Energy Choice Matters

December 4, 2008

DPUC Orders Changes to Dominion Retail's Business Relationship with Conn. Customers

Dominion Retail's business relationship with Connecticut customers, "requires certain adjustments," and the Connecticut DPUC ruled that Dominion's use of aggregator Levco Tech to acquire customers, "does not meet minimum standards set by Connecticut laws." The DPUC conditioned the five-year renewal of Dominion's retail license on the changes.

The final decision differed little from an earlier draft (Matters, 10/13/08), though the final ruling notes the blurring lines between aggregators, agents and suppliers (06-08-03).

Dominion has had a letter agreement with Levco since 2002 which has made it the dominant residential supplier in the state. Pursuant to the agreement, Levco solicits customers, enters into contracts with customers, and handles all customer complaints for Dominion.

Dominion has about 65% of the competitively served residential customers at Connecticut Light and Power (far ahead of second-place Direct Energy at 19%) and 69% of competitively served residential customers at United Illuminating (versus 13% for second-place Direct).

The DPUC's central objection to the arrangement is that Dominion does not directly enter into a contract with residential customers aggregated by Levco. Rather, the only agreement that the customer signs is an agreement with Levco, which contains language that the customer agrees to switch from their current electric supplier to, "the electric supplier selected by Levco Tech, Inc." The agreement further states that, "the Customer appoints Levco Tech as the Customer's exclusive agent to select the Electric Supplier for the customer," for the specified term.

... Continued Page 4

N.Y. PSC Should Ensure NYSEG ESCO Introduction Program Commitment Honored, Direct Says

The New York PSC should not to relieve NYSEG of any of the obligations it voluntarily undertook in a Joint Proposal in its 2007 rate case, including its commitment to work collaboratively with stakeholders to develop an ESCO Introduction Program, Direct Energy said in a motion for clarification on the PSC's recent retail access order (Case 07-M-0458, Matters, 10/16/08).

NYSEG offered to work on an ESCO Introduction Program as part of a compromise to continue its Fixed Price Option (FPO) rate, which had initially been opposed by ESCOs. The ESCO Introduction Program would give competitive suppliers an opportunity to sign new service customers before they become committed to utility commodity service.

However, the Commission's October 27 retail access order held that the ESCO Introduction Program would not be pursued further, "because we find that it reduces the scope of the [ESCO] referral program without offering any attendant benefits." The order instead directed NYSEG and other utilities that have not developed ESCO Referral Programs to move forward with the development of such programs on an expedited basis.

The Commission stated that the ESCO Introduction Program collaborative had, "been suspended without arriving at an ESCO Introduction Program."

Direct Energy countered the PSC's suggestion that the collaborative ended in failure some time ago, which is not the case. Direct clarified that the collaborative was only suspended "unilaterally" by Staff on the grounds that the Introduction and Referral programs would be addressed in the then-pending Iberdrola merger proceeding, while ESCOs and NYSEG had been planning to meet to

... Continued Page 5

Maine Approves Format of RFPs for Long-Term Capacity, Energy Contracts

The Maine PUC approved the form of RFPs which will be issued to solicit proposals for long-term contracts for capacity resources and associated energy (2008-104).

Legislation enacted in 2006 authorizes the Commission to direct investor-owned transmission and distribution (T&D) utilities to enter long-term contracts for capacity resources and associated energy.

The legislation gives the Commission flexibility regarding the disposition of such capacity and energy, though the PUC said in its order that it, "anticipate[s] that the resources will be periodically sold into the market as currently occurs with utility pre-divestiture entitlements."

However, the PUC saw no benefit in codifying such a determination of disposition at the present time.

Permissible pricing options under the RFP include a percentage discount to the hourly Maine zone LMPs in the ISO-NE day-ahead or real-time market (or comparable index for the Northern Maine Independent System Administrator).

The adopted RFP specifically allows cash and letters of credit as acceptable forms of financial security. However, other forms of security are not precluded, the PUC said, and will be considered in the context of a particular proposal and prevailing economic conditions.

The RFP standard contract includes utility security provisions because provisions for counterparty security are common in the industry and provide reasonable assurance to a supplier in the event that a utility's credit substantially deteriorates, the PUC said. Because it is unlikely that the credit of a regulated T&D utility would fall below investment grade, the credit support provisions should not have a negative impact on the utility, the Commission noted in response to a concern about the provisions from Bangor Hydro-Electric.

However, in evaluating bids, the PUC said it will be cognizant of the potential overall impact on the balance sheet of the utilities when considering the number of contracts and total amount of capacity or energy that is authorized. To the extent there is a cost impact resulting from the security/credit support provisions, such costs may be recoverable through the ratemaking process, the Commission ruled.

PUCO Approves Columbia Stipulation Placing More Costs in GCR

PUCO approved a Stipulation in Columbia Gas of Ohio's rate case which calls for gas storage carrying costs for sales (bundled) customers to be removed from base rates and included in the gas cost recovery (GCR) mechanism.

The change will ensure that customers on competitive supply do not pay for carrying costs of storage which does not benefit them.

The Stipulation also holds that base rates will not include any portion of regulatory assessments from PUCO or the Ohio Consumers' Counsel related to gas cost revenue. Such regulatory assessments will be recovered through the GCR mechanism to ensure that competitive supply customers do not pay supply-related assessments twice.

Per the settlement, Columbia will also meet with Staff to discuss Staff's recommendations for revisions to Columbia's Competitive Retail Natural Gas Service tariffs.

ConEdison Solutions Warns of Higher Capacity Costs from PJM Staff Energy Efficiency Proposal

A proposal from PJM Staff to allow energy efficiency providers to qualify for four years of capacity payments would artificially increase the capacity obligations of other customers, raising their costs, Consolidated Edison Energy and Consolidated Edison Solutions said in a letter to PJM CEO Terry Boston.

Consolidated Edison Solutions noted that after the initial year, the impact of energy efficiency measures will be captured in Peak Load Contribution (PLC), which is used to allocate capacity obligations to retail customers and their LSEs. The reduction in PLC effectively doubles the value of the capacity payment to the energy efficiency provider in the second through fourth years, ConEdison Solutions noted. Because the zonal capacity obligations in PJM are predetermined for the full four-year payment, the PLC reduction would artificially increase the capacity obligation of other customers within that zone.

ISO New England declined to implement a multi-year capacity payment for energy efficiency due to concerns of such double payments, ConEdison Solutions noted, though the ISO is evaluating how to eliminate any double payment.

ConEdison Solutions suggested two alternate methods of permitting energy efficiency to participate in the capacity markets which would not impose higher capacity obligations on other market participants. Under the first option, energy efficiency would be qualified for one year of capacity payments. The mechanism would decrement down the forecasted load in the second through fourth years to capture the societal benefits of energy efficiency until PJM's forecasting process recognized the load reduction.

Under the second method, energy efficiency resources could qualify for up to four years of capacity payments, but they would have their reduced load "added back" for purposes of determining the retail customer's capacity obligations in years two through four. The "add back" approach mirrors existing PJM rules for demand response providers, and would allow a 10 MW customer installing 2 MW of energy efficiency to receive capacity payment for 2 MW of load reduction, provided its capacity obligation was calculated on the original 10 MW peak load.

Briefly:

ERCOT May Lose $500,000 in Reserve Fund Investment

ERCOT reported that it may lose $500,000 from its investment in money-market The Reserve Fund, which was hit by the Lehman Brothers bankruptcy. ERCOT originally believed it would eventually receive its entire investment back based on its early redemption request, but the Reserve Fund has announced an error of 1¢/share in its net asset value calculation for the Primary Fund. ERCOT had approximately $47.8 million in the Primary Fund on Sept. 16. The potential $500,000 loss is about 0.26% of ERCOT's total investment with the Reserve Fund. ERCOT's management and investment of its funds, which include market participant postings, drew criticisms from lawmakers during a Texas Senate hearing in November (Matters, 11/19/08).

IDT Urges PSC to Account for Routine Churn in UBPs

IDT Energy sought rehearing of the New York PSC's recent Uniform Business Practices (UBP) order to reflect the higher levels of customer churn seen in today's market (Matters, 11/26/08). The UBPs provide that, "No ESCO shall transfer 5,000 or more customers during a billing cycle to full utility service, unless it provides no less than 60 calendar days notice to the distribution utility and DPS." Such language was designed for cases where an ESCO exits the market and ceases operation, IDT said. However, normal customer churn, "can easily exceed 5,000 a month for a number of ESCO's," IDT reported, but such normal churn cannot be reported to the utility in advance, since the ESCO will not be aware until the customer makes their decision to return to the utility. The Commission needs to clarify the rule to account for the routine flow of customers to and from utility service, IDT said.

PUCO Approves Duke Energy Retail Sales License Renewal

PUCO approved the electric license renewal application of Duke Energy Retail Sales, dismissing a "collateral attack" on the renewal application by the Ohio Consumers' Counsel (Matters, 9/17/08). OCC's allegations regarding a lack of corporate separation amount to hearsay, PUCO said, noting OCC has not used other complaint avenues to address the alleged corporate separation violations.

WGES Building Solar Plant in Md., Selling Output to Customer on PPA

Washington Gas Energy Services is part of a partnership including Standard Solar and John E. Kelly & Sons Electrical Construction that announced plans to build a 150 kW solar project at John E. Kelly & Sons' headquarters in Prince George's County, Maryland. WGES will own the system, with output being sold to Kelly & Sons over a 20-year, fixed-price PPA. Standard Solar is developing the project, and will design, construct, operate and maintain the system.

Tenaska Buying AIG Interest in Joint Ventures

Tenaska will repurchase the interest in Tenaska Marketing Ventures, Tenaska Gas Storage and Tenaska Marketing Canada (collectively TMV) currently owned by affiliates of American International Group (AIG). Troubled AIG is winding down its Financial Products division which owned the stake in the Tenaska ventures. Tenaska said it plans to solicit interest in a new partnership arrangement in early 2009, consistent with its business plan of combining TMV's marketing expertise with added financial strength to promote growth and continue expansion plans.

New Texas POLRs Won't Start Term with Any Customers

New POLRs in Texas for the term beginning January 1, 2009 will not be inheriting any customers from current POLRs, ERCOT reported yesterday. Outgoing POLRs from the period ending December 31 did not report that there are any existing POLR customers to be transitioned to the new POLR providers, ERCOT said.

NRG Building 30-MW Biomass Unit in Conn.

NRG Energy is developing a new 30-MW biomass project at its Montville Generating Station in Uncasville, Conn. NRG is reconfiguring one of the station's existing oil/gas-fired units to use biomass as a fuel source for 30 MW of the unit's 82-MW generating capacity.

EnerNOC Signs General Mills

EnerNOC has signed General Mills' West Chicago facility to its demand response program, for up to 5 MW of curtailment.

National Council on Electricity Policy Releases Demand Response Review

The National Council on Electricity Policy has released an overview of demand response and smart grid/meter actions at the federal and state level since the Energy Policy Act of 2005. The report was prepared by the Demand Response Coordinating Committee (DRCC) and covers legislative and regulatory measures (http://www.ncouncil.org/documents/NCEP_Demand_Response_1208.pdf). The National Council on Electricity Policy is composed of several agencies including NARUC and the National Governors Association.

Dominion ... from 1

The Department ruled that the supply contract, "must reflect that the parties to said contract are Dominion and the retail customer." Statute prohibits an aggregator from engaging in the resale of electricity, which is how the DPUC viewed the Dominion-Levco relationship.

"The customer needs to know that they are contracting with Dominion as their electric supplier," the DPUC said.

The Department raised concerns about an aggregator having an exclusive relationship with both the customer and an electric supplier.

"An aggregator assumes a fiduciary relationship with a customer when the aggregator pledges to negotiate a competitive contract for that customer with an electric supplier. A fair reading of the definition of an aggregator is that an aggregator is an agent for the customer that it represents in negotiations with an electric supplier," the Department said.

"Troubling issues arise if an aggregator also has an agency relationship with a single electric supplier. In any case, no laws would permit Levco to be an exclusive agent for both the customers and an electric supplier at the same time. In this case, Levco's agreements with its customers state that Levco is the customers' 'exclusive agent,' while at the same time, Levco's agreement with Dominion states that 'Levco shall... remain Dominion's exclusive electricity marketing agent in Connecticut [citation omitted].' Such an arrangement on its face presents a conflict of interests," the DPUC ruled.

The Department noted that, "[e]ntities are entering the market that do not fall within the definitions of supplier or aggregator," but determined that customers need a clearly defined business relationship with their supplier to prevent confusion and facilitate resolution of any potential disputes.

While Dominion may retain Levco or any other third-party entity to carry out its administrative or technical duties, such as soliciting customers, switching customers, or handling customer complaints, third-parties may not carry out such duties under their own name and must act on behalf of Dominion, the DPUC held.

Accordingly, Dominion is to submit by January 3, 2009 an operational plan addressing all customer-relation functions, such as marketing, solicitation, contracting, information disclosures, switching and terminating customers, and handling customer complaints. The plan must specify whether Dominion intends to hire or retain a third-person entity to perform any of Dominion's statutory duties, the exact functions that such third-person entity will perform, and the legal relationship of that third-party entity with Dominion, the DPUC ordered.

NYSEG ... *from 1*

discuss certain proposals advanced by NYSEG. Ultimately, the Commission approved the Iberdrola merger without either an ESCO Introduction Program or ESCO Referral Program, Direct noted.

While Direct does not object to focusing first on the Referral Program at NYSEG if the Commission sees the Introduction Program as an obstacle to prompt action, the Commission should make clear that NYSEG is bound by its commitment in the Joint Proposal to develop an ESCO Introduction Program.

Direct noted work by the collaborative on the Introduction Program can also improve the Referral Program.

Specifically, the collaborative was exploring the deployment by NYSEG (at ESCO expense) of telecommunications technology that would permit the utility to transfer customers interested in ESCO service directly to ESCO representatives. Once the customer and the ESCO reached agreement on commodity service, the customer can be transferred back to the utility, which would enroll the customer in the appropriate service and send an e-mail to the ESCO containing the account information required for billing. The technology could be used for both an Introduction Program and Referral Program.

The Public Utility Law Project filed a rehearing request in the case arguing that the PSC should implement utility disclosure of default service shadow prices, to facilitate ready price comparisons between the utility and ESCOs. The current mandatory price reporting for ESCOs, "cannot provide customers with adequate price information," because it only provides a snapshot of prices at the start of the month, PULP contended.

"Distribution utilities with affiliated ESCOs charging more than the utility have a conflict of interest that favors continued price opacity," PULP alleged.

A "simple remedy" would be for the utilities to supply on their bills for delivery service a statement of what full bundled services would cost, PULP said, which may provide competitive pressure to encourage ESCOs to lower prices in cases where ESCO prices are not providing savings.