being applied to competitive supply charges before being applied to electric utility charges would then only occur if the payment helped the customer avoid disconnection, OCC said.

AEP opposed Staff's revised partial payment order as well. While other distribution utilities already have such an order pursuant to negotiated agreements in other cases, those utilities have received consideration for doing so voluntarily, and agreement was reached as part of a larger settlement, AEP noted. AEP does not object to continuing those negotiated payment orders at other utilities, but argued the new rule would disadvantage the AEP utilities when they provide consolidated billing.

OCC recommended that competitive suppliers should be subject to the same deposit and credit rules as utilities (under Ohio Adm. Code 4901:1-17), which, among other things, would limit the amount of deposits to an average annual monthly bill plus 30%.

But Competitive Suppliers resisted proposals that would impose uniform credit and deposit rules on suppliers. Customers can choose among suppliers, Competitive Suppliers noted, and thus can avoid deposit or credit policies they do not like. Customer preference will dictate reasonable credit rules as customers will avoid enrolling with suppliers imposing burdensome requirements. Mandated standards would preclude suppliers from offering discounts for prepayment or good credit, Competitive Suppliers added.

Competitive Suppliers suggested that contract renewal rules should only apply to customers smaller than the mercantile class. The Staff's proposal for renewal pricing to be disclosed 35 days before the renewal date should be shortened to 20 days, consistent with the gas choice rules, to reduce risk premiums and produce lower prices for customers, Competitive Suppliers urged.

OCC, on the other hand, suggested limiting any automatic renewals to a month-to-month contract.

Competitive Suppliers also suggested that the rules direct utilities and suppliers to develop mutually acceptable customer referral programs, similar to programs in New York that permit customers to choose competitive supply through the utility's call center.

The rules should permit customers to elect to only place a specific number of their meters on competitive supply, Competitive Suppliers added, instead of being forced by the utility to place all meters on either standard service or competitive supply.

Competitive Suppliers opposed Staff's proposal to make suppliers use the Uniform System of Accounts for financial reporting. Staff has offered no compelling reason for applying a cost-of-service, monopoly accounting method to competitive providers, the Suppliers argued, reporting that Staff merely stated the proposal would produce uniformity. Forcing competitive suppliers to implement Uniform System of Accounts reporting would add hundreds of hours of labor and be unduly burdensome, Competitive Suppliers contended.

Suppliers also urged Staff to clarify that while suppliers must have and maintain proof of customer enrollment, they do not have to submit such proof to the utility with every switch.

OCC insisted that competitive suppliers should provide OCC as well as Staff with the rate and cost information that suppliers are using to market to residential consumers, as well as advertising and promotional materials. "In addition, CRES providers should be required to provide copies of all offers to Commission Staff and OCC to permit reviews that will ensure customers are protected from unconscionable terms," OCC added.

Suppliers should not be permitted to charge a termination or switching fee for customers returning to utility service because they have qualified for Percentage of Income Payment Plan service, OCC recommended.

OCC further urged that suppliers not be allowed to disclose social security numbers for credit evaluations without customer consent.

OCC suggested that the rule should state that all suppliers "shall" offer net metering, rather than stating that they "may" offer net metering contracts.

NOPEC reiterated its view that it is "critical" that all generation charges be bypassable, and also suggested that PUCO eliminate "stay out" rules imposed by utilities which restrict when customers can join governmental aggregation pools.

Duke Energy suggested that governmental aggregators should pay for aggregation lists produced by the utilities, since such lists are more expensive to provide than the standard pre-enrollment list that is provided to both gas and electric suppliers for $150. Duke pointed out that for gas aggregation lists, its tariff includes a charge of $1,200 for a boundary-verified aggregation list, and a charge of $400 for a zip code list.

Briefly:

RG&E ESCO Referral Program Delayed Until 2009

The New York PSC approved Rochester Gas & Electric's petition to postpone the effective date of tariffs to implement an ESCO Referral Program to March 1, 2009, from an original effective date of Sept. 1 (05-M-0858).

Spark Energy Gets Ohio Gas License

PUCO granted Spark Energy Gas a certificate to supply competitive retail natural gas (08-638-GA-CRS).

Dominion Retail Suggests Alternative to Release of Weighted Average Prices After Conn. RFPs

Dominion Retail suggested that Connecticut EDCs disclose the percentage of the load awarded for a given service term during the most recent procurement two weeks after DPUC approval of such procurement (06-01-08RE02). Dominion Retail offered the proposal as an alternative to disclosing the weighted average price from the RFP, which the Department, in a draft, found would lead to customer confusion (Matters, 8/7/08). Releasing the load percentages would allow retail suppliers to make an assessment based on current market conditions of what the weighted average prices were, which will facilitate faster development of pricing alternatives for incumbent customers, Dominion said.

Md. PSC OKs BGE Curtailment Service Provider Billing Option

The Maryland PSC approved Baltimore Gas and Electric's proposal to offer third-party curtailment service providers a billing service under which curtailment service providers can have their customer's demand response revenue credited to the customer's BGE bill, instead of directly paying the customer (Matters, 8/6/08).

GATS Most Cost-Effective Option for Solar REC Database, Md. PSC Staff Says

PJM EIS's GATS provides the most cost effective option for implementation of a solar REC database in Maryland, the PSC Staff concluded (RM32, Matters, 6/2/08). While rival Clean Power Markets offers some additional services over GATS, including some catering to the residential solar market, there is no cost for GATS, Staff pointed out, and Staff is prepared to administer parts of the solar program not offered by PJM EIS (mainly inspections of solar sites). While Clean Power Markets is capable of providing the needed services, "the critical issue of cost remains unanswered despite numerous promises from Clean Power Markets for an answer," Staff reported. Clean Power Markets is increasingly not an option given impending deadlines and the "vagueness" of Clean Power Markets' proposal, Staff argued. In a ranking of nine criteria related to the solar REC program, such as REC tracking, bulletin boards, and price reporting, GATS was superior to Clean Power Markets in six of the categories, Staff said.

TLSC Appeals Order on Revocation Delay

Texas Legal Services Center appealed an order which denied its petition to delay the license revocation proceedings of three defaulting REPs until customer relief is granted (Matters, 8/5/08). Staff had argued that revocation would not impact the Commission's or customers' ability to get relief, and an ALJ agreed. But TLSC cautioned that a more reasonable construction of PURA § 17.002 and 39.352(a) taken together is that after the date of customer choice, there is no such thing as an "uncertificated" REP, meaning that the Commission could only enforce rules against REP certificate holders. TLSC cited an interim order entered in the New Power Company certificate relinquishment proceeding in which an ALJ stated, "Although the ALJ agrees with NPC's contention that the relinquishment of a REP certificate does not diminish the Commission's authority to pursue remedies against a former REP certificate holder for rule violations committed while the former REP was certificated, the ALJ questions the Commission's ability to compel NPC's compliance with REP rules after NPC ceases to hold an REP certificate." TLSC made its appeal in dockets concerning Riverway Power (35783), eTricity (35775) and Pre-Buy Electric (35748).

DPUC Approves UI Procurement

The DPUC approved United Illuminating's Aug. 12 procurement for standard service and last resort service supply (06-01-08PH02). The RFP was for all of last resort service supply for the final quarter of the year, as well as 20% of standard service supply for each of the following periods:

- January 1, 2009 through June 30, 2009
- July 1, 2009 through December 31, 2009
- January 1, 2010 through December 31, 2010

The procurement also bought 10% of standard service supply for January 1, 2011 through December 31, 2011.

Cirro ... from 1

Savings-Just Energy, Accent Energy-Dynowatt, MXenergy-Vantage).

The strategies confirm that buying an established mass market book in ERCOT is more efficient than trying to build a new brand in a market already cluttered with independent competitors since 2002, and still attracting new, locally-based start-ups. Part of that fact is recognition that sales approaches in ERCOT, much more reliant on entrenched ABC channels as well as a more local approach to customers, differ greatly from approaches which have been successful in other mass markets, such as New York, where direct outbound telesales work much better.

Through Cirro, Dominion is acquiring a platform from which to quickly expand into a "top ten" REP in ERCOT, said Rob Potosky, executive vice president at Affiliated Energy Group (AEG), which offers strategic consulting for REPs and other market participants. Potosky was one of the leaders on last year's sale of Dynowatt to Accent.

Potosky added that ERCOT's market players and landscape, "will look substantially different in twelve months," with the nodal change prompting a series of transactions.

Based on present market conditions in ERCOT, other market activities, and the present pool of prospective purchasers, "it is clear that the substantial majority of remaining healthy mid-sized REPs will be acquired before nodal begins," Potosky concluded. Potosky reported that one of AEG's clients, with 1.5 million MWh annual load and consistently positive EBITDA, will likely be acquired within the next three months based on inquiries and proposals received thus far.

At the same time, some other mid-sized or larger REPs presently on the block may have trouble closing a deal to the extent they have antiquated systems in place preventing necessary adaptation to quickly changing marketing conditions, Potosky suggested. To the extent a REP appears to have achieved rapid growth in the past couple quarters by improperly passing through ERCOT charges such as inter-zonal congestion, it may make it difficult (if not impossible) for purchasers to divorce themselves from any resulting potential liability, Potosky concluded.

Cirro was represented in the sale by Aspen Advisors, LP, an investment banking firm based in Dallas.

Disconnects ... from 1

"Moreover, as past experience indicates, primarily through lessons learned from the experiences of the 2006 summer disconnect moratorium, it is not conclusive that this type of initiative will actually benefit customers," ARM and TEAM suggested.

"Ultimately, customers may be harmed,

because they will feel free to consume additional energy and will then face excessively large unpaid balances once the moratorium period is over, making it even harder to pay the outstanding debt," the REP groups said.

The summer moratorium of 2006 also left REPs with a significant amount of uncollectible debt, which impacts all other customers who do pay on time, ARM and TEAM reminded.

ARM and TEAM noted that the System Benefit Fund discounts have been "substantially" increased for the summer (Matters, 7/4/08).

The Commission's current rules already provide substantial customer protections in the form of deferred and levelized payment plans, bill payment assistance plans, special protections for ill, disabled and critical care customers, and moratoriums on disconnection for all customers due to extreme weather conditions, ARM and TEAM added.

Should the PUCT adopt a moratorium, it is "imperative" that interim procedures be implemented and facilitated by all market participants to ensure that participating customers stay with their current REP until the customer's payment obligations under all deferred payment plans have been fully satisfied, and in accordance with any term provisions in their contracts, ARM and TEAM urged. Such a requirement should also apply to any voluntary programs offered by REPs protecting customers from disconnections, the REPs said.