Energy Choice Matters

November 17, 2008

Md. PSC Directs Staff to Review Re-regulation of Constellation Merchant Fleet in Merger Review

The Maryland PSC's review of MidAmerican Energy Holdings' acquisition of Constellation Energy is to include consideration of whether approval of the merger can or should be conditioned on an agreement by the Applicants to return the former Baltimore Gas & Electric generating plants to BGE and/or to cost-of-service regulation, the Commission said in a scoping order.

To the extent parties do not address the issue, the Commission directed Staff to analyze and raise the return of Constellation merchant plants to BGE in the case.

As only reported in *Matters* (Matters, 10/20/08), MidAmerican proposed studying new BGE ratebased generation as a "benefit" of the merger. MidAmerican later told legislators it was open to discussion of re-regulation (Matters, 10/30/08).

The PSC will also consider arguments demonstrating that the public interest would be served by a "concrete and viable" alternative transaction than the MidAmerican proposal.

The Commission refused to limit the case to a proposed list of issues drafted by Staff from stakeholder input (Matters, 10/31/08). "The statutory public interest standard encompasses a broad array of issues," the Commission said, stating it views its authority, and its obligation, as requiring a thorough investigation that errs on the side of inclusion.

Still, "[t]his proceeding is neither a broad policy forum nor an opportunity for the parties to litigate issues more properly addressed elsewhere," the Commission emphasized, stressing to parties any issues must directly connect to the public interest and directly bear n the Commission's decision in the merger application.

The Commission adopted Staff's proposed schedule, rejecting arguments from unions urging a hearing on BGE direct testimony before submission of direct testimony from intervenors. The PSC will also hold at least three public forums on the proposal during the evening.

Reliant Sells Northeast Books to Hess

Reliant Energy has sold its Northeast customer books to Hess Corporation in a deal that includes 5.8 million MWh and helps Reliant reduce collateral needs, a condition for a new $650 million line of credit from Goldman Sachs.

The deal includes 300 customers, under the Reliant Energy Solutions East and Reliant Energy Solutions Northeast subsidiaries, which are mostly mid-merit to large commercial and industrial customers in Delaware, Maryland, New Jersey, New York, Pennsylvania and the District of Columbia. Some customers are as small as 25 kW, based on Reliant's expansion into the Maryland Type II market earlier this year. With the sale, Reliant intends to exit from retail operations in those six territories, though

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Attrition Lowers WGES Results

Customer churn, both in the mass market and among large institutional customers, weighed Washington Gas Energy Services quarterly earnings in the fourth quarter, decreasing results on a GAAP and adjusted basis.

For the quarter, WGL Holdings' retail marketing segment posted a GAAP loss of $10.1 million, compared with net income of $5.3 million a year ago. The non-GAAP operating loss for the marketer was $574,000, compared to non-GAAP operating earnings of $3.9 million in the year-ago quarter. Non-GAAP results exclude certain hedging impacts.

For fiscal 2008, the retail marketing segment posted GAAP net income of $4.8 million, down from $22.4 million a year ago. Adjusted

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Only 1 of 20 Tranches Filled in Md. Reserve Auction due to Risk Premiums

A November 10 reserve auction for 20 unfilled blocks of load at Baltimore Gas & Electric and Delmarva Power & Light produced only one acceptable bid, forcing the Maryland PSC to convene a stakeholder group to examine alternate procurement methods.

The November 10 solicitation was seeking SOS power for 17 residential blocks at BGE and three combined residential and Type I blocks at Delmarva. The blocks had received no acceptable bids in an October 20 procurement which was plagued by high risk premiums from the credit crisis (Matters, 10/28/08, 10/27/08).

The reserve solicitation faced the same price premium, and only one acceptable bid was made, for one block of Delmarva combined residential/Type I load. The PSC approved the lone acceptable bid on the recommendation of Staff and bid monitor Liberty Consulting Group, over the objection of the People's Counsel which said customers should not have to pay a premium due to the financial market turmoil. There were 11 bidders for 17 BGE blocks, offering a total of 80 bids, and seven bidders for three Delmarva blocks, offering a total of 15 bids.

Liberty Consulting found that there has been no substantive change in suppliers' perception of risks and related costs since the October procurement. The premium included in bids led most to be rejected due to the Price Anomaly Threshold (PAT), but Liberty Consulting said the rejections do not suggest a market failure or a failure in Maryland's process. The PAT does not recognize short-term anomalies like the current premiums, Liberty said, nor should it. However, if the risk premiums become an embedded element of pricing in the long-term, a re-evaluation of the PAT methodology may be required, Liberty Consulting added.

As Liberty suggested in its October report, continued premiums do call into question the efficiency of the current SOS process, as the cost of hedging power rises.

Under the procurement method approved in Case 8908, the Commission is convening a stakeholder group to discuss alternative ways to fill the unserved load, such as a rebid or a bilateral contract. Case 8908 ultimately calls for load to be filled by PJM market purchases if it remains unfilled. However, since the blocks' service date is not until June 1, 2009, there is plenty of time to secure power outside of the PJM spot market. A Staff report and utility plans developed in the working group are to be submitted to the PSC by December 2.

Arizona Workshop Offers Less Substance, More Grandstanding

Friday's workshop on retail competition at the Arizona Corporation Commission was more grandstanding than any substantive discussion of specific policies or paths to evaluate electric choice in the state. IOUs and munis/co-ops either opposed retail choice, or urged further review and tepid movement, while large customers and retail marketers argued for greater direct access.

ACC Staff is to develop a report on retail competition by the end of 2009. Staff invited comments on retail choice within 60 days (docket E-00000A-02-0051) addressing the cost/benefits of direct access, whether the current direct access rules are applicable, and how to handle default or POLR service. Staff's topics were not meant to limit any subjects stakeholders wish to comment on.

Opponents of retail choice hit two main themes during the workshops -- choice hasn't worked in any other state, and cherry-picking of favorable customers by retail marketers would leave POLR customers with a greater cost burden.

New West Energy, the marketing arm of Salt River Project, said it was just a matter of time until Texas, Pennsylvania and Illinois saw a rollback against electric choice. New West also questioned whether electric choice could withstand a court challenge in Arizona, given the *Phelps Dodge* decision which said the ACC must consider the "fair value" of marketer's property in setting rates for service (though the extent to which the ACC must rely on fair value is indeterminate). *Phelps Dodge* also found that though the Commission may be influenced by market forces in determining what rates are "just and reasonable," the Commission may not abdicate its constitutional responsibility to set just and reasonable rates by allowing competitive market forces alone to do so.

The Grand Canyon State Electric Co-op agreed, arguing that there isn't a state anyone can point to where competition is working. The Grand Canyon Co-op raised concerns that direct access would allow marketers to serve the largest customers with the most favorable load profiles, with such "cream skimming" leaving mass market customers paying higher rates.

Michael Curits, for the Arizona Municipal Power Users' Association, pointed to the "economic disaster" of the Texas retail market as giving reason for Arizona to go slow on any return to retail choice. Arizona should not be a guinea pig, he said.

Outgoing ACC Chairman Mike Gleason, who is term-limited, said he had hoped to hear during the workshop where competition was working in the U.S., but did not hear any such facts during the conference. He urged Arizona to stay where it is currently until greater evidence shows retail choice is beneficial.

Kevin Higgins, for the Arizonans for Electric Choice and Competition, argued electric choice would be in the public interest, promoting Commission goals such as reducing customer use of utility generation.

Staff asked about rate shock seen in Maryland and Pennsylvania from retail competition, but Higgins noted such price increases were caused by long-term rate caps, which gave customers cheaper power, and also caused by utility divestiture of generation. Higgins said because the Arizona IOUs retain their generation, with direct access proponents not currently seeking divestiture, Arizona customers won't see rate shock from the return of retail choice.

Sempra Energy further contended that only through retail choice could business customers obtain customized green and conservation products to meet sustainability initiatives. Arizona Public Service questioned why utilities could not be permitted to offer similar products. Chris Hendrix of Wal-Mart also favored a return to direct access as in the public interest.

N.Y. PSC Staff Weighing Complaint Reporting Changes

New York PSC Staff are weighing whether to change how ESCO complaint statistics are currently reported to the public, including a change from the current aggregate totals to a model where complaints are reported as a percent of customers.

During a technical conference on Phase II issues in the Commission's review of the Uniform Business Practices (Matters, 11/14/08), Staff suggested that the current reporting of aggregate complaint numbers may not be helpful, as larger ESCOs may generate more complaints due to their sheer size.

However, moving to a complaint statistic based on percent of complaints per customers isn't simple. One challenge is that with new marketing standards in the UBPs, PSC Staff will start recording complaints against ESCO marketing practices, even from customers who do not ultimately enroll with the ESCO but were solicited for ESCO service. Those complaints could skew the complaint rate on a percent of customer basis.

Staff also said should there be any change in ESCO complaint reporting, Staff would attempt to prevent releasing data that would let ESCOs "back into" their competitors' confidential customer counts through comparing complaint rates under the current system and any new system. That may include, Staff said, having a window of time where complaint statistics aren't reported, so that, under a percent-of-customers complaint system, ESCOs would not simply be able to go to the previous month's aggregate complaint data and be able to compare the numbers to try and determine a competitor's customer base. ESCOs still expressed concern, however, about competitors still being able to calculate customer counts during any transition.

Staff also reported that they are working on making ESCO information, and the state's Power to Choose website, more accessible from the main PSC page. Some ESCOs had voiced a desire to make it easier for customers to find the PSC's information on ESCOs.

Most of the other Phase II issues in the case, such as an ESCO "contest period" for enrollments and preventing loss of ESCO service due to a customer name change, are destined for working groups to be announced in the future.

CAPP Says Deregulation Pushing Texas Prices Higher

EIA data shows that deregulation in Texas has led to higher rates, irrespective of natural gas prices, the Cities Aggregation Power Project said Friday, in a report analyzing EIA data.

CAPP cites EIA data for the hardly novel claim that Texas electric rates have gone from below the national average pre-deregulation to above the national average, and that prices are even higher than those in other deregulated states and other gas-generation dependent states. CAPP limited its study to residential prices.

The report analyzes EIA data collected via form 826, similar the analyses done by Power in the Public Interest. As such, the CAPP report contains all the flaws inherent in such data. To start, EIA collects an all-in, bundled price for electricity, including energy, transmission and distribution charges. As such, attributing all increases in prices over time to "deregulation," which only affected the commodity portion of the bill, is simply impossible.

Furthermore, EIA data is reported by utilities and other power retailers on an average basis, based on usage sold and revenue. Contrary to how the analysis is often presented, utilities and retailers do not report prices to the EIA. Rather, they report total revenue and total megawatt hours sold for a broad class of customers (e.g., "residential"). Based on dividing revenue by usage, the EIA calculates an average price for all megawatt hours sold in a class.

Even in completely regulated states, citing EIA cent-per-kilowatt-hour data for pricing can be misleading, since even in certain broad classes, customers can be on specific rates with unique prices. Although there are typically much fewer rate classes in residential classes than commercial classes, many regulated states offer a space heating residential rate, or an optional Time-Of-Use residential rate, or a low-income rate, which in the EIA report are all blended together for a single "rate."

However, the analysis is even more poorly designed for ERCOT's unique market. First, the EIA simply does not collect data from every retail electric provider in Texas. Many providers are small enough that they are under the EIA's radar, and EIA only asks for data when they become aware of a provider. Thus many prices in the ERCOT market go unreported, and naturally these prices could be higher or lower than what eventually becomes the state average retail price. In prior lives we've filled out our share of 826 forms, once for a retailer that had been in business since 2002, but did not start reporting to the EIA until 2007 upon the EIA's request.

Second, just like with multiple tariffs in regulated states, there is no uniform residential rate for ERCOT retail power providers, but the EIA treats rates as uniform. A retail electric provider offering a time-based rate, a fixed-price rate (with associated hedging premium), a monthly variable rate, a green power rate, and any other unique rate simply lumps all its revenue from all products together, with all megawatt hours sold, which is used to reach an average "price" for the EIA. This average price has no meaning in understanding what rates are actually available or paid in the competitive market.

Nonetheless, CAPP's report will certainly set the stage for the 2009 legislative session, so its claims are important.

CAPP's analysis shows that only Nevada, Hawaii and Florida have suffered percentage increases in residential rates greater than those experienced in Texas from 1999-2007, which CAPP pegged at 64% (http://www.capptx.com/files/CAPPReport.pdf).

CAPP said of states most dependent on natural gas, deregulated states saw a 55% price increase, while regulated states saw a 33% price increase, indicating reliance on natural gas alone does not explain higher Texas prices.

The report did not define the categorization of regulated versus deregulated states (as competition is certainly not a binary condition in many hybrid markets), nor did CAPP give specifics for determining states which were deemed similarly gas dependent as Texas, though it said it relied on EIA data to make the determination.

CAPP's top priority is instituting opt-out municipal aggregation in the next legislative session.

Pa. PUC Seeks Comments on Registering Efficiency Providers

The Pennsylvania PUC is seeking comments on qualification requirements for conservation service providers to implement utilities' required energy efficiency strategies. Legislation calls for utilities to meet various peak load and usage reductions, and requires utilities to contract with at least one independent conservation service provider to implement part of their plans (Matters, 10/9/08).

Among topics the PUC sought comments on are whether it should establish bonding or a letter of credit requirements for conservation service providers, whether insurance should be required, and whether there should be a registration fee.

Comments are due Nov. 26, and the PUC is to develop a registry of approved conservation service providers by March 2009.

The Commission also is convening a working group to discuss an energy efficiency and conservation (EE&C) program.

Briefly:

ICC Sets Ameren POR Filing for Hearings

The Illinois Commerce Commission ordered a hearing concerning Ameren's proposal to implement utility consolidated billing and Purchase of Receivables, which Ameren had sought to become effective November 14. The Commission suspended Ameren's tariff filing through February 26, 2009, pending the hearing process. Ameren filed UCB/POR plans for its three Illinois utilities in cases 08-0619, 08-0620 and 08-0621. Illinois' major utilities were directed to implement UCB and POR as part of legislation last year, which also permits a marketer referral program and telephonic enrollment.

Priority Power Management Earnings Fall on Staff Growth

Amen Properties' broker Priority Power Management saw net income fall by 50% to $290,000 for the quarter ending September 30, 2008, versus earnings of $596,000 a year ago, on flat revenue of $1.1 million. The lower earnings were attributed to higher expenses from additional sales staff. Amen's former retail electric provider, W Power and Light, recorded a quarterly loss of $252,000 associated with its exit from the retailing business, as Amen focuses on the less credit-intensive brokering business. W Power had earned $34,000 in the year-ago quarter.

Constellation Closes on $1.2 Billion in Credit

Constellation Energy said it has closed on a $1.23 billion credit facility with UBS Loan Finance LLC and RBS Securities Corporation. As previously disclosed (Matters, 11/3/08), that's lower than the original $2 billion sought by Constellation, with the extra credit originally needed to shore up liquidity in case of a ratings downgrade. MidAmerican Energy Holdings provided an additional $350 million to help make up the difference.

Maine Parties File Briefs on ISO-NE Review

Parties to Maine's investigation of continued participation in ISO New England submitted post-hearing briefs last week, merely repeating previously covered testimony (Matters, 8/21/08, 8/20/08, 6/16/08).

Reliant ... from 1

assignment of contracts is contingent upon customer approval in some circumstances.

Consistent with its strategy to unwind large C&I sales to reduce collateral (Matters, 11/10/08), Reliant also withdrew its pending application for a Connecticut retail electric license.

Expansion into Northeast C&I markets had been one of Reliant's key growth initiatives entering this year, but higher collateral requirements associated with C&I deals have forced Reliant to shelve that strategy in favor of focusing on its higher-margin Texas mass market business.

WGES ... from 1

earnings were down at $12.4 million from $18.2 million in fiscal 2007.

The decrease in yearly earnings stems from lower electric margins and volumes. Lower gross margins from electricity sales reflect a reduction in unit margins and a 9% decrease in sales volume to 3.6 million MWh, from 3.9 million MWh in fiscal 2007. Lower electric sales reflect milder weather and the loss of certain government and large commercial accounts due to increased competition.

Adjusted unit margins in fiscal 2009 were $6.85/MWh down from last year's "exceptionally strong" margins of $9/MWh.

Yearly results were helped by stronger

natural gas margins, although margins dipped in the fourth quarter. Higher gas margins for the year reflect a rise in margin per therm sold, partially offset by a decrease in natural gas sales volumes. Adjusted unit margins for gas were of \$0.42/decatherm versus \$0.32/decatherm in fiscal 2007. Volumes dipped to 63.5 Bcf in fiscal 2008 versus 72.5 Bcf in fiscal 2007, primarily due to the loss of certain large government contracts.

Combined electric and gas customer count fell from 206,600 to 195,100 year-over-year, primarily due to the extended run-up in natural gas and electric prices from February through June that caused WGES to halt mass market customer acquisition efforts. Current lower energy prices have allowed WGES to renew mass market efforts, and it has begun to rebuild its number of mass market customer accounts, executives said.

Electric customer count fell to 61,800 from 65,900 while gas customer count dipped to 133,300 from 140,700, year-over-year.

WGES is projecting a 10% growth in electric volumes in fiscal 2009, and already has approximately 3.8 million MWh of normal weather electric volumes under contract for fiscal 2009. The marketer expects a net decline in gas volumes in fiscal 2009, as the last of a set of lost government accounts rolls off of its books.

Higher operating expenses at WGES reduced results by about \$2 million, with half of the increase in operating expense attributable to higher uncollectible expenses. Nonetheless, despite the difficult economic climate, WGES experienced "very low" uncollectible rates of approximately 0.3% in fiscal year 2008, and is currently projecting a slight decrease in that rate in fiscal 2009.

Quarterly net income from WGL's design-build energy systems unit was \$966,000 for the quarter, up from \$192,000 a year ago. For fiscal 2008, earnings were \$1.8 million, up from \$367,000 a year ago. Parent WGL Holdings reported GAAP earnings for fiscal 2008 of \$116.5 million, up from \$107.9 million a year ago.