Energy Choice Matters
November 27, 2008

Luminant, Staff Submit $15 Million Settlement to Resolve Notice of Violation

Luminant would pay $15 million to resolve allegations of market power abuse during the summer of 2005, under a settlement with PUCT Staff filed for Commission approval.

Staff had alleged that Luminant's bidding behavior was not competitive and increased market participants' costs of balancing energy by approximately $57 million, with Luminant allegedly accruing approximately $19 million in profits from the activities.

While Staff's Notice of Violation sought $171 million in penalties for alleged market manipulation, an ALJ determined that the amount of any fine should be tied to the number of bid curves submitted by Luminant, not the total megawatts involved (Matters, 7/23/08).

That meant the maximum potential penalty applicable would have ranged from $7.9 million to $15.5 million under the ALJ's ruling.

The settlement was reached to avoid the expense and uncertainty of litigation.

The stipulation, which requires Commission approval, does not represent an admission of liability or noncompliance by Luminant, which Luminant expressly denies.

The settlement also states that Staff believes the voluntary mitigation plan developed by Staff and Luminant filed in docket 34480 in July 2007 continues to represent an appropriate safe harbor for Luminant for any activities covered by the mitigation plan.

PULP Urges Review of ESCO Termination Fees in N.Y.

The Public Utility Law Project urged the New York PSC to review ESCO termination fees as part of Phase II of its Uniform Business Practices review, as it sought rehearing on the absence of any substantive policy regarding termination fees in the Commission's October UBP order (Matters, 10/28/08).

While the size and applicability of termination fees was a major part of stakeholder comments in the case, the Commission's final order was mostly silent on termination fees, only requiring that their amount and method of calculation be clearly disclosed to customers in solicitations, including in the new Customer Disclosure Label.

The Commission in its order found that a termination fee is not a "service charge" for utility service that is prohibited by law, because termination fees, "are not a requirement imposed by ESCOs to provide service."

PULP objected to that characterization of termination fees. If termination fees are not a requirement in order for service to be provided, then the Commission should explain how a customer who signs an ESCO contract which includes early termination provisions may have the early termination provisions waived, PULP said.

Termination fees, "are an integral part of some ESCO contracts and service simply will not be provided without them," PULP argued.

"Indeed, ESCO contracts are so one-sided they are contracts of adhesion," PULP contended.

PULP noted many of the ESCO contracts with customer termination fees also include language permitting the ESCO to unilaterally cancel the contract without penalty. "In the event that commodity price increases during the life of the contract reduce ESCO profits, for example, the ESCO contract

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Reliant Won't Proceed with GS, First Reserve Financing

Reliant Energy has opted not to proceed with its previously announced GS Loan Partners or First Reserve financings, as actions to reduce liquidity needs have mitigated the need for what investors had criticized as very expensive capital.

Reliant had originally arranged for $1 billion in additional capital consisting of a commitment for a $650 million term loan from GS Loan Partners and an agreement to issue $350 million of convertible preferred stock to the private equity firm of First Reserve Corporation.

The capital was needed to replace Reliant's existing credit sleeve with Merrill Lynch, which was originally to be unwound in an accelerated fashion. However, Reliant is now pursuing a longer-term unwind agreement with Merrill Lynch.

The changes come as Reliant unwinds its capital-intensive large C&I business (Matters, 11/10/08), including the sale of its Northeast customer book to Hess (Matters, 11/17/08). Reliant continues to review other strategic options which may further lower collateral needs.

"We believe Reliant has adequate liquidity without the GS Loan Partners and First Reserve financings and this course of action creates more value for our shareholders," Reliant CEO Mark Jacobs said.

PUCT Draft Refuses to Impose Price Floor on REP Distributed Generation Purchases

A draft PUCT order would reject pleas from environmental groups to change the Commission's current requirement for net metering to measure in-flows and out-flows separately, and would refuse to adopt suggestions to impose any pricing mandate on REPs with respect to the purchase of surplus energy from distributed renewable generation (34890, Matters, 8/5/08).

The Commission had previously concluded that PURA requires a separate measurement of in-flows and out-flows for net metering (Matters, 4/10/08), and refused to change its decision in the instant case, which mainly sets rules for distributed renewable generation and distributed generation from schools.

Staff's draft decision would reject calls for a price floor for excess distributed generation, noting that the Commission does not have the authority to impose a purchase price on the distributed generation customer's REP. Owners of renewable distributed generation have a choice of REPs and therefore can negotiate with more than one REP in an effort to obtain the best deal for the sale of their electricity, Staff said.

For that reason, proposals for a feed-in tariff or standard solar load profile, suggested by certain distributed generation developers, were rebuffed in Staff's draft.

Staff also declined to adopt in the case recommendations for a disclosure statement in every retail contract that identifies the rate paid by the REP for energy out-flows, stating the issue should be addressed in the Commission's ongoing REP disclosure docket (35768).

Staff further opposed Public Citizen's request to mandate that REC credits from distributed generation appear on customer bills from REPs, since REC credits are not the responsibility of the REP.

Staff's draft would accept REPs' request that upon termination of a contract with a distributed renewable generation owner, out-flow credits due to the customer could be first applied against any outstanding balance for retail service.

Cost of Reliability Projects in Entergy ERCOT Integration Triple

The cost of 15 transmission projects needed to reliably integrate Entergy Texas with ERCOT would be $488.7 million, according to an updated draft report by ERCOT.

That compares with $158 million in needed reliability projects in ERCOT's December 2006 report on integrating Entergy into the ISO, which Entergy had proposed as part of a transition to competition.

The new study, to be finalized in early December, was updated to match certain input assumptions being utilized in a parallel study on integrating Entergy Texas into SPP as a qualifying power region. Updated inputs include fuel prices, transmission equipment costs, unit efficiency estimates, load forecasts, and emission allowance prices.

The reliability projects are only one cost of integration. Building only those projects would require the use of less efficient generation for reliability, in order to limit flow of power on some transmission lines.

ERCOT identified seven economic transmission projects that could be pursued under integration, at a cost of $287.4 million. The economic projects would result in annual production cost savings of $55 million, which is more than 16.5% of the capital cost of the upgrades, the current ERCOT criteria for recommending economic transmission projects.

ERCOT's updated study did not include tie-back costs required on the non-ERCOT portion of the Entergy system following integration.

Under Entergy's original transition to competition plan filed in December 2006, the all-in cost of integration with ERCOT, when including tie-back and other miscellaneous costs, would have been $927 million, though Entergy estimated benefits of $1 billion from integration. The high price prompted the PUCT to abate the docket and require Entergy to study a possible SPP integration as an alternative.

Texas RPS Opt-Out Would Not Force REP Pricing Change Under Draft

A draft PUCT order would find that REPs are not required to lower the price charged to transmission-level voltage customers who elect to opt-out of the state's RPS requirement (35628).

Revisions to PURA in 2007 gave transmission-level voltage customers the right to opt-out of compliance with the RPS. The draft would define a transmission-level voltage customer as a customer that receives electric service at 60 kV or higher, or that receives electric service directly through a utility-owned substation that is connected to the transmission network at 60 kV or higher.

REPs had raised concerns in comments about an earlier proposal, which would have required a retail entity to not collect costs attributable to the REC program from an eligible customer who has submitted an opt-out notice (Matters, 10/6/08). As many retail contracts are for bundled energy, stripping out REC costs is not possible, REPs had said. Many REPs and transmission-level voltage customers are currently operating under long-term contracts, REPs noted, and forcing a pricing change could harm REPs who have bought RECs on a forward basis.

In its new proposal for adoption, Staff agrees with REPs that the statute does not require REPs to charge a customer anything different as a result of the new opt-out provisions. Staff also agreed that treatment of the costs attributable to the REC program does not need to be addressed in the rule, and can be negotiated between REPs and eligible customers. Thus, Staff changed the draft to limit the prohibition on collecting REC costs from opt-out customers to IOUs in the areas of Texas not open to customer choice.

The Staff proposal for adoption finds that customers may opt-out of 2008 RPS compliance even though the rule has not yet been finalized. Customers who submitted opt-out notices in 2007 will be permitted to opt-out for the 2008 compliance year. Allowing such customers to opt-out will not complicate the RPS allocation process, as allocation for the 2008 compliance period will not occur until early 2009.

The term of an opt-out notice may be up to two years under the draft. Each opt-out notice must include the name of the individual customer opting out, the customer's ESI IDs, the REPs serving those ESI IDs, and the term for which the notice is effective. The customer opting out must also provide the information included in the opt-out notice directly to ERCOT, in addition to a filing with the Commission.

California Draft Would Provide Bridge Demand Response Funding

A draft California PUC decision would grant the IOUs interim "bridge" funding to maintain several current demand response programs, as well as fund new pilots, until the Commission adopts a final decision on the IOUs' demand response activity and budget applications for 2009-2011 (A. 08-06-001 et. al.).

The bridge funding would begin January 1, 2009, and continue until a final Commission order on programs for the remainder of the 2009-2011 period. Monthly funding under the draft would be $3.1 million at Southern California Edison, $2.8 million at Pacific Gas & Electric, and $1.1 million at San Diego Gas & Electric.

The draft authorizes the continuation of all of the IOUs' requested programs, including the PG&E Small Commercial Aggregation Pilot, which was the only program opposed by any stakeholder. The draft concluded it would be prudent to continue funding the Small Commercial Aggregation Pilot given that the Commission may decide to keep the program in its permanent order on the programs.

The proposed decision would also authorize several pilot programs to test the use of demand response to provide Participating Load to the California ISO, which will be available under the Market Redesign and Technology Upgrade.

The draft decision would reject three of PG&E's proposed pilots since they do not appear to be directly related to Participating Load. The three programs are the Small Customer Enabling Technology pilot, the Commercial and Industrial Renewables Integration pilot, and the Plug-in Hybrid Renewables project.

Briefly:

ERCOT Estimates Doubling of Nodal Budget, Two-Year Delay

ERCOT estimates that the nodal market will go-live in December 2010, or nearly two years later than originally planned, assuming no additional material changes to the Nodal Protocols, it said in supplemental testimony supporting its request for additional funding (Matters, 11/25/08). The estimate is subject to the outcome of a PUCT cost-benefit analysis, which might prompt significant revisions, but ERCOT provided the estimate to assuage concerns from Commissioners that ERCOT was seeking unduly open-ended relief in its funding request (Matters, 111/21/08). The total cost of the program is now expected to hit $660 million, or more than double the most recent estimate.

Md. PSC Sets Hearing for Filling Open SOS Positions

The Maryland PSC has set a hearing for December 11 to review utility proposals for filling unserved load at Delmarva and Baltimore Gas & Electric for the SOS period starting June 1, 2009. The regular RFP procurement and a reserve auction failed to fill 17 blocks of residential load at BGE two blocks of combined residential/Type I load at Delmarva, due to high risk premiums in the bids (Matters, 11/17/08). A working group is to file recommendations for filling the blocks by December 2.

TXU Awarded NASA Deal

The Defense Energy Support Center awarded TXU Energy a $28 million fixed price contract for the NASA Johnson Space Center, Texas. The date of performance completion is January 31, 2011.

PUCO Schedules Dayton ESP Hearings

PUCO scheduled a technical conference to review Dayton Light and Power's electric security plan for December 15. Intervenor testimony is due January 12, 2009, with hearings commencing January 26 (Matters, 10/14/08).

North Texas Trade Association, Tara Seek Dismissal of Complaints

The North Texas Trade Association Members and Tara Energy jointly moved to dismiss the members' complaint in docket 33508, originally filed in 2006, as members no longer have an interest in the proceeding (Matters, 11/13/08).

FERC OKs Nebraska SPP Members

FERC accepted revisions to SPP's OATT to facilitate the membership of Nebraska Public Power District, Omaha Public Power District, and Lincoln Electric System, effective December 1.

FERC Approves Cornerstone, NorthWestern Capacity Release Settlements

FERC approved a settlement agreement with Cornerstone Energy under which Cornerstone will pay $325,000 in penalties and disgorge $122,000 in unjust profits, plus interest, for shipper-must-have-title violations. The self-reported violations were discovered during due diligence on the acquisition of Cornerstone by Constellation NewEnergy, and involved the transportation of approximately 12.2 Bcf of natural gas from October 2002 through May 2007. The Commission also accepted a settlement with NorthWestern Corporation under which NorthWestern will pay $450,000 in penalties for shipper-must-have-title violations. NorthWestern's self-reported violations involved 39.4 Bcf of gas over a period of approximately eight-and-a-half years, and did not result in unjust profits.

N.Y. UBPs ... from 1

of adhesion allows the ESCO to abandon the customer with a minimal (perhaps two weeks) notice," PULP said.

"It is unconscionable for ESCO contracts not to have symmetrical early termination language, as proposed by the Consumer Protection Board in its Initial Comments," PULP argued.

Constellation Energy asked for clarification or rehearing regarding the applicability of the new marketing standards to ABCs, and ESCOs' responsibility to train agents and brokers, an issue raised during the post-order technical conference.

Constellation drew a distinction between agents directly contracted to represent an ESCO for the marketing and sale of its products, and brokers that are independent or represent specific customers. While ESCOs should be responsible for training agents directly marketing their products, ESCOs have no control over independent brokers or those representing customers, and thus should not have to train such brokers or be held responsible for those brokers' activities, Constellation said.

The order broadly states that the new marketing standards are applicable to ESCOs' marketing representatives, including contractors and vendors. At the post-order technical conference, Staff suggested that if an agent/broker has a contractual relationship with an ESCO, or acts like a vendor, then they would be subject to the UBPs.

Constellation noted, however, that ESCOs will often have executed master agreements with independent brokers or brokers representing customers, even though ESCOs do not control or direct those brokers' activities, so a contractual-relationship test would be imprecise.

It would be entirely unfair for the Commission to impose penalties on an ESCO for violations of the UBPs by such a broker when much of the interaction between a broker and a customer occurs before an ESCO is even involved in a bidding process, Constellation said.