

Energy Choice Matters

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Combined Exelon-NRG Would Shed 3 GW due to Market Power Concerns; Exelon Open to Hostile Bid

Exelon expects it would need to shed about 3,000 MW from a combined Exelon-NRG Energy fleet to mitigate potential market power concerns in ERCOT and PJM East, Exelon CEO John Rowe told investors during a conference call yesterday (Matters, 10/20/08).

Exelon has already engaged CRA International in reaching that conclusion, and Rowe said Exelon can structure the transaction to keep assets with the greatest value. The combined IPP would own 47,000 MW after the planned divestitures. Rowe said there's "no doubt" scale is important in these turbulent times, and the sheer size of the combined balance sheet will make new asset investment easier.

Aside from the minimal asset sales, Rowe described Exelon and NRG's footprints as complementary, and also said NRG's coal units in Texas are a big part of the value of the proposed acquisition, although it does put Exelon, which has been touting its low-carbon fleet to investors, at a greater greenhouse gas mitigation risk.

Rowe expects a more timely and predictable regulatory approval process than previous Exelon merger plays, such as the failed PSEG deal, because NRG does not own any regulated utility distribution companies.

While Exelon hopes the acquisition will be friendly, Rowe told investors he is committed to pursuing the transaction even if it is not.

Exelon has looked at other "distressed" assets in the industry, and did not find a "value add" from any other potential transactions. NRG is the "best deal we've seen," Rowe said, noting that Exelon has evaluated every other major merchant generator and numerous integrated utilities.

TXU Defends Ads Promoting Corporate History of "Electric Service"

TXU Energy defended the ability of REPs to advertise their parent company's history before the deregulation of the ERCOT market, in reply comments regarding proposed rules for REP information disclosures (35768).

Reliant Energy, in its initial comments, reported that some current ads in the market tout the 100-year history of a REP, and questioned whether such a statement conflicts with provisions prohibiting REPs from suggesting they have been providing service prior to their Commission certification. Though Reliant did not name any REP, such comments were squarely directed at TXU.

"To help customers make informed decisions, REPs should be permitted to make truthful claims regarding their business operations, company philosophies, community involvement, and a host of other things that individual customers may want to know about and would find valuable in choosing a provider," TXU said.

"As such, accurate and truthful information about a REP's corporate history of providing electric service, as well as its corporate history of having established roots in our great state of Texas, could be valuable information to help some customers make an informed decision in the marketplace," claimed TXU.

In other salient reply comments, Public Utilities Broker of Texas countered REPs' claims that the proposed product types (guaranteed fixed, limited fixed, indexed and variable) would appreciably impact product offerings.

FERC Orders Load Forecasting in MISO Module E to Remain with LSEs

FERC will not require the Midwest ISO to conduct centralized load forecasting, nor will it require distribution companies or POLRs to assume the load forecasting requirements of competitive LSEs, under an order on a MISO Module E resource adequacy construct compliance filing (ER08-394-002).

Competitive suppliers have argued that the requirement for LSEs to perform load forecasting will produce poor results, given that distribution providers are better equipped to predict their systems' load and because LSEs will use disparate methods for forecasting, frustrating the goal of system-wide reliability. Some suppliers have cautioned LSEs will have an incentive to underforecast their loads to decrease their resource adequacy obligations and costs (Matters, 6/18/08).

FERC, however, succinctly stated that, "The LSE is the entity responsible for its resource plan and it is the entity that will be penalized if it does not have sufficient planning resources, and therefore it is appropriate that the LSE, in this case the retail-choice provider LSE, be responsible for the load forecast."

The Commission did not address concerns of load forecast gaming, but said that it views MISO as a "facilitator" of forecasts by using the stakeholder process for estimation working groups, and to provide an accuracy assessment.

"We do not see the need for the Midwest ISO to become the central forecasting authority. We expect that the estimation workshop process facilitated by the Midwest ISO will facilitate the development of uniform estimation techniques and forecasting procedures," FERC stated.

In other compliance matters, FERC directed MISO to complete stakeholder discussions and propose an accreditation standard for load modifying resources (LMRs), within 30 days of the order. To the extent that LMR performance is based on unforced capacity, MISO is propose a definition of unforced capacity for LMRs.

FERC also accepted MISO's 12-hour advisory notice for LMRs, although the Commission admitted the timeframe was "less than ideal." Nevertheless, the 12-hour

notification is more reasonable than a 24-hour requirement since a 12-hour requirement increases the probability that resources designated as LMRs can participate under typical emergency conditions, FERC said.

FERC approved MISO's revised proposal to qualify power purchase agreements with verified resources as Capacity Resources, subject to additional modifications. FERC directed MISO to require such PPA resources to demonstrate that the resources are not committed to other market participants or to load outside of MISO to prevent double counting. PPA resources can only be designated as a Capacity Resource if the contract identifies one or more specific resources, the Commission ordered. FERC did not see the need to limit eligible PPAs to only those PPAs that specify specific units, as FERC expects that verification procedures will identify the resources backing non-unit specific PPAs and ensure that the resources are not committed to other loads.

CPV Says Current Credit Markets Show Need for Long-Term PPAs in Maryland

"[N]obody can deny that recent developments in the nation's capital markets make it very risky to depend on new RPM-based projects to solve a near term reliability problem," generator CPV Maryland said, given that RPM only offers a three-year capacity payment -- a payment CPV says is unlikely to be sufficient to secure financing in the current credit environment.

In supplemental comments regarding the Maryland PSC's "gap" RFP process (Case 9149, Matters, 9/23/08), CPV renewed its call for long-term PPAs between utilities and generators to be considered as a solution to any potential reliability gap faced by the state if necessary transmission upgrades are delayed. CPV is developing a 640-MW combined cycle power plant in Charles County.

"Quite simply, Maryland and other jurisdictions that require new baseload facilities in the immediate future will have to look to other, more time-tested finance structures," CPV said in arguing that today's financial markets will not support merchant projects.

Since the collapse of the credit markets, it

may be extremely difficult to finance new baseload generation without "bullet-proof" PPAs with credit-worthy utilities, CPV asserted.

The recent collapse of the capital markets, "is likely to delay the full realization of the RPM," CPV added.

Duke Ohio Wants Rehearing to Allow Nonbypassable Charge for Existing Generation

Duke Energy Ohio petitioned for rehearing of PUCO's decision in setting rules for Standard Service Offers under SB 221, arguing that the rules inappropriately preclude utilities from applying for an unavoidable charge for existing generating facilities as part of their electric security plans (08-777-EL-ORD).

PUCO's final order rejected Duke's pleas for such nonbypassable charges because 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 (Matters, 9/18/08).

However, Duke argued that its gas-fired plants in PJM have never been used and useful in the provision of utility service for Duke customers, and would be newly dedicated to serve consumers for the life of the generating assets.

Duke claimed that the Commission's order, "deprives consumers of a long-term, least cost supply of capacity and energy from existing resources."

"In the face of increasing prices over time it makes sense to consider locking in long-term capacity at low prices. The Commission's Order effectively prohibits such consideration," Duke added.

Duke also raised the specter of possible capacity shortages in the Midwest ISO. Dedicating Duke's gas-fired plants in PJM via an unavoidable surcharge would mitigate this potential reliability risk, Duke claimed, to the extent that DE-Ohio is able to import capacity from PJM.

An unavoidable charge, Duke insisted, is also not anticompetitive because DE-Ohio must "dedicate to Ohio consumers the capacity and energy..." of such plants. Thus, consumers of Competitive Retail Electric Service (CRES) providers will receive the capacity and energy from dedicated facilities just as will DE-Ohio's consumers, Duke reasoned. "There is simply no anticompetitive effect," Duke said.

Duke was forced to amend its electric security plan application to remove a proposed unavoidable charge for existing generating assets due to PUCO's rule (Matters, 10/17/08).

Meanwhile, the Alliance for Real Energy Options asked for rehearing to include in the SSO rules a clear statement on the bypassability of all generation-related charges, save for newly dedicated generation which has been publicly bid and made available to customers at rates that comport with the benefit of the new generation.

AREO also sought to change the provision which calls for congestion costs to be recovered via a transmission cost recovery rider. Congestion, AREO noted, affects the price of energy at a particular point on the electric grid and is, "therefore generally recognized throughout the country as being part of the 'Energy' component of electric rates, rather than a part of the 'Transmission' component of electric rates."

FirstEnergy requested approval to implement, if its electric security plan is adopted, a transmission rider to recover such transmission-related costs, including without limitation, net ancillary and congestion-related costs incurred under the Midwest ISO (08-1172-EL-ATA).

Nstar Faults Basic Service Procurement in Comments on FERC-NARUC Report

Any attempt to improve competitive procurement of electricity supply must address current methods that pass through to customers prices that are high and volatile, Nstar said in describing basic service in Massachusetts in comments on the FERC-NARUC competitive procurement report (Matters, 9/1/08).

Nstar argued that while industrial customers' favorable load profiles and high capacity factors have produced 70% migration to competitive

supply, mass market customers are not benefiting from basic service, as suppliers still cannot offer customers savings under the basic service structure. Only 18% of small commercial customers and 5% of residential customers shop, Nstar said, and the remainder are forced to endure "volatile" basic service prices. Furthermore, migrating customers create additional costs for those remaining on basic service (by choice or because of unfavorable load characteristics or bad credit) by forcing wholesale suppliers to include migration risk premiums in bids, Nstar said.

Nstar also opined on the risks utilities face in signing long-term PPAs to meet renewable and environmental goals, and said nonbypassable charges should be used to mitigate potential stranded costs that may arise if customers migrate from falling market prices in relation to the PPAs.

Constellation Energy, the COMPETE Coalition and Direct Energy were among those endorsing the report's conclusions. Constellation also urged that states and utilities be especially careful to develop fair and reasonable credit requirements for bidders, especially given increased costs for obtaining credit for wholesale market participants throughout the country. Credit requirements that are overly cumbersome (for instance, requiring bidders to provide collateral over and above the value of the products they win the right to supply and the utilities' costs to replace such products) will inevitably lead to higher costs for consumers and/or less robust participation from potential and actual bidders, Constellation said.

Constellation advocated the use of full requirements contracts instead of state or utility management of a portfolio of incremental resources, pointing to the risk management benefits of full requirements procurement, as highlighted in a January report from the Analysis Group.

Gas Marketers Ask for Clarification of FERC Reporting Exemption

The National Energy Marketers Association asked FERC to clarify its recent order (Order 704-A) affirming reporting requirements designed to enhance transparency for information provided by natural gas market

participants to price index publishers, to ensure that competitive retail sales are exempt from the reporting requirements (RM07-10, Matters, 9/19/08).

While NEM believes FERC intended to exempt competitive marketers under the Commission's Form 552 retail transaction reporting exclusion, NEM requested that the Commission explicitly list in the Definitions section of Form 552, Section VII, "sales to and purchases by retail consumers pursuant to a state-approved retail access program," as volumes to be excluded from reporting.

NEM is concerned that the Commission's distinction in Order 704-A between reportable and non-reportable end-user transactions is unclear with respect to the treatment of retail access program transactions because of the Commission's use of the terms "bundled retail service" and "bundled retail transaction" in the relevant passages discussing end user transactions, coupled with a lack of discussion of retail access programs.

FERC cites "bundled retail service" and direct pipeline to end-user transactions in discussing the retail reporting exemption. By using such phrasing, Order 704-A does not directly address the intended reporting exclusion and/or obligation for retail commodity sales from competitive retail natural gas marketers as part of a state-approved retail access program. The term "bundled retail service" would typically denote only LDC commodity sales, not competitive retail access program sales, NEM noted, but in FERC's context it appears the term is used for both types of sales.

Furthermore, FERC states that, "To the extent that a potential respondent purchases or sells gas at a bundled retail tariff rate, it should not count those volumes towards the de minimis threshold and, if required to submit Form No. 552, it would not include those volumes in its report." Marketers would not usually consider their competitive retail sales to be sales under a bundled retail tariff rate, NEM noted.

To the extent FERC did not intend competitive retail sales to be exempt from the reporting requirement, NEM asked for rehearing of the issue, because of the burden reporting would place on marketers, especially in light of the exemption regulated LDC sales would receive.

RPM Buyers Seek Rehearing of Transitional Auction Complaint Dismissal

RPM Buyers sought rehearing of FERC's dismissal of their complaint against PJM regarding the RPM transitional base residual auctions, asserting that the Commission, "has abdicated its duty, relying on compliance with unproven, experimental tariff provisions as an excuse to avoid considering the abundant evidence that those [RPM] rules have utterly failed their essential purpose."

FERC found that no tariffs were violated and that suppliers could not, and did not, offer prices well in excess of avoidable costs in the auctions (EL08-67, Matters, 9/22/08). But in RPM Buyers' view, "the September 19 Order tells customers that no matter how badly the untested tariff provisions run amok due to inherent - but previously unacknowledged - flaws, there is no remedy, and they are condemned to pay those unjust and unreasonable rates for the next three years."

The Federal Power Act, "did not leave customers at the mercy of such a multi-billion dollar error," Buyers said.

"The Commission never even addressed the central question that the RPM Buyers raised in their Complaint - did the RPM transition auctions produce just and reasonable capacity charges that customers must now pay," Buyers concluded.

Briefly:

dPI Energy Expanding to Maryland

dPI Energy, the prepaid electricity supplier that's a subsidiary of Rent-A-Center, applied for a Maryland electricity supplier license. To date, dPI has only offered service in ERCOT.

National Energy Consulting Seeks Texas Aggregator License

National Energy Consulting filed for an aggregators certificate at the PUCT to pool C&Is, municipalities and political subdivisions. CEO Clay Miller was formerly with LPB Energy Consulting, as was President Craig Winfree, who was also a regional sales manager for Sempra Energy.

REP Disclosures ... from 1

"This is not the telecom industry, this is the generation and sales of electricity. In PUB's view there is not now, nor will there ever be wholesale energy products analogous to call waiting or call forwarding as you find in the telecommunications industry. The mixture of generation or the hedging practices of REP's may be different from one to the other, but the end result is delivery of electrons. Generation is generation," PUB asserted.

Gexa Energy, which proposed line-item charges on the Electricity Facts Label to permit apples-to-apples comparisons, responded to similar recommendations from consumer groups for such itemization on bills. Gexa explained that, "because space on a customer's bill is at a premium," such line-item charges should be left to the EFL, except for non-recurring transmission and distribution utility (TDU) charges, the ERCOT Administrative Fee, the Texas Regional Entity fee, the PUC Assessment fee and gross receipts tax reimbursements. Those latter taxes and fees should be listed in the Terms of Service instead of the EFL, Gexa said, since they are generally applicable to all customers.