Energy Choice Matters
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Illinois Power Agency's First Procurement Plan Features Three-Year Laddered Contracts

The Illinois Power Agency proposed buying default service power for Commonwealth Edison and the Ameren utilities on laddered three-year contracts in its initial five-year procurement strategy.

The agency, created last year as a solution to the much-derided descending clock wholesale auctions which were blamed for price increases when market-based rates began, submitted a plan to the Illinois Commerce Commission that is similar in many respects to the three-year laddered procurement the auctions were meant to establish.

Despite being heralded by market critics in Connecticut, Pennsylvania and Maryland as a model to fix deregulation through state-run active portfolio management (and drastically different from those states' competitive RFP solicitations), the IPA's plan does not include long-term contracts, would procure standard wholesale products, and is not significantly different than many laddered SOS procurements in the East.

The IPA, however, did propose procuring power throughout the year -- initially quarterly, with an eye toward "continuous" procurement -- in order to prevent market-timing risks from a single procurement. The IPA would also use RFPs rather than a descending clock auction.

After conducting an extensive analysis of varying procurement methods, the IPA said that an RFP-based, laddered approach, "will provide the highest probability of obtaining the lowest long term electricity costs."

The public agency also reported that the lowest price risk scenario is achieved when the portfolio

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Australian Retail Electric Leaders Entering ERCOT Market

Two pioneers in the Australian and New Zealand electric industry are forming a REP to take on the ERCOT market.

Start-up Frontier Utilities, founded by Donald Cheesman and Steve Eskrigge, filed with the PUCT for a REP certificate.

Cheesman, Frontier's CEO, previously founded and/or led a series of electric and utility-service companies in Australia and New Zealand. Cheesman founded, with Eskrigge, Victoria Electricity in 2004, and grew the company to 350,000 customers. Victoria Electricity has been responsible for approximately 30% of market churn in Victoria. Cheesman has also served as CEO of Queensland Electricity, NSW Electricity, and South Australia Electricity.

Cheesman, again with Eskrigge, also founded Direct Connect Australia, which Frontier described as the "dominant" utility connection company in Australia providing energy, telecommunications, insurance and other products to customers who are moving.

Cheesman and Eskrigge also founded New Zealand electric retailer Energy Online in 1998, eventually growing and selling the firm to Genesis Power, the largest integrated generator retailer in New Zealand, in 2002.

Eskrigge introduced the ECO Gold loyalty card to the Australian market, which provided electricity customers with access to a broad range of discounts and energy products.

Scott Evans, a veteran of the ERCOT market, will serve as President of Texas Retail Operations. Evans has held various management positions in sales, operations and regulatory affairs at Spark

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Universal Gas & Electric Moves for Dismissal of Mich. PSC Staff Complaint

Universal Gas & Electric moved for summary disposition and dismissal of the Michigan PSC Staff's license revocation complaint, arguing that Staff has only presented hearsay evidence, and that its contracts comply with the Choice tariffs (U-15577, Matters, 8/4/08).

Universal noted that Staff's complaint failed to meet the Commission's directive to include "all necessary testimony and exhibits" in contravention of procedural rules, since Staff chose to exclude the written testimony of "approximately 20" current or former Universal customers, while presuming that such customers will be permitted to present oral direct testimony at an evidentiary hearing. Without such customers' testimony, Staff's complaint is not supported by sufficient evidence, Universal said.

Staff has failed to provide sufficient reliable and admissible evidence in support of each of its claims, Universal contended. "The lack of such evidence is alarming giving the serious nature of Staff's allegations, the extreme nature of the relief Staff requests which would result in Universal's inability to operate its business any longer in Michigan and in Universal's customers' loss of the pricing advantage they are already receiving as a result of contracting with Universal, and the considerable amount of time that Staff has had to amass a factual basis for the broad allegations contained in the complaint," Universal said.

Universal countered claims from Staff that the marketer has switched customers without proper authorization.

Among other reasons, Staff argued that Universal's failure to timely send switch confirmation letters to customers amounted to unauthorized switches. Confirmation letters must be sent within seven days of a customer entering into an agreement with an alternative gas supplier.

Universal, however, reiterated its prior argument that customers do not enter into an agreement until their enrollment is accepted by the utility. Some enrollments are rejected by the LDC, such as for customers in arrears, and thus a customer's mere signature on an application cannot constitute entering into an agreement, Universal said. Furthermore, it would not make sense to send confirmation letters before the utility confirms the enrollment is valid, because otherwise, customers would receive switch notification letters for switches which are never accepted, Universal claimed.

"Under well-settled Michigan law, a contract is not a contract until there is an unconditional acceptance. In this case, Universal's obligation to supply gas is conditional and frequently those conditions are not satisfied," Universal said.

Universal also opposed Staff's contention that Universal's use of a customer's original enrollment to re-enroll customers who have submitted switch requests to other AGS's constitutes slamming.

Under Universal's contract, customers appoint Universal as their "sole and exclusive natural gas supplier" during the term of the contract and permit Universal to "take any action or sign any document as if [they] had taken the action or signed the document."

Thus, the customer switches cited by Staff were improper, and Universal had a contractual right to re-enroll such customers, the marketer said.

Universal's termination fee does not obstruct choice, as Staff claimed, since it is an agreed upon term of its contract, and the PSC has no statutory authority to regulate such contractual provisions, Universal argued.

Universal also pointed out that under the Choice tariffs, customers do not have the right to contact the utility and demand to be returned to LDC supply, weakening Staff's case that customers should always be free to move among different suppliers.

Staff’s claims regarding deceptive marketing by Universal are hearsay, Universal contended. The supplier claimed that its marketing materials, "were at all times approved by Staff before Universal used such materials."

Staff has submitted, "no admissible evidence relating to the substance and reliability," of customer complaints regarding deceptive practices, Universal said.

Universal also renewed its request to have Staff inform Universal customers calling the PSC of the applicable Gas Cost Recovery rates at the LDCs.

"If the customers knew that MichCon and

Consumers are currently charging $1.136 and $0.872 per Ccf respectively, in comparison to Universal's contract prices of $0.999 and $1.049, customers' concerns about being charged double and triple should evaporate," Universal reasoned.

Calif. PUC Makes Customers Leaving Bundled Service Pay New Generation NBCs

The California PUC approved a decision (R. 06-02-013) that requires bundled service customers who are eligible to return to direct access to pay nonbypassable charges associated with new utility-owned or procured generation when departing bundled service (Matters, 7/23/08).

The Commission cited its policy of keeping bundled customers indifferent to the effects of shopping, and noted that utilities currently make procurement commitments on behalf of customers eligible for direct access but remain on bundled service.

Until bundled customers eligible for direct access give notice of their intent to shop, IOUs have no way of knowing if and when such customers will leave bundled service, and thus IOUs properly include such customers' load when forecasting supply needs and making procurement decisions, the PUC observed. Those customers should accordingly pay a share of those costs even when they leave utility service, the Commission reasoned.

The draft accepts Southern California Edison's proposal for "vintaging," or assigning a departure date to departing customers in order to determine those customers' generation resource obligations.

Customers departing in the first half of the year would have a departure date for vintaging purposes of December 31st of the prior year, while customers departing in the second half of the year would have a departure date for vintaging purposes of December 31st of the year in which they depart.

The Commission rejected the Alliance for Retail Energy Markets' recommendation that the nonbypassable charges be included under the 2.7¢/kWh cap applicable to the direct access Cost Responsibility Surcharge, since the cap will have expired for all three IOUs by the end of 2008. The PUC said it was reluctant to reinstate such a cap absent a more definitive showing of need. The Commission also denied AReM's request that the Cost Allocation Mechanism (CAM) be limited to five years, instead of 10.

The decision also adopted rules regarding nonbypassable charges for community choice aggregation load and municipal departing load. Commissioner Rachelle Chong suggested that the PUC needs to educate customers on departing load rules, and recommended that a two-page handout be developed.

Md. PSC Fines NCG $150,000

The Maryland PSC ordered broker NCG Energy Solutions to pay $150,000 for conducting business in Maryland for about two years before applying for a license, and for "significant misrepresentations" contained in its broker application (9142, Matters, 6/18/08).

The PSC could have imposed a fine of $7 million for the violations, based on per-day penalties. The Commission said NCG, "blatantly disregarded the Commission's authority to regulate electricity suppliers," and noted NCG's claim that it was unaware of licensing rules was undermined by the fact it had obtained licenses in New York, New Jersey and Massachusetts.

The Commission also faulted NCG for waiting until Staff informed the broker that it was violating Maryland law until it applied for license, and then listed three significant misrepresentations on its application.

First, NCG listed New York, New Jersey and Massachusetts on the application as the only other states in which it engaged in the sale of electricity, but the undisputed evidence revealed that NCG also operated without a license in Illinois, Delaware, Connecticut and Washington, D.C., the PSC said.

Second, NCG stated that it commenced operations in Maryland on January 1, 2008, but later admitted that it began operating as an electricity supplier in Maryland in June 2006.

Third, and despite the application's direction to disclose any felony convictions among its officers and directors, NCG concealed the felony embezzlement conviction of its owner and CEO, Christopher Kent, the PSC said.

The PSC based its fine on assessing a civil penalty of approximately $200 for each day NCG operated without a license plus an approximation of the public service company assessments that should have been collected from NCG during that time. The fine was tempered by the fact that the Commission had no evidence that any individual Maryland customers were harmed by NCG's behavior.

The Commission noted that had NCG, or any other unlicensed company for that matter, applied for a license on its own initiative or, after being notified by the Commission, honestly and conscientiously pursued the license application process, the Commission might have viewed the situation in an entirely different light.

Briefly:

Gexa Considering Ohio Market

Gexa Energy, "is considering establishing a subsidiary that would apply for certification as a Competitive Retail Energy Supplier (CRES) providing competitive retail supply in the State of Ohio, and specifically to retail customers within FirstEnergy's service area," the retailer disclosed in a motion to intervene in FirstEnergy's electric security plan and market rate option cases. Gexa told PUCO it served approximately 1,000 MW of peak load and approximately 158,600 retail customers as of December 31, 2007.

Our Energy Applies for REP License

Mohan Wanchoo, currently President of EC Infosystems, filed with the PUCT for a certificate for his new start-up REP, Our Energy. Tom Tate, who has held various marketing and business development positions at NYSEG and TSE Services, a subsidiary of the North Carolina Electric Cooperatives, would serve as COO. Our Energy would meet PUCT financial requirements through unused cash resources of at least $100,000. The REP would use EC Infosystems for EDI and billing, and retained Competitive Assets as its regulatory consultant.

Calif. ALJ Denies DRA Request for Novation Hearings

A California PUC ALJ denied the Division of Ratepayer Advocates' request for evidentiary hearings regarding the benefits and costs of novating Department of Water Resources supply contracts, concluding such hearings would needlessly delay the case (R. 07-05-025). Although there are disputes over the potential for savings from novation (Matters, 8/19/08), such disagreement is not, in itself, a basis to hold evidentiary hearings, the ALJ ruled, concluding there is an ample record from discovery, three days of workshops, and several rounds of comments. Moreover, various remaining areas of disagreement identified by DRA are of a legal or policy nature.

PECO to File Procurement, Mitigation Plan This Month

PECO intends to file a procurement, rate mitigation, and energy efficiency plan regarding its move to market based pricing in 2011 this month, Exelon CFO Matthew Hilzinger reported at the Lehman Brothers CEO Energy Conference. While Exelon would like legislation in Pennsylvania to codify the move to market-based rates, just to get everyone on the same page, Hilzinger noted a regulatory path already exists.

Calpine Not Seeking Consolidation

Consolidation is not in Calpine's immediate future, CEO Jack Fusco said in answer to several questions at the Lehman Brothers CEO Energy Conference. Fusco, who has a background in merchant energy M&A from stints at Orion Power and Texas Genco, believes Calpine can be strong as a stand-alone company, although he noted with its young, efficient fleet, it's an attractive target for other IPPs seeking to diversify their older, former utility assets.

Calif. PUC OKs Darbee Dual-CEO Role on Interim Basis

The California PUC voted to permit PG&E Corp. CEO Peter Darbee to serve concurrently as chief executive of the parent company and utility Pacific Gas and Electric on an interim basis while the PUC reviews the case for an extended waiver of the affiliate rules (A08-07-014, Matters, 8/6/08). The order allows Darbee to serve as concurrent CEOs for a maximum of 120 days before requiring further Commission action, and does not set precedent. Although voting for the decision, Commissioner Timothy Simon voiced concern about the arrangement and said the

PUC needs to closely monitor affiliate transactions. Commissioner Rachelle Chong also voiced concerns about the policy, though voting for it.

Illinois Procurement ... from 1

is procured relatively evenly over three years, the current period for which there is sufficient liquidity in wholesale energy markets. Procurement distributions ranging between 20% and 40% per procurement cycle were determined to be relatively comparable in their capacity to mitigate risk. For the initial plan, IPA proposed procuring 35% of projected energy needs two years in advance of the delivery year, 35% of needs one year in advance, and 30% of needs in the delivery year.

The IPA would link a portion of laddered purchases to market price triggers in order to capture favorable market movements. "This approach will help ensure that the IPA fulfills its mandate to develop a procurement plan that both achieves the lowest total cost over time and takes into account any benefits of price stability," the IPA said.

Due to a lack of liquidity in energy futures markets beyond three years, the initial IPA procurement plan does not include long-term contracts. The plan also does not yet attempt to assess the availability, efficacy, economic value and consumer benefits of demand-side initiatives and resources. The IPA will "fully and comprehensively" evaluate the inclusion of robust demand-side initiatives/resources as well as the use of long-term contracts beyond three years as integral components of future procurement plans, it said.

IPA also recommended that 110% of projected needs should be procured in July and August to reduce risks of weather-related price spikes. Such procurement does carry the risk of needing to sell excess power back to the market at a loss, IPA noted.

The IPA's plan, for the period June 2009 through May 2014, is based on five-year demand forecasts from the utilities, factoring for the largely unknown variable of retail switching. "The creation of the Office of Retail Market Competition within the Illinois Commerce Commission, and the passage of legislation to facilitate retail competition indicate the potential for significant changes in retail switching among eligible retail customers," the IPA said.

Since the utilities' load projections are updated only annually, the IPA will readjust projections should retail switching exceed the utilities' projections.

As some power has already been bought by the utilities, the IPA will procure default service power as follows:

Procurement Period	ComEd Load	Ameren Load
2009-2010	28.88%	30.42%
2010-2011	36.43%	52.61%
2011-2012	37.10%	51.44%
2012-2013	37.42%	70.99%
2013-2014	100.00%	100.00%

IPA suggested shortening the statutory provision for a four-day review of procurement results to decrease risk premiums arising from leaving bids open before execution. IPA estimated that absent a shorter approval window, the premium resulting from bidders purchasing five-day option contracts to guarantee the price they submit to the IPA would be $180 million over the next three procurement cycles. IPA recommended that bids be approved the same day they are submitted.

Frontier ... from 1

Energy, Firefly Electricity, Freedom Power and Electric Now. Evans has also been a consultant for several start-up REPs, focusing on creating CIS systems and business protocols for day-to-day operations

Frontier Utilities would meet PUCT financial qualifications with unused cash resources of at least $100,000.

Frontier Utilities has an agreement with EC Infosystems for EDI functionality and a contract with Fulcrum Power Services for QSE services and load forecasting. It also retained Competitive Assets as a regulatory consultant.