

Energy Choice Matters

September 17, 2008

ComEd, Retailers Reach Agreement on Advertising ComEd Real-Time Pricing

Commonwealth Edison and retail suppliers have reached an agreement on certain revisions to ComEd's Integrated Distribution Company (IDC) implementation plan needed in order for ComEd to market and promote ComEd's bundled, real-time pricing tariff for residential customers (Matters, 6/30/08).

ComEd's IDC implementation plan is designed to prevent ComEd from favoring a merchant affiliate, and does not allow a distribution company to, "proactively act to retain or obtain a customer for any of the IDC's retail electric supply services." Current IDC rules prohibit distribution companies from promoting, marketing or advertising any Retail Electric Supply Service, which ComEd has cited for a lag in real-time pricing enrollments compared with program goals.

Chief among the conditions agreed to by ComEd in order allay retailers' concerns is that, should any retailer desire to offer its own residential real-time pricing product, ComEd will indicate in its promotional materials that certain retailers offer real-time pricing as well. Retailers must provide ComEd with reasonable notice of their intent to offer real-time pricing to be included in such marketing materials.

Additionally, should a retailer decide to offer a residential real-time product pursuant to Rider RES-RRTP, ComEd's promotional materials will indicate that certain retailers' products provide the same benefits as ComEd's product, including free meter installations and reduced meter charges.

ComEd will also give retailers an opportunity to comment on draft marketing materials, and will hold semi-annual meetings regarding promotional efforts with retailers and the ICC's Office of Retail

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PEG, Nicor Trade Allegations in Latest AGS License Case Filings

Progressive Energy Group and Nicor Gas have traded more motions and exceptions regarding PEG's application to be an AGS in Illinois, mostly reiterating earlier arguments (Matters, 9/12/08).

However, in its latest reply, PEG alleges that, "Nicor Gas' professed interest in PEG's qualifications to be an AGS is extremely suspect in light of the fact that it has never attempted to intervene in an AGS certification proceeding before." PEG urged the Commission to consider Nicor's, "real motives," for intervention given that an ALJ has endorsed granting the license in a proposed decision.

PEG accused Nicor of a "clear abuse" of the discovery process because PEG alleges a discovery request made by Nicor to Vanguard Energy Services in Nicor's pending rate case (08-0363), requesting that Vanguard attest to its relationship with PEG (a matter which has become a debate in the AGS license proceeding), was not intended for use in the rate case docket, but instead to be submitted by Nicor in opposition to PEG's AGS application, PEG said.

PEG further alleged that the reason for Nicor's "fierce" objection to PEG's AGS license is that, presumably, PEG could gain intervenor status in Nicor's current rate case upon receiving an AGS license. The ICC recently denied PEG's petition for interlocutory review of an ALJ's ruling denying PEG's intervention in the rate case since PEG was not an AGS, but the ALJ's original order, PEG claimed, implied that PEG would be permitted to participate upon receiving a license. PEG told the ICC that it has presented testimony in the rate case calling for \$30 million in adjustments favorable to ratepayers that have not been presented by other parties, and alleged that Nicor Gas is protecting its

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PUCO Federal Advocate Urges Delay in MRO Review

FirstEnergy's market rate offer application should be held in abeyance given the uncertain status of the Midwest ISO Market Monitor's mitigation authority, PUCO Federal Energy Advocate Daniel Shields said in pre-filed testimony (Matters, 9/16/08).

Shields noted that SB 221 requires any distribution company implementing an MRO that is a member of an RTO to have a market monitor empowered to take action to identify and mitigate market power or the electric distribution utility's market conduct, or similar market monitoring ability.

However, the role of RTO market monitors is in question given FERC proceedings RM07-19 and AD07-7, in which a NOPR contemplates that Market Monitoring Units should be removed from tariff administration and mitigation. PUCO has opposed that provision in comments at FERC, arguing that the MMU should possess the authority to recommend remedies and/or sanctions to FERC regarding those manipulating or attempting to manipulate the market. Mitigation imposed by the MMU is appropriate, PUCO has said, since the ISO will not be expected to impose enforcement measures upon its market participant customers, which is a potential conflict of interest, Shields testified.

As such, Shields recommended that PUCO delay action in the MRO case until FERC issues its decision in RM07-19 and AD07-7.

Shields is concerned that FERC may take a final position in the dockets that could materially impact the status of FirstEnergy's MRO application and render the company unable to fulfill one of the criteria under R.C. 4928.142 if FERC removes the Market Monitors' ability to mitigate conduct.

OCC Urges PUCO to Deny Duke Energy Retail Sales CRES Renewal

The Ohio Consumers' Counsel urged PUCO to suspend and deny the application of Duke Energy Retail Sales (DERS) for renewal of its certification as a competitive retail electric service provider, as OCC alleged that, "DERS has violated the corporate separation standards

of Ohio Adm. Code 4901:1-20-16, other rules of the Public Utilities Commission of Ohio," and, "acted to undermine the competitive market for electric generation service."

"Such violations and activities have adversely impacted the competitive electric marketplace, and thus have adversely affected the interests of residential customers," OCC alleged (04- 1 323-EL-CRS).

"DERS is merely a shell corporation that does not act independently from its affiliated companies, one of which is Duke Energy Ohio, Inc. ('Duke Energy') that provides distribution and generation service to customers in Cincinnati and the surrounding area," OCC alleged.

OCC pointed to PUCO's finding of several "side agreements" between customers and a DERS predecessor which were questioned in a previous rate case (03-93-EL-ATA).

"DERS' activities were directed by employees of its Duke affiliates to settle Duke Energy's Rate Plan Case and to assist in Duke Energy's anticompetitive efforts to retain its corporate customers," OCC alleged.

DERS has no employees and no customers, OCC claimed, further alleging that, "DERS' balance sheets for 2005 through 2007 show the deepening accounts payable to its affiliates (and increasingly negative equity) as the results of large 'Option Premium Expense[s]' to Duke Energy's customers in the absence of any operating revenues."

Absent the constant infusion of funds from its affiliates, DERS would be insolvent, OCC claimed.

OCC also referenced statements regarding DERS' and its predecessors' business plan that were the subject of now-settled litigation brought by a former Duke employee.

Calif. Draft Sets Revised RPS Market Price Referent

The California PUC yesterday issued a draft decision that would refine the methodology for the market price referent (MPR) for use in the RPS, but would continue the use of a "proxy plant" for modeling the levelized price of a utility's long-term PPA with a new natural-gas fueled generation facility in California (R. 06-02-012).

The proposed decision addresses several aspects of the existing MPR methodology in order to improve the accuracy, transparency, and simplicity of the modeling for the MPR proxy plant.

The draft would adjust the method for determining the cost of natural gas fuel for the proxy plant to include data from up to 12 years of forward natural gas contracts traded on the New York Mercantile Exchange and to provide a reasonable prediction of gas prices in the later years of the proxy plant's long-term forward gas contract.

The draft would also refine the methodology for the capacity factor used for the combined cycle gas turbine proxy plant to increase consistency and transparency of the modeling by adopting a statewide technical capacity factor. The draft makes minor updates to the methodology for calculating installed capital costs for the proxy plant and also ends the use of a factor for calculating transmission line losses.

The draft decision would include as a permanent feature of the MPR methodology the calculation of the cost of compliance with regulatory programs limiting greenhouse gas (GHG) emissions, setting forth a methodology that takes into account the rapid changes occurring in the GHG regulatory area.

The proposed decision would also maintain the Commission's current practices of publicly disclosing the MPR calculation, and of requiring the public disclosure of the information whether the price of an RPS procurement contract is at, below, or above the MPR.

PPL, EFH, FPL See No Adverse Impact from Lehman Filing

PPL, Energy Future Holdings and FPL Group were the latest electric industry players to assure investors that the Lehman Brothers Holdings bankruptcy won't have a material adverse effect on the companies' operations.

PPL EnergyPlus is a counterparty with Lehman Brothers Commodity Services Inc. in wholesale energy marketing and trading transactions. The Lehman bankruptcy filing gives PPL EnergyPlus the right to terminate its transactions with Lehman Brothers Commodity Services. As of September 15, PPL EnergyPlus' direct net exposure to Lehman Brothers

Commodity Services Inc. was estimated to be less than \$2.0 million pre-tax.

PPL Energy Supply and PPL Electric Utilities have aggregate credit facility commitments of \$4.735 billion with various banks, including Lehman Brothers Bank, FSB, a subsidiary of Lehman. As of September 15, Lehman Brothers Bank, FSB's total commitment as a lender under such credit facilities was \$185 million. PPL does not believe that the potential reduction in available capacity under the credit facilities will have any impact on PPL's ability to meet liquidity needs.

Energy Future Holdings subsidiaries are counterparties with subsidiaries of Lehman with respect to wholesale energy marketing transactions, including natural gas hedging transactions that are part of EFH's corporate hedging program. The Lehman bankruptcy filing gives the EFH subsidiaries the right to terminate the transactions, and the EFH subsidiaries provided notice to the Lehman subsidiaries terminating these transactions effective on September 15, 2008. EFH believes that, as of September 15, its subsidiaries' direct net financial position with respect to the transactions is not material and that its overall corporate hedging program is not materially impacted by the termination.

A subsidiary of Lehman is a lender under the senior secured facilities of Texas Competitive Electric Holdings Company (TCEH), a subsidiary of EFH. As of September 15, the aggregate amount of unfunded commitments under (i) TCEH's \$2.7 billion revolving credit facility was approximately \$2.49 billion of which the Lehman subsidiary's unfunded portion was approximately \$285 million and (ii) TCEH's \$4.1 billion delayed draw term loan facility was approximately \$1.2 billion of which the Lehman subsidiary's unfunded portion was approximately \$17 million. EFH does not believe the potential reduction in available capacity under the credit facilities will have a significant impact on the liquidity of EFH.

As of September 15, FPL Group and its subsidiaries did not have any direct net credit exposure to Lehman Commodity Services, based on existing contracts and current market prices. FPL Group believes it may have some indirect credit exposure as a result of Lehman's obligations with regional transmission

organizations. At this time, FPL Group is unable to determine the impact of the potential indirect credit exposure but, based on information currently available, does not believe that such exposure will have a material adverse effect on FPL Group

Sempra Energy announced that the company's total exposure -- including its share of the joint-venture commodities business -- is expected to be less than \$20 million.

Briefly:

ALJ Denies Krescent Intervention in SAB Case

A PUCT ALJ denied Krescent Energy Partners' motion to intervene in the REP application docket of SAB Power, concluding Krescent has not shown a justiciable interest that may be adversely affected (Matters, 9/11/08). Krescent had sought intervention based on a non-compete clause it said it had with SAB's principal, Tejbir Singh, who is also a principal at AmeriPower, a REP partially owned by Krescent. But the ALJ noted that under PURA and Commission rules, the possible violation of the non-compete agreement between AmeriPower and Singh does not appear to be a consideration in the grant or denial of a REP certificate. PURA requires the Commission to grant a certificate if an applicant satisfies the four criteria listed in § 39.352(b), the ALJ said.

We Energies Worries About Stranded Costs Over Cleveland Cliffs Provision in Mich. Bill

Michigan's pending electric re-monopolization bill (HB 5524) would raise rates for captive customers of We Energies, due to draft provisions which would exempt Cleveland Cliffs from a competitive load cap, and changes eliminating provisions for recovery of stranded costs, We Energies said in a letter to Rep. Frank Accavitti (Matters, 9/8/08). Cleveland Cliffs' load constitutes well over 70% of We Energies' retail sales in Michigan, and thus, "[t]he potential for negative consequences are substantial," We Energies said. With no provisions for stranded cost recovery, We Energies would be faced with the prospect of requesting rate increases up to 40% for its Michigan customers, since Wisconsin does not allow for electric choice. We Energies is also concerned about changes to return to service rates.

ERCOT Withdraws Request for Higher System Admin. Fee due to Nodal Delay

ERCOT has asked to withdraw its request to raise the System Administration Fee by 15¢/MWh due to the delay in a Go-Live date for the nodal market. ERCOT reported to the PUCT that the current fee of 41.71¢ is sufficient to fund ERCOT's base operations for 2009 until such time as a new nodal schedule is developed, based on a revenue requirement reduction of approximately \$42 million due to the nodal schedule delay. The PUCT instructed ERCOT to delay setting a new implementation schedule until completing an updated cost-benefit analysis of the nodal market. ERCOT did not request a change to the separate nodal surcharge, and also reported that a request for an increase in the nodal surcharge is not expected to be filed until after the updated nodal budget and schedule are developed.

Dominion Closes Cirro Purchase

Dominion Retail is expected to announce today the close of its previously announced purchase of Cirro Energy (Matters, 8/14/08).

D.C. PSC Codifies Environmental Disclosure Rules

The Washington D.C. PSC adopted its proposed rules to codify current orders regarding electricity Fuel Mix and Emissions Disclosure Reports as Chapter 42 of Title 15 DCMR (FC945, Matters, 7/14/08). The PSC essentially codified current rules issued in Orders No. 12765, 13391, 13589 and 13880, which call for semi-annual reports to be sent to customers within the June and December billing cycles, with reports also submitted to the PSC. As required now, the June report is to list fuel mix and emissions data for the previous calendar year, while the December report is to list data for the period of January through June of the current year. Failure to file an environmental information report or disclose information to customers may result revocation of a supplier license or imposition of a civil penalty up to \$10,000 per violation.

NU Says C2 System to be Ready at CL&P, WMECO By Oct. 16

Northeast Utilities reported that it is to implement its C2 customer service system at Connecticut Light and Power and Western Massachusetts

Electric Co. beginning the evening of Thursday, October 9, with C2 anticipated to be fully operational by October 16. The schedule takes advantage of the long Columbus Day weekend, which is historically a lower customer call volume period, in order to minimize the impact on customers, NU said.

Over 1.5 Million Still Without Power in ERCOT

Nearly 1.6 million customers remained without power in ERCOT Tuesday evening, with 1.5 million customers without power at CenterPoint, 55,000 at Texas-New Mexico Power, and 30,000 at Oncor. Oncor expects to have power essentially fully restored by the end of the week, while CenterPoint projects restoring 50-75% of its 2.26 million customers in the next seven days. Gov. Perry issued a proclamation giving public utilities the authority to enter public and private property and install temporary electric transmission lines to restore power in East Texas and along the coast, similar to authority granted after Hurricane Rita.

CNE Signs Green Deal, Appoints Demand Response VP

Constellation NewEnergy signed an agreement to provide the new InterContinental Chicago O'Hare Hotel with 4,475 MWh of Green-e wind RECs to match the hotel's energy usage for one year. CNE also recently named Leighton Wolfe as vice president of alliances and strategy. Wolfe will lead development of new demand response initiatives and deployment of new technologies for C&Is, and develop the NewEnergy Alliance, which is to, "forge a new electricity demand response model that will surpass the current utility-driven demand response offerings and provide customers with more control over their energy costs." Wolfe founded two systems integration firms and was a consultant on building integration and distributed energy technologies.

FERC OKs OG&E Purchase of Redbud Plant

FERC conditionally accepted Oklahoma Gas and Electric's purchase of Redbud Energy's 1,200-MW generating facility, contingent upon the completion of several transmission upgrades to increase the amount of import capability into the region (EC08-58, Matters, 4/21/08). Interim mitigation measures are to be applied until the

transmission upgrades are complete. FERC found AES Shady Point's complaint that OG&E does not procure long-term energy and capacity in a transparent, competitive manner to be beyond the scope of the proceeding.

ComEd RRTP ... from 1

Market Development. Details to be provided to retailers include the method of marketing (direct mail, print, bill inserts, radio, Internet, etc.), frequency and timing of ads, and the text and content of any materials, as available.

All costs of promoting ComEd's residential real-time pricing program are to be considered in the Commission's final economic analysis of the ComEd program and whether the program has produced "net economic benefits" as required by legislation.

The stipulation reached by retailers and ComEd stresses that the IDC revisions are granted only due to legislation requiring ComEd to offer residential real-time pricing, and that they are subject to review as part of the overall review of the real-time pricing program due in 2010. The agreement is subject to Commission approval.

PEG ... from 1

own interest, not that of its customers, be seeking to block PEG's license and thus rate case participation.

Nicor, meanwhile, continued to attack various representations made by PEG in its application.

Nicor alleged that various Experian and Dun & Bradstreet reports show a, "lack of any discernible financial history," and indicate that PEG, as yet, has not been engaged in the buying and selling of natural gas, as represented in its application, since the reports reflect no payments to any vendor associated with the trade of providing gas, Nicor claimed. The limited payments listed were to companies involved in motion picture production, wholesale sporting goods and lithographic printing, Nicor said.

Both PEG founders Christopher Childress and Arnold Schramel represented to the Illinois Department of Employment Services that they were unemployed, Nicor alleged, to obtain unemployment benefits. Both were former managers at Nicor's unregulated AGS.

However, each also represented in their AGS application that they are "staff" at PEG, Nicor said. "These conflicting representations cannot both be true, and the fact that Childress and Schramel made them both, to different agencies of Illinois government, shows that PEG cannot be trusted to serve the public as an AGS," Nicor alleged.

But Nicor should focus on its own integrity, PEG charged, alleging a, "long sad history of not being truthful to both the Commission and its actual and potential customers." PEG made allegations with respect to Nicor's not sharing Chicago Hub revenues with customers, a whistle blower complaint related to Performance Based Rates, and the handling and replacement of mercury regulators.