Energy Choice Matters
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Constellation Sale Talks at "Advanced Stage"

Constellation Energy disclosed yesterday that it has retained Morgan Stanley and UBS to act in an advisory capacity to, "evaluate strategic alternatives," informing investors that it is in, "active discussions with potential strategic partners."

Standard & Poor's said Constellation informed it that talks regarding an outright sale of the company were at "an advanced stage."

Speculation on Wall Street that EDF may purchase Constellation, or at least raise its already growing stake in the conglomerate, provided some relief to CEG's stock slide, with shares up 25% in after-hours trading, to $29. Previously, share prices had fallen nearly 60% during the week from $55 on Monday, due to investor fear over liquidity, despite assurances from CEG that the Lehman bankruptcy would not have a material adverse impact on operations (Matters, 9/16/08).

EDF was considering further U.S. investment at a Wednesday meeting in Paris. It recently increased its stake in CEG to nearly 10%.

Analysts questioned CEG about an acquisition by EDF at a recent investors forum (Matters, 9/4/08), and have also pushed for a joint venture similar to the RBS-Sempra marriage, a possibility which CEG downplayed last month (Matters, 8/28/08). Any sale, or stake in CEG above 20%, would require Maryland PSC approval.

Investor confidence in CEG has been rattled since a disclosure in August that the firm had underestimated its collateral needs by nearly $2 billion if its credit were seriously downgraded. CEG called it an "inexcusable" error, prompting the company to shore up its liquidity by entering an agreement for an additional $2 billion credit facility, plus planning for a sale of its upstream gas assets.

But Constellation yesterday was forced to address Wall Street speculation, fueled by a research

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Final Rules on ESP, MRO Applications Contain Scant Changes Favorable to Retailers

PUCO refrained from setting prescriptive direction for competitive bidding plans under market rate offers, and declined to adopt several measures sought by competitive suppliers, in adopting final rules relating to Standard Service Offer as well as reasonable arrangements (Matters, 7/23/08, 08-777-EL-ORD).

In a round of comments, various stakeholders had asked that PUCO set a specific method for procuring MRO power, whether it be through descending clock auctions, RFPs, or a least cost portfolio. PUCO declined to direct the utilities to use any one method for creating their competitive bidding plans, although competitive bidding plans must include a discussion of various procurement methods considered, including portfolio approaches, staggered procurement, forward procurement, electric utility participation in day-ahead and/or real-time balancing markets, and spot market purchases and sales.

PUCO did not adopt Duke Energy's recommendation that new utility procurements from existing generation using a bidding process be allowed to be recovered via a nonbypassable surcharge under electric security plans. PUCO stressed that provisions in SB 221 allowing for unavoidable capacity charges arose from a concern that the market might not provide sufficient means for the creation of additional generation resources which might be needed in the future. Existing resources are already available to Ohio consumers through the market, PUCO noted, and thus should not be subject to an unavoidable charge as Duke suggested. Environmental upgrades to existing resources could still be

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NERC, Marketers Defend Latest Approach on LSE Reliability Compliance

NERC and Integrys Energy Services responded to protests from distribution providers regarding NERC's re-assessment of whether retail power marketers should be categorized as LSEs for purposes of compliance with reliability standards (RC07-4).

As part of a two-step process meant to address the reliability "gap" caused by FERC's finding that power marketers do not fit the LSE category, NERC determined that distribution providers in retail access areas should serve as the LSE for all load connected to their system, for NERC compliance purposes. NERC noted joint registration or transfer of responsibility by agreement could be invoked by relevant parties where more than one entity is responsible for compliance with the standards.

Consumers Energy objected, arguing that FERC had already endorsed an earlier solution to create a non-asset owning subclass in the LSE category for retail marketers.

But Integrys Energy Services responded by noting FERC's relevant order did not address the substance of the non-asset owning LSE proposal, and only approved NERC's two-step process, which resulted in the distribution provider solution for a short-term basis.

The Integrys marketer noted NERC's plan, while considering distribution providers LSEs, recognizes that distribution providers may lack some information regarding retail marketers' load. NERC asked distribution providers to make good faith efforts for compliance, but noted that until responsibilities are clearly delineated and both market participant groups are registered with NERC, NERC will exercise its discretion in any potential penalties.

Detroit Edison characterized the short-term solution as assigning all responsibility to distribution providers while assigning none to retail marketers.

But NERC's filing contemplates that power marketers will end up with responsibilities, Integrys Energy Services noted; such responsibilities are just undefined as of yet.

Integrys Energy Services, responding to comments from the Exelon distribution utilities, argued that a sub-category of non-asset owning LSEs is oxymoronic, since owning assets is what makes an entity an LSE under NERC's rules.

While NERC noted some distribution providers argued that retail marketers should be responsible for their own-end use loads since under retail access they are the entities with information regarding those loads, NERC insisted that, "there can be no dispute that DPs provide the wires over which even the retail power marketer load is served and do, in fact, have both the infrastructure and access to information to enable them to comply with the LSE Reliability Standards."

"To the extent DPs providing wires service for retail power marketers also are registered as LSEs, NERC does not find compelling arguments that they lack the ability to comply with LSE Reliability Standards for all end-use load on their wires," NERC said, noting many DPs serve as POLRs in retail access states.

While NERC agrees a long-term solution is needed, "[c]alls to immediately eliminate the LSE functional category and LSE Reliability Standards are premature and should be rejected." Constellation Energy had suggested such removal in comments, under a plan that would re-assign some LSE responsibilities to distribution providers and other NERC functional categories.

Consumers Energy opposed Constellation's plan, arguing that distribution providers are charged with the physical delivery of energy and are not equipped to be responsible for load forecasting and arranging for energy service to loads.

NERC noted that because of the market structure and legal framework in ERCOT (and perhaps other organized markets with independent system operators and regional transmission organizations), NERC recognizes that concurrent or joint registrations may be needed immediately.

Additional Generators Oppose Auto MCPE Adjustment During NSRS Deployment

More generators came out in opposition to PRR 776, Automatic MCPE Adjustment During Intervals of Non-Spinning Reserve Service (NSRS) Deployment, originally proposed by industrials to provide accurate prices in Real-Time and facilitate load response (Matters, 9/3/08).

PRR 776 would adjust the Market Clearing Price for Energy when the deployment of NSRS occurs in order to provide accurate prices in Real-Time through an automatic $100/MWh upward adjustment.

BP Energy noted the PRR's use of an average price mark-up greatly dampens the potential for scarcity pricing, "which is needed for the ERCOT energy-only resource adequacy mechanism to work."

"[T]he potential for genuine scarcity pricing also is needed for some gas-fired generators with either low capacity factors or operating limits imposed by environmental restrictions to earn sufficient revenues to stay viable in the ERCOT market in the short run," BP said.

The potential for scarcity pricing also provides the necessary market penalty for those QSEs who are short during times when the reliability of the Real Time grid is threatened, BP added. "By artificially dampening Real Time prices, BPEC believes that this PRR may lead to an increase of Replacement Reserve Service (RPRS) procurement by ERCOT to ensure reliability of the grid. Such an increase in costs, uplifted on an ERCOT-wide Load Ratio Share basis, also would decrease the efficiency of the ERCOT wholesale market by weakening the principle of direct assignment of costs," BP explained.

The belief that the $100 adder will increase demand response is not backed by any historical evidence, BP argued, pointing to $3,000 and $4,000 price excursions this spring that did not produce significant demand response.

Luminant agreed that the PRR does not provide the proper pricing signals to reflect the true market value of resources during periods when NSRS is deployed. The $100 adder, based on a simple average of historical MCPE price adjustments, fails to recognize the fact that such price adjustments have been escalating since January 1, 2007, and also fails to recognize the seasonality of price variations that have occurred, which inherently provide proper scarcity pricing signals necessary to provide incentive to Market Participants (both generators and Loads) to build new generating capacity or interrupt existing Loads, Luminant said.

Briefly:

Former Direct Manager Starts Conn. Aggregator

Howell Consulting applied to aggregate Connecticut C&I, institutional and governmental customers. Principal Derek Howell was Director of Aggregations and Associations, U.S. North, for Direct Energy, after previous roles in product development and deal structuring at the retailer. Howell previously managed origination at Select Energy.

Dominion East Ohio Has New Choice Website

Dominion East Ohio launched a new interactive website (www.dominiongaschoice.com) meant as a one-stop shop for gas choice information. The new site includes videos on various choice options (competitive supply, SSO or governmental aggregation) and includes links to PUCO's Apples to Apples charts and OCC comparisons. Dominion East Ohio worked with PUCO, the Ohio Consumers' Counsel and competitive suppliers in developing the site.

Delmarva Moving Forward with Delaware Smart Meters

The Delaware PSC has given the green light for the "diffusion of the advanced metering technology into the electric distribution system network," and Delmarva said that smart meters are to be installed for its 300,000 customers. The Commission's order, Delmarva said, clears the way for detailed installation planning. While customers could see the new meters arrive as early as next fall, Delmarva said it will take some time to fully integrate them to a point where customers can realize all the benefits. The per-customer charge for the new meters will be determined in a future rate proceeding.

TAC-WMS Call Joint Meeting on CSCs

TAC and WMS have called for a special joint meeting on October 8 after the ERCOT board remanded consideration of the 2009 Commercially Significant Constraints (CSCs) back to TAC. The Board instructed TAC, working with ERCOT Staff, to re-examine options 3b, 3h and 3i, and to return to the October board meeting with a single recommendation for CSCs and the resulting Closely Related Elements (CREs) so that the

Board can comply with Protocol Section 7.2, CSC Zone Determination Process.

R.I. PUC to Hold Meeting on Long-Term Renewable PPAs for Grid

The Rhode Island PUC is to hold a series of stakeholder meetings to consider whether National Grid should be forced to procure renewable energy on long-term PPAs. A schedule has not been set yet.

Texas Outage Update

About 1.4 million customers in ERCOT remained without power Wednesday, with 1.32 million at CenterPoint and 50,000 at Texas-New Mexico Power. CenterPoint reported as of 8 a.m. Wednesday having 96% of transmission circuits and 93% of substation capacity back in service. Service has been restored to all transmission voltage industrial customers, including the Houston Ship Channel and energy and petrochemical companies, CenterPoint said. Across ERCOT, high-voltage transmission lines remaining out of service have been reduced to 22, including 14 138-kilovolt (kV) lines and eight 69-kV lines. About 2,150 MW of generation remain unavailable, representing eight generating plants (25 units total).

N.Y. PSC OKs Revised Capacity Release Rules at KeySpan LDCs

The New York PSC approved KeySpan Delivery New York and KeySpan Delivery Long Island's revised tariffs to modify existing capacity release programs to accommodate marketers' needs in the non-winter months. A final order was not available at press time (08-G-0723 & 08-G-0725).

PUCO Staff Withdraws Market Monitoring Testimony

PUCO Staff withdrew the previously filed testimony of federal advocate Daniel Shields from FirstEnergy's market rate offer case during a hearing yesterday (Matters, 9/17/08).

Gateway Energy Services Intervenes in 2002 N.Y. Capacity Refund Case

Gateway Energy Services has sought intervention in FERC's proceeding regarding potential refunds LSEs may be liable for due to under-procurement of capacity by the New York ISO in 2002 (EL05-17, Matters, 8/18/08). Gateway (then Econnergy) was a signatory to a settlement with KeySpan-Ravenswood over the under-procurement, but FERC has set the matter of LSEs' liability to other generators, including Rest-of-State generators, for hearing.

CEG ... *from 1*

note by Credit Suisse analyst Dan Eggers, that the $2 billion credit facility slated to close in October could be pulled.

Constellation stated Wednesday that the sponsoring banks have confirmed that the firm, underwritten commitment for an additional $2 billion credit facility announced on Aug. 27, 2008, remains in effect.

Constellation reported that the terms of the commitment include a material adverse change condition, defined as "a material adverse change in the business, financial condition or financial results of operations of the company and its material subsidiaries, taken as a whole on a consolidated basis."

Constellation stressed that its credit exposure to financial institutions is "limited," and said as of September 15 it had net credit exposure to 14 financial institutions. The company's estimated aggregate credit exposure, net of collateral, to those financial institutions was approximately $120 million, with no single financial institution representing more than $28 million of net credit risk exposure.

Nevertheless, S&P said that if CEG did not shore up its balance sheet, "a multiple-notch downgrade is likely" -- the scenario Constellation originally spooked the Street with in August with its underestimation of collateral.

"We do not expect the company to withstand such a rating action," S&P said.

SSO Rules ... *from 1*

collected via a nonbypassable surcharge per SB 221, however.

The Commission declined to implement any sort of phase-in generation credit for shopping customers, proposed by marketers and government aggregators to combat the negative impact artificial generation prices created by the phase-in of higher SSO prices would have on competition.

Electric security plans must include a description of how the electric utility proposes to address governmental aggregation programs and SB 221 provisions allowing aggregation pools to avoid standby service charges, as well as limitations on collection of certain cost deferral charges for aggregation customers. ESPs must also include a description of the effect of any unavoidable generation charges in the ESP on large-scale governmental aggregation.

Proposals for nonbypassable surcharges under ESPs for new generation or environmental upgrades must include a description of the projected costs of the facility, and the facility must have already been reviewed by the Commission through an integrated resource planning process.

ESPs must list all components of the ESP which would have the effect of preventing, limiting, inhibiting, or promoting customer shopping for retail electric generation service. Such components would include, but are not limited to, terms and conditions relating to shopping or returning to the standard service offer, and any unavoidable charges. For each such component, an explanation of the component, a descriptive rationale and, to the extent possible, a quantitative justification shall be provided.

Similar description and quantification is needed on nonbypassable generation charges related to new generation and/or environmental upgrades. Justification must be provided for any unavoidable charges for standby, back-up, or supplemental power as well.

PUCO modified language in the rules holding that provisions of an SSO application must be "consistent with" instead of "achieve" the policies of the state as set forth in divisions (A) to (N) of Section 4928.02, Revised Code, recognizing the need for flexibility in attempting to satisfy those policies, a point raised by several parties in comments. The goals, ranging from encouraging competition to ensuring adequate supplies and reasonable rates, could arguably be in conflict under some proposals.

As for reasonable arrangements, PUCO declined to develop any method whereby a competitive supplier could serve the customer seeking a ratepayer-subsidized discount or other special rate, instead of the utility. PUCO lifted several proposed restrictions which will make reasonable arrangements available to more customers as well. For example, the Commission removed the criterion that a customer needed to show a new fixed asset investment to qualify for economic development or energy efficiency rates, since PUCO noted that new jobs, the point of such special rates, could be created without additional investments in fixed assets. PUCO also dropped a proposed requirement that a customer have an electric intensity of at least 10% to qualify for certain special arrangements. The 1 MW cap on customers eligible for energy efficiency was also lifted in the final rules.

The Commission determined that it is necessary to approve all reasonable arrangements entered into between the electric utility and one or more of its customers, and removed all references to standard schedules from the final rules.