Energy Choice Matters

November 3, 2008

ConEd Opposes RESA Suggestion for Continued Use of Quarterly Price Estimates

Consolidated Edison told the New York PSC that there is "no need" to continue to provide a forecast of market prices once the Commission approves its plan to have the Market Supply Charge (MSC) reflect day-ahead prices in effect during the billing period (07-E-0523).

The Retail Energy Supply Association had suggested ConEd continue to send customers price estimates quarterly to assist them in decision-making (Matters, 10/23/08).

But ConEd said the estimates that it currently provides are not intended as a benchmark against which customers should make purchasing decisions. "Their purpose was and is to project the Company's future cost of supplying full-service customers at market prices," ConEd said. A three-month-old forecast is hardly a "benchmark," ConEd added.

"The Company is more effective in telling customers about upcoming energy pricing changes through its Outreach and Education efforts designed to encourage conservation when prices are expected to increase," ConEd reported, noting it will still provide the after-the-fact "price to compare" to its full-service customers under the new MSC methodology, which more accurately shows the previous cost of service to the customer.

Other changes proposed by RESA are beyond the current proceeding, ConEd said. RESA had recommended that ConEd be required to identify percentage load by class for the MSC Adjustment Factors, so that ESCOs may develop more tailored pricing to better serve customers. But ConEd insisted that, "the choice of an ESCO to price against energy prices billed to the Company's native load should not depend on the utility's undertaking additional work either to prepare forward market

... Continued Page 5

Michigan PSC Staff Revises Recommendation on Residential Marketing, Rescission at Detroit Ed

The Michigan PSC Staff has backed away from its suggestion that all residential marketing materials from alternative electric suppliers be approved by Staff, but is still seeking to extend the residential rescission period, although for a shorter period than originally proposed. The disclosures came in reply briefs in Detroit Edison's rate case (U-15244, Matters, 7/17/08).

After reviewing First Amendment arguments raised by Constellation NewEnergy against its proposal for Staff approval of all marketing materials, Staff recommended that competitive suppliers submit residential marketing materials for Staff review and comment five days prior to use. However, Staff is no longer seeking approval of such materials prior to their use.

Staff also suggested shortening its proposed extended rescission period from 30 days to 14 days, agreeing with Energy Michigan than 30 days may be too long. However, Energy Michigan had recommended a five-day rescission period. Constellation argued that Staff has not produced any evidence that there is a widespread problem with the current rescission period, and objected to the revised 14-day proposal, as it would still raise the cost of service.

CNE and Energy Michigan both attacked Detroit Edison's inconsistent arguments regarding cost of service rates, which the two groups see as the overarching goal of recent energy legislation.

Edison's desire to continue to offer special, discounted contracts to certain large customers, supported by Staff, and its proposal to continue offering three-year discounts under economic development riders are unlawful under Act 286 of 2008 because they are not cost-based rates, CNE

... Continued Page 5

Conn. Consumer Advocates Seek Investigation of Turris Associates

The Connecticut Attorney General and Office of Consumer Counsel petitioned the DPUC to commence an investigation into aggregator Turris Associates, based on allegations of pricing misrepresentations reported by the Southington Water Department.

Southington alleged that Turris and its agent Raymond Sanzone agreed to a brokers' fee of 0.665 mills for a contract with Southington and a number of other municipalities. Southington alleged that Sanzone then negotiated with Constellation NewEnergy for supply, but secured a brokerage fee of 1 mill, or more than 50% higher than the compensation he agreed to with his clients.

Southington alleged that over the three years of the contract's term with the municipalities, Sanzone collected more than $500,000 in excess of the agreed brokerage fee. Southington Water further alleged that Sanzone made material misrepresentations concerning a capacity charge flow through provision of the supplier contract.

Southington said that over 140 municipalities and school districts were affected by the alleged brokerage fee overcollection.

"Such misconduct further undermines the public confidence in electric retail choice and the State's deregulated electricity markets - markets that have already produced in Connecticut some of the highest electricity prices in the United States," the AG and OCC said.

Allegheny Defends Handling of Warrior Run Ancillaries

Allegheny Power defended its treatment of ancillary services from the AES Warrior Run qualifying facility, informing the Maryland PSC that Jan. 1, 2008 represented the first time Allegheny could have sought to sell the plant's ancillary services in the PJM market.

Allegheny, and its customers, are currently forced to purchase the plant's above-market power under a long-term obligation. Last year, the PSC allowed Allegheny to sell the output it receives from the plant in the PJM market to mitigate some of the above-market costs, effective at the end of a three-year PPA that expired at the end of 2007.

Allegheny filed at FERC to receive reactive power compensation for the plant in May 2008. The PSC Staff asked why Allegheny took so long to seek such ancillary service compensation, since a merchant affiliate sought reactive power compensation for other Allegheny plants in 2003 (Matters, 9/26/08). Staff suggested a disallowance of $358,000 on the belief that Allegheny has not maximized Warrior Run revenues.

Allegheny explained that under a PPA that had been in place through the end of 2007, Warrior Run's entire "output" was sold, including ancillary services. Thus, until Jan. 1, 2008, when the PPA expired and the Commission authorized Allegheny to sell the power directly into the PJM market, Allegheny had no ancillary services to sell from Warrior Run.

The Office of People's Counsel, however, questioned whether the PPA from 2005-07 actually included ancillary services, as bidders in prior RFPs did not bid on the premise that ancillary services were available, which led to the RFP deleting the reference to ancillary services. "This would seem to indicate the right to that ancillary service was not being sold through the RFP and there could have been a tariff on file to capture revenue from whatever Reactive Support and Voltage Control was available," OPC said.

The reactive power compensation filing required by FERC is complex, and Allegheny started working on it immediately after the Commission authorized Allegheny to sell Warrior Run's power into PJM in November 2007, and even before the Commission specifically directed Allegheny to seek reactive power compensation in December 2007. Still, the complex nature of the filing took five months to complete, but resulted in a compensation mechanism that was higher than the PSC Staff's expectations, Allegheny said.

The other plants cited by PSC Staff for which Allegheny filed for reactive power compensation in 2003 had previously reached black box reactive power settlements dating to the 1990s, Allegheny said, with the 2003 filing merely updating the revenue requirement.

Allegheny also reported that it cannot sell regulation service from Warrior Run because the plant's operating characteristics won't allow it to respond to PJM instruction every 30 seconds. Allegheny has earned $2,400 from June through September by selling day-ahead scheduling reserves from Warrior Run.

Allegheny argued against any disallowance because it filed for reactive power compensation as quickly as it was authorized to do so, and upon the Warrior Plant having the capability to sell ancillary services at the end of 2007.

PSEG Texas Plants Perform Well

PSEG reported net income of $656 million for the quarter, up from $506 million a year ago, on the sale of international assets. Income from continuing operations was $476 million compared with $490 million a year ago.

PSEG Power operating earnings, reflecting Northeast merchant assets, dipped slightly to $328 million for the third quarter of 2008, compared with earnings of $338 million a year ago. Hedging impacts offset higher energy prices and greater generation output.

PSEG Power has hedged approximately 45% to 55% of its coal and nuclear generation in 2010 but is largely open in 2011 with just 15% to 25% of anticipated coal and nuclear generation hedged thus far.

PSEG Energy Holdings, which includes ERCOT units and international assets, reported operating earnings of $56 million for the third quarter, versus $63 million a year ago, on a tax charge. Still, stronger production and increased spark spreads at PSEG's 2,000 MW of gas-fired Texas generating capacity mitigated much of the tax charges.

CEO Ralph Izzo touted New Jersey's Energy Master Plan for delineating a leading role for utilities in energy efficiency and expanding the opportunities for both PSEG's regulated and competitive businesses to grow in renewable offerings. Izzo reiterated his view that he doubts the market would have achieved the New Jersey renewable and conservation goals alone.

PSEG trimmed expected 2009 capital expenditures by $275 million-$325 million due to the financial market turmoil, with such spending now expected to be $1.55 billion.

Briefly:

Vectren Source Loss Narrows

Vectren Source's third quarter loss narrowed to $0.6 million from a loss of $1.3 million in the year-ago quarter, but customer count dwindled to 130,000 due to its exit from the Georgia market. On October 1, Vectren Source began providing natural gas to nearly 40,000 equivalent customers in Vectren Ohio's service territory as part of Vectren Ohio's process of exiting the merchant function. Overall, Vectren Corp. posted earnings of $10.1 million from Energy Marketing and Services in the third quarter, compared with a loss of $2.0 million a year ago, with the results lifted by the performance of ProLiance. ProLiance earned a record $12.4 million for the quarter, compared to a loss of $0.2 million a year ago, on wider cash to NYMEX spreads. However, Vectren does not believe the record high third quarter earnings are necessarily indicative of ProLiance's future operating results and believes cash to NYMEX and seasonal spreads will likely narrow during the 2008-2009 heating season. Parent Vectren Corp. reported consolidated net income of $23.2 million for the third quarter, up from $13.6 million a year ago.

Md. PSC Grants Mitchell Energy Broker License

The Maryland PSC granted Mitchell Energy Management Services an electric broker license for C&I customers, and deferred any regulatory assessment to future consideration (Matters, 6/19/08). Staff had recommended allocating Mitchell Energy an $81.72 assessment for its operation from 2006-08 before it sought license from the PSC when Mitchell Energy learned brokers needed to be licensed. The amount is based on Maryland revenue of about $58,000 during that period.

Constellation Looking for More Credit As Banks Trim Original Facility

Constellation Energy said that the closing of its previously announced credit facility, expected last Friday, has been extended to no later than Nov. 26, and that it currently expects to receive total commitments from the banks of approximately $1.0 billion to $1.25 billion, down from the original $2 billion sought. Constellation said it is exploring other alternatives with MidAmerican Energy Holdings and other parties to provide additional liquidity of up to $750 million to reach the original $2 billion target. Constellation said UBS Loan Finance LLC and RBS Securities Corporation agreed to delay the close of the previously announced $2 billion credit facility, with the added time devoted to determining the final size, terms, and conditions of the credit facility, now expected to top out at $1.25 billion.

Maine Hearing Examiner Denies Extended Hearing in ISO-NE Participation Review

A Maine PUC hearing examiner denied extending the hearing for the PUC's investigation of utilities' participation in ISO New England. Industrials and cooperatives had sought to extend the hearings to take testimony from Aroostook Wind Energy regarding whether the developer would have the financial capability to build the Maine Power Connection if cost socialization of the line joining Maine Public Service to the NEPOOL grid was denied by ISO-NE. The hearing examiner found the motion for further testimony to be untimely, as it occurred after the hearing, and also found that further testimony would be impractical given the schedule in the case that calls for briefs by Nov. 13 and a decision by Jan. 15, 2009.

Mass. DPU Orders Review of Gas Buying Collaborative for Small LDCs, OKs Hess Contract

The Massachusetts DPU accepted a gas supply agreement between Blackstone Gas Company and Hess Corporation, and ordered Blackstone to investigate joining other LDCs to form a gas buying pool (08-38). The contract with Hess is for all requirements and lasts three yeas, awarded through an RFP sent to eight suppliers. The Massachusetts Attorney General raised a concern in the case that Blackstone's small size could be resulting in its receiving higher costs from competitive bidding, and suggested the formation of a gas buying collaborative involving Blackstone and other similarly situated LDCs. The DPU ordered Blackstone to investigate the feasibility of forming such a gas buying collaborative.

Dominion Retail Says Levco Enrollment Process Meets Statutory Requirements

The Connecticut DPUC has previously approved Dominion Retail's use of Levco Tech to enroll customers, Dominion said in exceptions to a draft decision renewing Dominion's license but finding that its use of aggregator Levco to enroll customers does not meet statutory requirements (Matters, 10/13/08). Dominion argued that the enrollment process, in which customers sign an agreement with Levco, presents customers with all statutorily required information (price, terms and cancellation provisions), and had been approved by the Department in a prior proceeding. Statute also includes an aggregator under the definition of an electric supplier, Dominion said, further justifying the use of Levco in enrollment.

Parties Propose CenterPoint AMS Hearing in Feb. 2009

Parties in CenterPoint Energy's Advanced Metering System deployment docket (35639) have agreed to a proposed schedule that would have direct testimony from CenterPoint due on Dec. 10, with hearings from Feb. 4-6, 2009. Settlement talks are ongoing.

New York City Opposes Adjusting ICAP Demand Curves Upward

A proposed upward revision to the New York ICAP demand curves that would "massively increase" capacity payments is unsupported and premature, the City of New York told FERC (EL09-4). Capacity Suppliers urged the increase due to the 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 for new investment in electric generating facilities (Matters, 10/15/08). However, the City noted that no current recipients of the tax benefits are affected by the prospective change, and further noted that alternative tax relief programs offered by the City provide equal benefits, or are even more advantageous. Generators have not supported the need for the revised demand curves given such alternate tax programs, the City said. The City noted Zone J prices would rise 39% under the generators' petition, costing $100 million annually the first year and $300 million annually by 2010.

CenterPoint Returning to Normal Transaction Operations

CenterPoint Energy announced it is returning to normal transaction operations and that REPs may resume submitting transactions for all order types today. Priority Orders will continue to automatically downgrade to Standard timelines through November 5. REPs may resume submitting transactions for Priority Reconnects and Priority Move-Ins, as well as Safety-Net Requests, on November 6.

Need for PATH Line Pushed Back

AEP and Allegheny Energy said last week that the needed in-service date for the Potomac-Appalachian Transmission Highline (PATH) has been extended by one year to June 2013, based on the latest reliability studies by PJM. The need and impact of the line is one of the issues surrounding Maryland's investigation into the potential need for backstop generation solutions for 2011-2012.

ERCOT Receives First Distribution from The Reserve

ERCOT has received an initial distribution of $24.3 million from The Reserve, a money-market investment management company. ERCOT requested the return of all its funds invested with The Reserve immediately after the Lehman Brothers bankruptcy, because approximately 1.2% of the assets of one of the Reserve's funds were Lehman securities (Matters, 9/25/08). ERCOT expects a full recovery of all of its and its members' funds invested in The Reserve's funds due to the priority of its redemption request, but the timing of full recovery is still unknown.

ICC Picks ComEd AMI Facilitator

The Illinois Commerce Commission named Mark Gabriel of Plexus Research, an RW Beck Company, the third-party facilitator of the Commonwealth Edison advanced metering collaborative (Matters, 10/3/08).

ConEd MSC ... from 1

price estimates or to provide percentage load by class for the MSC adjustment factors."

RESA's proposal for shadow billing under the new MSC, "would be a costly and time-consuming effort with no benefit to customers, who would probably only be confused by it," ConEd concluded.

Detroit Ed ... from 1

said. Rates set at a level less than cost are only permissible when there is a clear statutory override, such as the phased implementation of deskewing for residential customers, CNE said.

While Detroit Ed argues for special, below-cost rates for some customers, it champions cost-of-service in pushing for the elimination of the "subsidization" of competitive load through retail access distribution rates that do not include costs to subsidize lower residential rates. Detroit Ed has proposed implementing equal distribution rates for full service customers and retail access customers on the basis both should bear the cost of paying for residential subsidies.

Staff, however, has opposed this proposal since it would move retail access delivery rates away from cost-of-service. Constellation noted Edison's proposal would raise retail access distribution rates by 27%-53%, "effectively guaranteeing the demise of the Choice program." CNE observed that Edison is basing its push for equal distribution rates on cost-of-service principles, yet is also asking to implement several below-cost rates for large customers. Choice distribution rates already contain $13 million annually in generation-related subsidies, such as decommissioning and securitization charges, Energy Michigan added.

Energy Michigan cited Purchase of Receivables as another area of inconsistency in Edison's case. Energy Michigan submitted testimony to allocate some customer service and sales costs, including customer record-keeping, collection expenses, uncollectible accounts and staffing costs, to the generation side of the bill. Detroit Edison currently allocates 100% of such costs to distribution rates, on the basis that all customers use the services and delivery rates properly apportion costs to all customers.

Energy Michigan noted that only 39% of Edison's revenue is associated with distribution, yet Edison assigns 100% of its uncollectible costs, including generation costs, to distribution. "Edison takes the position that Choice customers should subsidize full service customers by paying full service generation uncollectible costs," Energy Michigan noted.

But when it comes to POR, Edison claims the program would amount to subsidization of marketers' uncollectibles. "If the Commission will not force DTE to buy Choice receivables at 100% of face value (thus absorbing Choice uncollectible cost because Choice customers pay DTE uncollectible generation costs) the Commission should not force Choice customers to pay the generation portion of DTE uncollected full service charges," Energy Michigan said.

Staff hit Detroit Ed's inconsistent arguments with respect its GreenCurrents renewable tariff, as Edison seeks to recover marketing expenses for the renewable program from all customers. Edison is requesting recovery of $949,000 from all customers, which, based on enrollment of 13,000 in the green product, costs about $73 per enrolled customer.

Staff has proposed several changes to the program, including the introduction of a new, long-term fixed price renewable product to be offered by Detroit Ed. Edison has objected to the product, citing cost recovery uncertainty, and further arguing that competitive suppliers may offer customers such products. But the new 10% limit on choice under Public Act 286 undermines Edison's argument that customers may rely on the market for long-term green products, because customers' ability to elect a competitive green product may be constrained if the 10% cap is hit, Staff said. Cost recovery of the GreenCurrents marketing expenses from all customers would also be anti-competitive, Staff agreed.

Edison defended its proposal to change the pricing option that customers default onto when they return to bundled service from competitive supply and do not make an affirmative choice for which bundled tariff they wish to be served under.

Currently, customers default to Short-Term Service (Option 2) when returning to Detroit Ed, a plan which does not include a minimum stay. Detroit Ed proposed changing the default selection to Long-Term Service (Option 1), which commits the customer to Detroit Ed for 12 months of bundled service.

Staff has opposed the change because it would commit customers to a 12-month product without an affirmative choice. However, Edison argued that customers may leave the utility again at any time under Option 1; they will just be back-billed for higher rates they would have paid as if they had been on short-term, market-priced service. Staff, however, still objected to such "surprise billing" when the customer has not elected a tariff option. CNE agreed, noting that the rate penalty of the back-billing will effectively disincent consumer choice.