Energy Choice Matters

October 15, 2008

N.Y. Capacity Suppliers Urge Demand Curve Adjustment due to Tax Law Change

A coalition of New York City capacity suppliers filed a complaint at FERC requesting that the New York ISO modify the Market Administration and Control Area Services Tariff to increase the ICAP Demand Curves for New York City for the remainder of the 2008-2009 Capability Year and for the 2009-2010 and 2010-2011 Capability Years to account for the known elimination of a major factual input to the cost of new entry (CONE) for the New York City proxy unit -- the elimination of New York City's Industrial and Commercial Incentive Program real property tax exemption (ICIP Real Property Tax Exemption) for new investment in electric generating facilities.

The NYISO Board has rejected Suppliers' petition for relief.

"The loss of the ICIP Real Property Tax Exemption directly and significantly increases the cost of building new generating capacity and making capital improvements to existing generating capacity in New York City that is not reflected in the current NYC Curves," Suppliers said.

"In fact, the current NYC Curves are now understated by almost 40%, and thus produce rates derived from those curves that are unjust and unreasonable," Suppliers claimed.

Suppliers called the real property tax exemption one of the "most significant" factual inputs to the calculation of the net CONE, and reported that effective June 30, 2008, legislative changes expressly exclude utility property, including electric generating facilities, from receiving any real property tax exemptions as a matter of right.

The Capacity Suppliers urged FERC to increase the NYC ICAP Demand Curves by $47.74/kW-year, or 38.8%, in 2008/2009.

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MXenergy Adjusted EBITDA Falls Despite Higher Revenues, Customer Count

MXenergy posted net income of $24.8 million for the fiscal year ending June 30, 2008, up from a loss of $13.8 million a year ago, on higher sales and unrealized hedging gains, it reported in a 10-K filing yesterday. Adjusted EBITDA for fiscal 2008, which excludes hedging and other impacts, was $44.9 million, down from $60.1 million for fiscal 2007. MXenergy is holding an analysts call today.

Gross profit excluding unrealized gains and losses from risk management activities for the 2008 fiscal year totaled $115.5 million, a decrease of $3.3 million (3%) from the prior year. The decrease is primarily due to lower volumes of natural gas sold during fiscal year 2008 and unusually favorable market conditions for variable contract pricing in certain natural gas markets during the winter of fiscal year 2007, which resulted in a gross profit per MMBtu of natural gas sold for that period that exceeded the gross profit per MMBtu sold for the same period in fiscal year 2008, MXenergy said.

Total sales were $752 million in fiscal 2008, up from $704 million a year ago. Electricity sales jumped to $83 million from $23 million a year ago on higher volumes from strong organic growth and incremental volume resulting from operations acquired from Vantage Power Services in May 2007. Natural gas sales dipped about 2% to $670 million for fiscal 2008 on customer attrition and warmer-than-normal weather in Georgia.

MXenergy grew its residential customer equivalents (RCEs) to 700,000 as of the end of fiscal 2008, compared with RCEs of 631,000 at the end of fiscal 2007. Although MXenergy attributed the majority of the additions to organic growth, it also acquired 60,000 RCEs from GasKey in January 2008.

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Suppliers, Customers Urge ICC to Adjust Allocation of ComEd Customer Care Costs

A coalition of end users and competitive suppliers has petitioned the Illinois Commerce Commission for rehearing of its decision to defer adjusting Commonwealth Edison's allocation of all customer care costs to nonbypassable delivery service under the ICC's recent rate case Order (07-0566)

The Coalition to Request Equitable Allocation of Costs Together (REACT) presented testimony and evidence during the case that $64.8 million of customer care costs should be assigned to the supply portion of the bill, and thus be bypassable for customers served on competitive supply.

Although the Commission's Order states the Commission believes that some percentage of customer care costs may well be attributable specifically to bundled supply customers, the Order did not make any related adjustment to delivery rates in the instant case, leaving the question to be determined in the ICC's special investigation on cost of service (08-0532).

REACT, however, argued that ample evidence exists to make an adjustment on customer care cost allocation now, with the amount subject to refinement in the special investigation.

"[A]bsent an adjustment on rehearing, ComEd's delivery services rates will continue to cross-subsidize its supply rate, thereby erecting an artificial barrier to entry for retail electric suppliers who want to provide service to residential customers," REACT said.

REACT's $64.8 million allocation of customer care costs to supply rates is a conservative start, the coalition said, representing 40% of ComEd's $162 million customer care cost revenue requirement for fixed-price bundled customers. That estimate fully removes costs attributable to meter reading and the establishment of delivery services, REACT said, and is below the 67% allocation to supply service that would result from simply assigning costs based on the share of revenue associated with supply service. Allocating 40% of customer care costs to a bypassable supply charge would be fully in line with the treatment of such costs by similarly situated utilities that are providing service in competitive markets in other states, REACT added.

REACT includes A. Finkl & Sons, Co., Alsip Paper Condominium Association, Aux Sable Liquid Products, LP, the City of Chicago, Commerce Energy, Inc., Flint Hills Resources, LLC, Integrys Energy Services, Inc., the Metropolitan Water Reclamation District of Greater Chicago, PDV Midwest Refining LLC; United Airlines, Inc., and Wells Manufacturing Company.

CNG, SCG Decide to Accept Firm Service Switches Prior to Oct. 1

Connecticut Natural Gas and The Southern Connecticut Gas Company have decided to grant customer requests received prior to October 1, 2008, to switch from interruptible to firm service for a one-year term, to be reconsidered at the expiration of the single year term, they reported to the DPUC.

However, CNG and SCG told the DPUC that any requests to switch to firm service received after October 1, 2008, will be denied until further notice.

The LDCs' tariffs given them discretion to deny such switches, and they previously had been denying customer requests to switch to firm service, citing an adverse impact of such switching on their ability to serve firm customers and balance their load.

Marketers, however, have objected to that reasoning, since it was discovered that the LDCs have included interruptible customer loads in their peak day analysis to design their distribution systems. Since LDCs have already planned for serving interruptible customers, switching them to firm service would not add burden to the system, marketers have argued.

CNG and SCG cited the, "continued unprecedented spread between natural gas prices and oil prices [that] has resulted in comparatively higher Interruptible Sales ("IS") and Interruptible Transportation ("IT") value of service rates compared to the Companies' firm rate schedules," as prompting the increased level of firm service switch requests.

Md. PSC Issues Show Cause Order to Ohms Over Unreceived Refunds

The Maryland PSC instituted an investigation into Ohms Energy's, "failure to comply with Commission Order No. 81833," under which Ohms was to refund to customers amounts related to billing issues arising from its 2007 default.

The Commission's order said that its Office of External Relations (OER) this summer continued to receive repeated complaints from former Ohms customers indicating that they never received a refund, despite Ohms President Sheimiar White's attestation that the refunds were mailed June 19.

"Mr. White continues to claim, on those occasions when he can be reached, that the checks were mailed and he does not know what happened," the Order states.

The Commission further reports that White, "has ignored OER requests to provide a full accounting and verification that he has complied with his obligations."

OER estimates that approximately 58 customers have complained to OER that they are still owed refunds, and that the actual number of outstanding refunds may yet be higher. Over the past few weeks, several customers have received checks that were later returned to their bank due to insufficient funds, the Commission added.

The Commission ordered Ohms by October 24 to produce:

(a) A full accounting of all debts owed to former Ohms' customers and verification of any refunds paid pursuant to Commission Order No. 81833, including copies of cancelled checks, bank statements and any other related documentation.

(b) Copies of any and all savings and/or checking account statements and related documentation reflecting funds presently held by Ohms Energy Company, LLC.

Ohms is also to appear before the PSC on November 12 to show cause why the Commission should not impose civil penalties, not exceeding $10,000 for each and every day that, "Ohms has violated and continues to violate the dictates of Commission Order No. 81833."

Consumers Energy Says Residential Subsidy Can Be Eliminated in Five Years

Consumers Energy has determined that it can eliminate the current residential rate subsidy over a five-year period, while staying within the 2.5% annual rate impact cap under newly enacted HB 5524, it reported to the Michigan PSC (U-15681, Matters, 9/24/08).

Consumers estimates that the elimination of the residential rate subsidy, as measured using the 50-25-25 cost allocation method specified by the statute, could be accomplished with an increase in residential rates by an average of approximately 1.3% per year over the five year period. Consumers will file an application to reduce the residential subsidy in its next electric general rate case, which it expects to file before the end of 2008.

However, it would take 8-9 years to completely eliminate the discount for industrial metal melting customers under the Furnace/Metal Melting Service Provision (GFM provision) while meeting the constraint of the maximum 2.5% annual increase requirement, Consumers said.

Consumers also argued that its current rates for educational institutions are cost-based, as required by the new legislation, because of its recently approved General Educational Institution (GEI) rates. However, the GEI rates will need to be adjusted to reflect the legislation's 50-25-25 allocation methodology, and to remove a four-year sunset provision, Consumers said.

Briefly:

Dominion Retail Asks for More Time for Exceptions on Renewal Draft Order

Compliance with the requirements of a DPUC draft decision relating to Dominion Retail's license renewal and relationship with aggregator Levco Tech would, "require wholesale changes in the manner by which Dominion conducts business," in Connecticut, Dominion said in requesting more time to file exceptions to the draft (Matters, 10/13/08). The additional time is needed to evaluate the "magnitude and feasibility" of the changes proposed in the draft, Dominion said in requesting an extension from October 16 to November 1 for filing written exceptions. Among other things, the draft would require Dominion to enter into contractual relationships with customers acquired through Levco, rather than Levco contracting with the customer.

Reliant Files for New REP Certificate due to Merril Unwinding

Reliant Energy applied for a REP certificate for legal entity Reliant Energy Texas Retail, LLC, which may be used to transition some or all Reliant customers to facilitate the unwind of Reliant's Merril Lynch Credit Sleeve and Reimbursement Agreement, Reliant reported to the PUCT.

MMC Energy to Pay $1 Million in Settlement with CAISO

MMC Energy is to refund to the California ISO $1 million to settle No-Pay charges and other claims stemming from the participation of MMC's aggregated units in the CAISO spinning reserves market even though CAISO later determined the aggregated units were ineligible to provide spinning reserves. The aggregated units include a small unit which is synchronized to the transmission grid and spinning, and another larger unit that remains off-line until needed. FERC previously ruled that the larger units which are not synchronized are ineligible to provide spinning reserves under the CAISO tariff, and set the matter of resolving the issue of No-Pay charges for hearing (Matters, 6/9/08). The settlement would resolve all issues under MMC's original complaint in docket EL08-46, except for No-Pay Charges arising after Jan. 1, 2008.

CenterPoint Begins Work on DNPs, Backlog Cleared

After informing REPs that they could begin submitting all types of Disconnect for Non-Payment and Reconnect requests starting October 13, CenterPoint worked its first DNPs yesterday, it confirmed. All pending enrollment orders are also current or future-dated, meaning the backlog has been cleared.

Constellation, MidAmerican Integration Would Begin in January 2009

Constellation Energy Vice Chairman Mike Wallace told employees yesterday that integration activities related to its pending merger with MidAmerican Energy Holdings will commence no earlier than January 2009, in a memo urging employees to maintain focus on meeting current business objectives.

Skipping Stone Sale Completed

As previously tipped by Commerce Energy (Matters, 6/4/08), energy consultant Skipping Stone has been acquired from the retailer by its original founder Peter Weigand, and Greg Lander, who formerly founded Citizens Gas and TransCapacity.

Ace Cash Express Questions Factual Basis for PUCO Staff Proposal

Ace Cash Express moved that PUCO Staff's recommendation that utilities and competitive suppliers be prohibited from using check-cashing businesses as payment centers be withdrawn because, "there is no factual basis for the premise on which the proposed rule is based." Staff's proposal cited its belief that use of such payday loan payment centers "unnecessarily exposes Ohio's financially vulnerable low-income population to the predatory lending practices of this industry." Ace made a public records request to PUCO for any "record" that supported Staff's stated belief, but PUCO responded that "there are no records that are responsive to your request," Ace said in reply comments (08-723-AU-ORD, Matters, 9/11/08).

Dominion East Ohio Amends Transportation Rates Under Stipulation

Dominion East Ohio, PUCO Staff and the Ohio Oil & Gas Association have filed substitute proposed rates for DEO's General Sales Services (GSS) and Energy Choice Transportation Service (ECTS) customer classes under a previous joint stipulation (Matters, 8/26/08). The proposed rates were updated to properly reflect the application of the Gross Receipts Tax Rider. The changes, which can be found in 08-169-GA-ALT produce a slight increase to the volumetric rates for each service class.

D.C. OPC Suggests Perennial Review for Added Winter Protections

The District of Columbia Office of People's

Counsel proposed expanding the scope of temporary winter protections for electric and gas customers suggested by the PSC (FC 1043, Matters, 9/29/08), and also recommended that the Commission re-evaluate instituting the measures annually prior to every winter season. The protections were last used in the 2005-06 winter. OPC wants the proposed deferral of deposit collections to be expanded to six months, rather than three, and also wants customers to be able to pay a reconnection fee over three months, rather than one as proposed by the Commission.

ICAP Curves... from 1

The "deleterious effects" of not adjusting the Demand Curves would be both short-term and long-term, Suppliers asserted. Near-term decisions on upgrades, repowerings, and small new generators, as well as participation by demand side providers in the capacity markets, will be negatively affected.

Over the long-term, the flawed curves will "assuredly" impact the long-term capacity levels in New York City, Suppliers said. "The Demand Curves are the only forward signal in the NYISO's administered capacity markets, and their continuation at plainly deficient levels will chill investment in new and existing generation," Suppliers argued.

Suppliers also noted that the NYISO must use the NYC Curves to determine whether it is appropriate to apply its newly enacted load-side capacity mitigation rules to determine if a new entrant is required to submit bids at the Offer Floor.

"Allowing flawed NYC Curves to remain in place could result in the NYISO's application of an inappropriately low mitigated price to the uneconomic new entrant and all suppliers in the NYC spot market auctions when that entrant's bid sets the market clearing price which, in turn, is likely to adversely affect the voluntary monthly and strip auctions and the bilateral markets," Suppliers observed.

Complainants included the Independent Power Producers of New York, Astoria Generating Company, ConsumerPowerline, East Coast Power, Energy Curtailment Specialists, NRG Energy, and TC Ravenswood.

MXenergy ... from 1

MXenergy defines an RCE as a natural gas customer with a standard consumption of 100 MMBtus per year, or an electricity customer with a standard consumption of 10 MWh per year.

The bulk of the GasKey accounts are commercial and industrial customers for which MXenergy expects to earn gross profit that is lower than that for its traditional mass-market business. Consistent with its experience with previous acquisitions, MXenergy expects attrition for the GasKey portfolio to be higher than its normal attrition.

Average annualized in-contract customer attrition was approximately 19.7% for fiscal 2008, versus 25.6% for fiscal 2007.

MXenergy reported it purchased the GasKey net assets for a base amount of approximately $4.3 million, plus working capital, plus contingent consideration payable for volumes consumed on customer contracts acquired for a 36-month period subsequent to the acquisition date. Total operating cash outlay for the GasKey acquisition was approximately $12.0 million.

Most customers have been acquired through door-to-door, telemarketing, direct mail, event, and internet sales channels. However, MXenergy is currently expanding its marketing channels to include multi-level network marketing, it said. It recently inked an agreement with network marketer Zurvita (Matters, 6/16/08).

At the end of fiscal 2008, approximately 51% of MXenergy's natural gas customer portfolio had fixed rate contracts, while the remaining 49% had variable rate contracts. As of June 30, contracts with fixed price natural gas customers had an average remaining life of approximately 12 months. Approximately 31% of MXenergy's electricity customer portfolio is on a fixed rate contract while the remaining 69% is on a variable rate contract.

During fiscal year 2008, approximately 44% of total sales of natural gas and electricity was within markets where LDCs guarantee customer accounts receivable, MXenergy said.

Texas electricity RCEs increased 125% during the year ended June 30, 2008, from the recent success of expanded direct marketing activities.

Total RCEs in the Georgia natural gas market grew approximately 17% during the 2008 fiscal year.

Northeastern U.S., Mid-Atlantic U.S. and Canadian market RCEs grew 34% during from targeted direct sales marketing activities and a wider range of product offerings to customers, particularly in the Massachusetts, Connecticut and New York electricity markets.

MXenergy told investors it has taken a "conservative" approach in entering new deregulated electricity markets. Its intent is to develop the business organically and through acquisitions, as well as by leveraging potential cross-selling opportunities with its natural gas business. "We believe offering both natural gas and electricity to the same customer leverages our existing infrastructure and decreases customer turnover," MXenergy said.

MXenergy received a marketing license in California in September of 2008.

MXenergy told investors it considers its main competitors in natural gas to be Direct Energy, Energy Savings Income Fund, Gateway Energy Services, and Interstate Gas Services. In electricity, primary competitors are Gateway Energy Services, Direct Energy and Dominion Retail, MXenergy said.

MXenergy RCEs as of June 30

	2008		***2007***	
	No.	**% of Total**	**No.**	**% of Total**
Southern U.S. (Georgia, Texas, Florida):				
Natural gas	241,000		209,000	
Electricity	25,000		12,000	
	266,000	38%	221,000	35%
Northeastern U.S., Mid-Atlantic U.S. and Canada (New York, New Jersey, Connecticut, Massachusetts, Pennsylvania, Maryland, Ontario, British Columbia):				
Natural gas	156,000		139,000	
Electricity	73,000		31,000	
	229,000	33%	170,000	27%
Midwestern U.S. (Ohio, Michigan, Indiana, Illinois, Kentucky):				
Natural gas	205,000		240,000	
Electricity	—		—	
	205,000	29%	240,000	38%
Total RCEs:				
Natural gas	602,000		588,000	
Electricity	98,000		43,000	
	700,000	100%	631,000	100%