Energy Choice Matters
September 19, 2008

MidAmerican Rescues Constellation in Bargain Deal

MidAmerican Energy Holdings expects to enter a definitive agreement to acquire Constellation Energy today in a bargain deal that provides a savior for the ailing CEG while solidifying MidAmerican's growing competitive portfolio and expanding its reach into the eastern organized markets.

The deal combines two of the largest competitive retail electric suppliers, in top-ranked Constellation NewEnergy and MidAmerican, the latter of which has grown appreciably in the past two years, buoyed by the Illinois market and expansion into new territories, such as this February's Texas licensing. Any combination of each's competitive natural gas supply business will prove formidable as well.

Still, MidAmerican plans to allow Constellation to "operate autonomously," MidAmerican CEO Gregory Abel said. Such autonomy is a hallmark of Warren Buffet-led firms. Abel said there have not been discussions on any potential management changes at CEG. Messages seeking comment on retail supply integration and branding were not returned.

MidAmerican, which heretofore has not owned a utility in an RTO, picks up a swath of merchant baseload assets in the East, particularly PJM and the New York ISO.

The sale price of $26.50 per share, or $4.7 billion, represents the lowest value for CEG's shares since 2003, before the slide earlier this week. And it's sharply off the $12.4 billion offer from FPL Group in 2005 which ran into regulatory hurdles.

MidAmerican contacted CEG about a deal Tuesday, Abel said, and expects the transaction to close within nine months. Constellation's corporate headquarters will remain in Baltimore, and there are no immediate plans for layoffs, MidAmerican said.

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Gas Marketers List Improvements to Proposed Md. Regs

Competitive gas suppliers recommended several changes to draft Maryland rules covering retail gas consumer protections and supplier-utility coordination (RM35, Matters, 8/14/08).

Gateway Energy Services noted enrollments begin on the first of the month, requiring suppliers to begin delivering gas for such customers on the first. However, due to operational restrictions, Gateway pointed out that suppliers cannot begin billing customers until the customer's meter read occurs. That means the gas supplied by the marketer from the first of the month until the meter read goes unbilled, and such gas is also not included in any cash out adjustment a supplier may see. Gateway suggested correcting the "inequitable" situation by requiring utilities to pro-rate the period from the first of the month until the actual meter read, so the supplier could bill for the volume and be made whole. Alternatively, utilities should buy back such gas from the supplier at an agreed upon market rate.

Gateway urged the PSC to only require utilities to use POR for consolidated billing, rather than providing a proration option for partial payments. Gateway cited experiences in other territories where proration has led to customer confusion.

In the event the proration option is kept, Gateway opposed the provision that would return unpaid balances to suppliers after 90 days. Gateway noted the provision would cause customer confusion, since such post 90-day collections would be the first time the supplier would be seeking payment from the customer, who otherwise has been paying a single consolidated bill to the utility. Customers are

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Start-Up Marketer Applies for Conn. License

Start-up retailer Discount Power applied for an electric supplier license in Connecticut to serve all customer classes.

The standard residential contract submitted in its application calls for a floating generation rate at least 5% below applicable utility generation rates with no specific term, and does not require a security deposit. The residential contract also includes the provision that, "DPI may at any time, modify, reassign or withdraw this agreement with thirty (30) days written notice if there are adverse changes in the laws, rules or market conditions affecting DPI's ability to perform hereunder."

Discount Power's standard commercial contract also includes a floating 5% discount off utility commodity rates, but requires a one-year commitment with automatic renewal. Per the agreement, C&Is can cancel via a written notice 30 days from the end of the original term, but the contract is silent on cancellation provisions outside of that window.

Discount Power reported its expected 12-month estimate of sales as follows:

	Customers	Load (MW)	Sales (MWh)
Residential	24,000	34.56	216,288
Commercial	300	4.48	28,087
Industrial	15	6.30	45,778
TOTAL	24,315	45.34	290,153

Discount Power has contracted with Energy Services Group for various wholesale business processes, including load forecasts, scheduling and settlement.

Michael Parrella serves as Discount Power CEO, and is Chairman of Four Crystal Funding, a public investment company; Ck41 Direct, a direct response marketing company; and Gtherm, a geothermal alternate energy company. Previously, Parrella raised capital for a wide variety of companies, specializing in technology companies, and he also holds over 60 patents.

CenterPoint Offers Territory-Wide Deployment for AMS

CenterPoint Energy has filed a plan to facilitate settlement of its Advanced Metering System deployment case, now proposing to deploy smart meters throughout its service territory, with 2.4 million meters, instead of the limited 250,000 meter rollout initially proposed. The proposal is based on the stipulation in Oncor's settled AMI docket with several changes (Matters, 7/9/08).

CenterPoint would begin AMI installation June 1, 2009 and install smart meters by entire meter reading districts at a time (rather than the REP-driven deployment initially proposed). CenterPoint plans to install 280,000 meters in 2009, with 530,000 installed annually 2010 through 2013.

As of June 1, 2009, REPs would have direct, real-time access to on-demand meter reads for their customers, and access via CenterPoint's web portal to 15-minute data on a day-after basis. Customers will not have such access, unless provided by their REP, until the common Texas data repository and web portal in project 34610 are developed.

CenterPoint will be able to support prepaid service, consistent with Subst. R. 25.498 as of June 1, 2009, for residences with smart enters.

CenterPoint's total estimated revenue requirement is $1.15 billion, and reported the operating and maintenance expenses for the AMS surcharge period would be $172 million.

CenterPoint proposed a monthly surcharge as follows:

Residential	$3.80
Secondary <= 10 kVA	$4.90
Secondary > 10 kVA	$4.92
Primary	$4.92

CenterPoint offered to conduct education efforts, and provide in-home monitors to low-income customers, if such costs are included in the AMS surcharge. The surcharges listed above include a $5.4 million education program but do not include costs of in-home monitoring devices.

CenterPoint hopes for Commission approval at the Nov. 6 Open Meeting.

CAPP Signs Long-Term Supply Deal With Luminant

Cities Aggregation Power Project has signed a 24-year agreement to purchase power from Luminant, under which it is prepaying for a portion of power in exchange for a lower rate.

Under the agreement, more than 150

members of CAPP and the South Texas Aggregation Project can insulate municipal budgets from potential energy price spikes. CAPP believes the agreement to be the first of its kind in the U. S. The contract includes an initial rate of 5.6¢/kWh that increases 3% annually (eventually to 11.4¢ at the end of the term).

CAPP said "competitive, more predictable" energy prices are achieved by prepaying a fixed cost portion of the contract. CAPP will issue bonds to finance the prepayment on behalf of participating cities. Cities choosing to take part will sign a complementary contract with CAPP agreeing to pay for their annual share of the prepayment cost of the long-term purchase of power. Under the contract, cities will obtain almost two-thirds of their annual power requirements at contractually specified energy prices. The remaining power will be purchased through supplemental one- to three-year contracts that CAPP has previously used to serve its members.

FERC Affirms Gas Price Reporting Requirements

FERC yesterday reaffirmed and clarified Order No. 704, its rule establishing reporting requirements designed to provide transparency for information provided by natural gas market participants to price index publishers. FERC clarified that natural gas market participants must report all data on FERC Form No. 552 for transactions that use, contribute to, or could contribute to a price index.

Reporting should include data on transactions involving volumes that use next-day or next-month price indices, volumes that are reported to any price index publisher, and all volumes that could be reported to an index publisher, even if the respondent has chosen not to report to a publisher. Volumes that could be reported to an index publisher include bilateral, arms-length, fixed price, physical natural gas transactions between non-affiliated companies at all trading locations.

Order No. 704-A also removes the requirement that data be reported only for specific reportable locations. Participants must report transactions that do not occur at a specific location currently designated by an index developer as a reporting location. The rule also clarifies that balancing, cash-out, operational and other similar transactions must be reported on FERC Form No. 552 to the same extent as other types of transactions.

The rule exempts from filing entities that have both reportable sales totaling less than 2.2 million MMBtu and reportable purchases totaling less than 2.2 million MMBtu. The exemption applies only for those entities not holding blanket certificates. FERC clarified that end-use transactions are not categorically exempt, although traditional retail service is not included in the data required for FERC Form No. 552.

FERC Approves Single-Price Proxy Points for CAISO Imports, Exports

FERC approved the California ISO's proposal to establish modeling and pricing proxy points for import and export transactions that are consistent with the conversion to the Market Redesign and Technology Upgrade market design. The proposal, according to FERC, better considers the effects of transactions over CAISO's highly integrated interconnection with the Sacramento Municipal Utility District and the Turlock Irrigation District (ER08-1113).

Transmission owners outside of CAISO, however, have ridiculed the proposal as creating favorable prices for CAISO entities by pricing imports at a low-cost proxy, and pricing exports at a high-cost proxy (Matters, 7/9/08).

Under the California ISO's proposal, entities agreeing to provide certain information concerning their transactions into and out of the CAISO market would have alternative pricing available in lieu of the proxy point pricing. Non-CAISO entities, however, have raised concerns about sharing such commercially sensitive information.

FERC conditionally accepted the California ISO proposal, finding it ensures physically feasible day-ahead schedules and helps communicate the, "true market value of electricity at each location and the cost of congestion between locations," according to a FERC fact sheet. An order was not available yesterday.

FERC said the CAISO plan is meant to remedy infeasible day-ahead schedules under the current regime that requires the California

ISO to scramble in real time to redispatch its system to accommodate actual flows, and to allocate the costs of the redispatch as uplift.

Briefly:

Michigan Lawmakers Pass Legislation Capping Shopping

Michigan legislators in both houses yesterday approved HB 5524, which caps competitive retail electric service at 10% of IOU sales. The legislation does contain the late-added provision which essentially allows mining conglomerate Cleveland Cliffs to shop for power regardless of the shopping caps. The bill, expected to be signed by the governor, also deskews rates and provides for automatic recovery of certain cost overruns for utility owned generation. A sister renewable energy bill was also approved, although it was criticized by green IPPs for slow renewable development despite up-front customer charges. Fittingly, Detroit Edison yesterday submitted its anticipated Combined License Application to the NRC for a possible new, 1,500-MW unit at its Fermi 2 nuclear plant.

FERC Dismisses RPM Transitional Auction Complaint

FERC yesterday dismissed a complaint by RPM Buyers alleging that RPM had not resulted in just and reasonable capacity prices during the transition period, but also ordered a technical conference for February 2009 after PJM submits a report to the Commission Dec. 15 (Matters, 6/2/08). The report is to detail PJM's findings from its ongoing RPM review, and list the actions it proposes to take, including filing proposals as necessary to implement changes to RPM. Although an order was not available, FERC dismissed the complaint on the basis that RPM Buyers had failed to allege or prove that any party violated PJM's tariff and market rules, and because the prices determined for the transition period were determined in accordance with PJM's Commission-approved tariff, a FERC fact sheet said.

Integrys Marketer Launches Green Gas Product in Ohio

Integrys Energy Services launched its Ecovations Renewable Gas product in Ohio, which is a blend of natural gas and 8% biogas, which Integrys says does not carry an additional charge. C&I customers can claim "carbon offsets" as a benefit of purchasing biogas, the Integrys marketer said. Integrys reported a recent survey of existing customers indicated 72% would opt for renewable gas if the cost were the same as conventional natural gas. Twenty-five percent said they would switch to biogas even if it cost more. Integrys will also plant a tree for each new enrollment in the product.

Accent Boosts RECs in Basic N.Y. Product

Accent Energy said yesterday at no additional charge it has raised the REC offsets included in its basic New York electric product to contain twice as much renewable energy as Con Edison and National Grid bundled service. Accent also offers a 100% hydro product and 100% wind product in New York.

Kelliher Says FERC Ready to Act on Urgent M&A Filings

FERC is "ready to act" if it needs to quickly approve various section 203 merger filings caused by Wall Street turmoil, Chairman Joseph Kelliher noted at yesterday’s Commission meeting. Kelliher pointed to FERC's quick review of the JP Morgan-Bear Stearns transaction this spring, stating that the Commission understands the seriousness of the current situation. Kelliher compared the potential tumult to the collapse of Enron in the fall of 2001, which at the time was among the top three gas and electric marketers, Kelliher said.

FERC OKs Pricing Experiment in Unorganized West

FERC approved the experimental two-year transmission pricing plan submitted by eight WestConnect members intended to encourage more efficient use of the grid and reduce customer costs by expanding access to coordinated transmission service from multiple transmission providers at a single rate. Under the proposal, participating transmission owners would offer customers the option of buying hourly non-firm, point-to-point transmission service across their transmission systems at a single rate. IOU participants include Arizona Public Service Company, El Paso Electric Company, Nevada Power Company/Sierra Pacific Power Company, Public Service

Company of Colorado, Public Service Company of New Mexico and Tucson Electric Power Company. Taking coordinated service under the proposal would be an alternative to pancaked point-to-point transmission service now offered under each member's OATT. Each participating transmission company will be allocated a pro rata share of revenues based on the ratio of the ceiling rate of each transmission provider involved to the sum of those ceiling rates, provided that none of the transmission providers will collect more than their ceiling rates.

Citizen Power Wants Pa. Deregulation Study

Consumer advocate Citizen Power asked Pennsylvania legislators to fund an independent study of the Electric Choice program, citing "serious questions" of the decade-old program. "Citizen Power believes the time to consider a return to cost of service regulation is past due," the group said. "Utilities are making record profits and there's a 60% excess generating capacity in Pennsylvania," Citizen Power said, arguing such factors should lead to rate decreases, not impending increases.

FERC Sets Settlement Talks for Dynegy Ancillary Service MBRs

FERC has set settlement discussions for a dispute involving Dynegy's sale of ancillary services to the Ameren Illinois Utilities for the locked-in period from January 1, 2007 through December 31, 2007 (ER07-323-002). While FERC permitted the sales at market-based rates, Constellation Energy and munis had requested rehearing of the 2007 decision, arguing that FERC erred in removing the condition that the ultimate rate that Dynegy charges the Ameren Illinois Utilities for ancillary services be no higher than the cost-based rates charged by Ameren affiliates for such ancillary services. FERC based its decision lifting that condition on the fact that an RFP for the ancillary needs was competitive, but Constellation said competition in the RFP was limited, since there were only three bidders and Ameren had to accept all of those bids in order to obtain the required ancillary services.

FERC ALJ Certifies Large Western Crisis Settlement

A FERC ALJ certified as a contested settlement an agreement among most stakeholders to resolve several western electricity crisis proceedings, reasoning approval of the settlement agreement is in the public interest (Matters, 9/3/08). The ALJ noted Northern California Power Agency, which protested the settlement, neglected to include an affidavit detailing any genuine issue of material fact, and concluded other NCPA arguments were unsubstantiated. NCPA has not demonstrated that it is harmed in any way by the settlement, the ALJ said.

PJM NERC Penalty Pass-Through Mechanism Approved

FERC accepted PJM's proposal that will allow it to pass-through NERC penalties to responsible members (ER08-1144). In doing so, it rejected arguments from AMP-Ohio that subjecting PJM members who weren't required to register with NERC to now have to comply with all NERC standards to avoid a potential pass-through penalty was a simple end-run around provisions exempting small LSEs from burdensome NERC registration (Matters, 7/14/08). "By agreeing to PJM's Operating Agreement ... small unregistered parties have already conceded that they will make some effort to help maintain reliability within PJM," FERC said. FERC stressed that pass-through penalties must be approved by the Commission, at which point unregistered LSEs may argue against their culpability. The Commission also rejected arguments from Duke Energy and Rockland Electric that the pass-through gave too much discretion to PJM in assigning responsibility to various members. FERC noted that the pass-through must be approved by the Commission, at which time the proper allocation of responsibility can be argued.

Initial Decision Says PJM Plan for Merchant Allocation of Over 500 kV RTEP Costs Discriminatory

PJM's proposal for allocating above 500 kV Regional Transmission Expansion Planning (RTEP) costs to merchant transmission facilities (MTFs) is unduly discriminatory, an ALJ said in an initial decision (EL07-57 et. al.). PJM's proposal allocates RTEP costs to PJM zones based on their actual peak demand over the previous 12 months, but allocates costs to MTFs based on a measurement (planned firm transmission withdrawal rights or FTWRs) that is likely to exceed their peak demand over that period, the ALJ said. An MTF's planned FTWRs, even if adjusted, obviously will exceed its (nonexistent) demand in the prior year, the ALJ explained. An MTF's existing FTWRs would represent the MTF's highest possible demand in the prior year. Thus, PJM's proposed methodology will require MTFs to pay a greater share of 500 kV upgrade costs than MTFs would pay if PJM used the same methodology to allocate such costs to them that PJM uses to allocate such costs to zones, the ALJ determined. For upgrades under 500 kV, PJM has met its threshold burden of showing that it meets the general standard set out in Order No. 890, and treats MTFs and zones comparably by applying the same methodology to both, the ALJ said.

Calif. PUC OKs SCE Smart Meters

The California PUC approved a settlement between Southern California Edison and the Division of Ratepayer Advocates to implement SCE's $1.63 billion advanced metering initiative (A. 07-07-026). The PUC determined that the project offers between $9 million and $304 million in net benefits to consumers.

SCE PPAs Approved by PUC

The California PUC approved 1,350 MW of PPAs submitted by Southern California Edison, including power from:

• CPV Sentinel (273 MW)
• El Segundo Energy Center (550 MW)
• Walnut Creek Energy (478.80 MW)
• Wellhead Delano (48.5 MW)

SCE has elected to spread the PPA costs over all customers, including direct access customers.

FERC OKs Southeast Grid Planning Processes

FERC accepted, with various modifications, Order 890 transmission planning process compliance filings from Southeastern transmission owners, including E.ON U.S., Cleco Power, Southern Company Services, South Carolina Electric & Gas, Duke Energy Carolinas and Progress Energy Carolinas, Entergy Services, and Southwestern Power Administration.

Calif. PUC Adopts State Efficiency Plan

The California PUC approved the Long Term Energy Efficiency Strategic Plan, which devotes little attention to the role of energy service providers (Matters, 7/15/08).

FERC OKs NYRI Incentives, Cites Market Impact

FERC approved incentive rates for the New York Regional Interconnect merchant transmission project, conditioned on the New York PSC's determination that the $2 billion, 190-mile transmission line either ensures reliability or reduces congestion, and approves siting for the project. Commissioners Suedeen Kelly and Philip Moeller both stated that the line would help the competitiveness of wholesale markets. FERC's conditional rate approval includes a 275 basis point addition to the return on equity (ROE) that will be earned by the company. That incentive includes: 50 basis points for future participation in the New York ISO; 100 basis points for forming an independent transmission company (transco); and 125 basis points for a combined transmission and advanced technology incentive. The actual ROE is to be determined in a separate proceeding.

FERC to Revoke MBRs for Two Sellers, Issues EQR Guidance

FERC intends to revoke the market-based rate authority of Solaro Energy Marketing and Take Two LLC within 15 days if the two marketers do not submit their electronic quarterly reports for 2008. Each last filed EQRs for the fourth quarter of 2007, FERC said. FERC also issued guidance for reporting transmission capacity reassignment agreements in EQRs, stemming from requirements established in Order No. 890 (RM01-8-011).

CEG ... from 1

Despite the promised autonomy, it's clear deregulated wholesale activity was the primary driver of CEG's strategy, while MidAmerican's portfolio is decidedly weighted with regulated assets. While Baltimore Gas and Electric previously has not shown much interest in pursuing new utility generation, MidAmerican affiliate PacifiCorp has rankled IPPs in Oregon over building ratebased wind farms below the size which would require competitive procurement. Yesterday EPSA and the Northwest & Intermountain Power Producers Coalition raised strong concerns about the "anti-competitive slant" of PacifiCorp's latest draft RFP, which included provisions that any merchant project would have to be sold to the utility at the end of the initial PPA, originally for only $1.

Frequent market critic Sen. E.J. Pipkin suggested that the CEG sale provides an opportunity to re-regulate the electric industry.

RM35 ... from 1

reluctant to speak with, and will become suspicious of, suppliers because they have been paying the LDC, Gateway said. It also forces suppliers to generate bills, which otherwise have been produced by the LDC. Customers typically throw away such bills from suppliers since they are accustomed to paying their single consolidated utility bill, Gateway said. Customers are unlikely to pay such past due amounts since they are no longer reflected as past due on their utility bill, Gateway pointed out.

Interstate Gas Supply argued that giving the utility the option of POR or proration is not conducive to a successful and efficient market without also requiring all the elements of the base rates related to uncollectible costs to be unbundled. Further, since in most instances bad debt, collection and disconnection processes, accounts receivable management, call center functions and other related functions continue to be included in base rates, unless POR is offered, continued inequities exist related to those elements for customers on competitive supply, since shoppers pay the same base rates that include recovery of those costs, yet do not receive the same associated benefits, IGS said.

IGS faulted a provision calling for a "reasonable early cancellation fee" since the term is undefined and creates a risk for interpretation in compliance. IGS recommended that the rule specify an amount that is considered reasonable if not exceeded, perhaps tying the cancellation fee to the number of years of the contract (for example, for each year of a contract, the cancellation fee cannot exceed $50).

Gateway opposed the requirement that non-residential customers may directly request that the LDC complete their drop to bundled service if their supplier has not completed the request within three days. Gateway noted the rules require the supplier to process the request within two days and that, due to the potential for penalties, suppliers will have the incentive to complete such drop requests on time. Gateway reasoned that customers may call the LDC asking to be returned to bundled service, claiming to have called their supplier without actually having done so, which could expose the customer to various termination fees without having a chance to be reminded of them by speaking with the supplier.

Gateway also noted a provision of the budget billing rules could hinder shopping. The draft contemplates that a final reconciliation for utility customers on budget billing will be made on the commodity side of the bill upon a customer's switch. However, customers may see such reconciliation as a switching fee, and may cancel their agreement with their competitive supplier. Gateway suggested that any budget-billing commodity reconciliation owed to the utility (or due to the customer) upon switching be rolled into the distribution side of the bill.

Gateway noted that a provision requiring enrollment confirmation letters to contain the date of customer enrollment isn't practical since waiting for the date to be certain would delay mailing of the letter, and the date may not prove to be accurate in any case. Gateway suggested removing the requirement, or at least noting that such a date is only an estimate.

IGS urged the PSC to clarify that marketers requesting customer information from LDCs do not have to obtain customer consent separate from that obtained during the enrollment process. IGS also recommended that suppliers be provided with 24-months of usage, rather than 12, to avoid the impact of abnormal consumption patterns from an unseasonable warm or cold heating season.

IGS said it, "is committed to expanding into the Maryland deregulated natural gas market upon implementation of rules," that remove inequitable cost allocation.