Energy Choice Matters
December 8, 2008

Reliant Opposes Provisions of Staff-Luminant Settlement

A proposed settlement between PUCT Staff and Luminant under which Luminant would pay $15 million to resolve allegations of market manipulation in the summer of 2005 is not in the public interest, because of references to a nullified voluntary mitigation plan and a Conclusion of Law regarding the Commission's refund authority, Reliant Energy said in amicus comments on the pact (docket 34061).

In the proposed settlement, Staff states that it "continues to believe" that the Voluntary Mitigation Plan negotiated between Luminant and Staff, filed in docket 34480 on July 31, 2007, represents an appropriate safe harbor for Luminant from any future enforcement actions for activities covered by the Mitigation Plan (Matters, 11/27/08).

However, a state district court declared the Commission's approval of the Mitigation Plan to be, "void and of no legal force or effect," Reliant noted, because the Commission acted without complying with the statutory requirement to conduct a contested case proceeding.

"The safe harbor protection referenced in the Settlement Agreement is unavailable to Luminant unless the Commission approves a voluntary mitigation plan in the context of a contested case proceeding," Reliant argued.

"Moreover, seeking Commission approval of Staff's commitment to what will constitute protected market activity for purposes of future enforcement proceedings has all the appearances of an improper attempt to side-step the statutorily-required contested case requirement and to circumvent the district court's injunction," Reliant charged.

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Regulators Urge Change in Module E Language to Ensure Reporting of Retailers' Capacity Compliance

A Midwest ISO compliance filing meant to address the concerns of electric cooperatives could prevent state utility commissions from receiving data regarding the capacity of alternative retail electric suppliers under MISO's Module E, the Illinois Commerce Commission and Organization of MISO States (OMS) told FERC (ER08-394-005).

Under MISO's originally approved resource adequacy construct, MISO was to, upon request of state regulators, validate that LSEs have arranged for sufficient planning resources to meet their resource adequacy requirements.

However, Hoosier Energy Rural Electric Cooperative and Southern Illinois Power Cooperative urged FERC to clarify that the broad language regarding reporting would not include cooperatives and other entities not subject to state regulatory jurisdiction.

FERC granted the request, and directed MISO to submit a compliance filing. But OMS and ICC cautioned that the new language from MISO is too narrow, and could exclude reporting of the capacity compliance by competitive suppliers.

MISO proposes to only report capacity information for LSEs subject to "rate regulation" by state regulatory authorities. Such language could be interpreted to exclude alternative retail electric suppliers, the ICC and OMS cautioned, since their rates are not set by regulatory orders.

State commissions must have access to resource adequacy information about alternative retail electric suppliers, in order to allow state commissions to fulfill their obligations of ensuring system reliability and reliable customer service, OMS and ICC said. "The resource adequacy of alternative

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Cost of Entergy-ERCOT Integration Rises, Cost of Staying in SERC Falls

The cost of transmission projects needed to reliably integrate Entergy Texas with ERCOT would be $483.8 million, ERCOT said in an updated, final report submitted to the PUCT.

That's slightly less than the $488.7 million reported in a draft analysis last month, but more than double the original cost as developed in 2006 (Matters, 11/27/08). Integration with ERCOT or the Southwest Power Pool is being evaluated as part of a possible transition to competition for Entergy Texas.

The cost estimate includes 15 transmission projects and has been updated with revised fuel prices, transmission equipment costs, unit efficiency estimates, load forecasts, and emission allowance prices to provide an apples-to-apples comparison with an impending study of SPP integration.

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 the flow of power on some transmission lines.

Seven economic projects that could be pursued under ERCOT integration would cost $283.0 million, but would result in annual production cost savings of $55 million. That's more than 16.5% of the capital cost of the upgrades, which is the current ERCOT criteria for recommending economic transmission projects.

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

The cost of remaining in SERC, if the Cottonwood Energy facility also remains in SERC, is $161 million for the time period ending in 2012, from 11 transmission-related projects, Entergy said in a revised analysis. That's less than the $200 million of transmission projects and $340 million of generation capital projected under the original stay-in-SERC scenario, due to excluding 2008 and 2013 from the analysis, new generation and transmission that have come online, and reduced load forecasts.

If the 1,200-MW Cottonwood plant disconnects from SERC, Entergy would need an addition $390 million in transmission upgrades. Soon after 2012, Entergy anticipates that it will require significant new generation capacity, with costs of $550 million or more, in the Western Region of Entergy Texas. The stay-in-SERC scenario will be impacted by whether the Commission approves the CCN for the $300 million Kelson Transmission project, which would link Cottonwood with ERCOT (Matters, 10/20/08).

None of the projects needed under a stay-in-SERC scenario would be avoided by integrating with SPP as Entergy's Qualifying Power Region. However, if Entergy were integrated into ERCOT, only a portion of the transmission projects required under a stay-in-SERC scenario would be needed. The $81 million Cypress-Jacinto line would no longer be needed, while the cost of the $229 million Webre-Richard line (needed only if Cottonwood left SERC) would be reduced by $140 million.

PJM Requests Settlement Judge for RPM Review

PJM asked FERC to appoint a settlement judge to facilitate consensus on revisions to the Reliability Pricing Model stemming from the Brattle Report and FERC's September 19 order (EL05-148, Matters, 9/22/08).

While the stakeholder process has been productive, it has not resulted in a consensus on RPM changes that can be implemented in time for the May 2009 auction, PJM reported.

Market rule changes intended for that auction must be effective and acted upon by no later than March 27, 2009, meaning any settlement would likely need to be filed at FERC by the end of January.

The working group has developed three approaches to implement various changes to RPM -- a comprehensive proposal by PJM to resolve all issues, and two variants of that proposal, one by a group of capacity buyers and one by a group of capacity sellers.

The RPM revisions would include or address a Gross Cost of New Entry Adjustment, the Energy and Ancillary Services Offset, energy efficiency's participation in RPM, market power mitigation reform, modeling of Locational

Deliverability Areas, an increase resource eligibility, incremental auction redesign, new entry pricing, and penalty structure.

Md. PSC Opens Case to Allocate RGGI Funds

The Maryland PSC has opened a proceeding (Case 9166) to determine the manner in which 23% of the monies in the Maryland Strategic Energy Investment Fund will be allocated to, "provide rate relief by offsetting electricity rates of residential customers, including an offset of surcharges imposed on ratepayers under §7-211 of the Public Utility Companies Article."

Comments on the refund allocations are due December 31, and a hearing is scheduled for January 14.

The Fund consists principally of proceeds from the sale of Regional Greenhouse Gas Initiative allowances, money appropriated in the state budget, and compliance fees paid under §7-705 of the Public Utility Companies Article, Annotated Code of Maryland.

"The most appropriate way to allocate and credit the money from the Fund for rate relief is to spread the money equally across all residential customers," the PSC said, as opposed to basing allocation on a utility's current EmPower Maryland efficiency programs, because not all utilities have programs at this time.

The ideal presentation of the credit on the customer's bill would be a line item entitled Strategic Energy Fund Credit, the PSC reasoned. A second-best solution is an explanation on the bill that the distribution charge includes a credit from the Maryland Strategic Energy Fund, intended to offset the costs of programs designed to decrease energy demand and promote affordable, reliable, and clean energy.

Extrapolating the auction price and number of Maryland allowances from the first RGGI auction, the PSC estimated that approximately $22.5 million could be available to provide rate relief for residential utility customers by December 2009. Allocation of the money from the Fund to residential customers on a per-customer basis would yield an average per-customer credit of approximately $10.45.

FERC Denies APS Non-Conforming Agreement

FERC denied Arizona Public Service a non-conforming service agreement with affiliate Arizona Public Service Marketing and Trading, citing its long-standing requirement that a resource must be owned, purchased, or leased by the network customer in order to qualify for designation as a network resource, as recently affirmed in Order 890 (ER08-1460).

APS had sought authority to allow its Marketing and Trading affiliate to designate, as a network resource, preference power resources made available to its customer, the city of Williams. APS Marketing and Trading would not have title to the power, or ownership control over the resource.

APS argued that the non-conforming agreement was needed because, under the Western Area Power Administration's legal requirements for preference power, only the recipient of the preference power allocation may take title to the power (in this case the city of Williams). APS said that having Williams take point-to-point transmission service would increase costs to Williams, and that other alternatives such as an agency agreement would also be too costly.

FERC found such economic hardship arguments to have little weight, since the alternatives to the non-conforming agreement would only reduce Williams' annual savings of $175,000 per year by an estimated $20,000.

"Since this is a situation where there are OATT-compliant alternatives available and the cost of compliance not only appears minimal but still provides overall savings to the customer we conclude that there is no basis for finding the proposal consistent with or superior to the pro forma OATT," FERC ruled.

Briefly:

Progressive Energy Group Receives Illinois Gas License

Progressive Energy Group (PEG) received an alternative gas supplier license from the Illinois Commerce Commission. PEG will market to all customer classes at Nicor Gas, Peoples Gas and North Shore Gas, with a long-term goal of offering customers energy, warranty and

conservation products and services (Matters, 8/27/08).

American PowerNet Seeks Ohio Electric Certificates

American PowerNet, which specializes in wholesale procurement services for large retail users, applied for Ohio competitive retail electric supplier licenses for two of its subsidiaries. APN Starfirst would market to commercial, mercantile and industrial customers at Cleveland Electric Illuminating and Ohio Edison. American PowerNet Management would market to the same classes in those territories, as well as to C&Is at Columbus Southern Power.

DPUC to Re-examine Levco Tech License

The Connecticut DPUC has reopened aggregator Levco Tech's licensing docket (99-09-21RE01) to examine Levco's manner of operations, and to determine Levco's compliance with applicable laws. The Department instituted the proceeding after it became apparent in Dominion Retail's licensing renewal (Matters, 12/4/08) that Levco, "has been acting as an exclusive agent for both the customers and Dominion, an electric supplier." The Department noted Levco's agreements with its customers state that Levco is the customers' "exclusive agent to select the Electric Supplier for the customers," while at the same time, Levco's agreement with Dominion Retail states that, "Levco shall…remain Dominion's exclusive electricity marketing agent in Connecticut." "Such arrangement on its face presents a conflict of interests," the DPUC said.

ICC Accepts Juice License Relinquishment

The Illinois Commerce Commission accepted Juice Energy's petition to surrender its alternative retail electric supplier license (Matters, 10/10/08). Juice had relied on Lehman Brothers for credit, and lost its credit line in the Lehman bankruptcy.

BlueStar Argues for Entry of Default Against Brokers

BlueStar Energy Services petitioned the Illinois Commerce Commission for an entry of default judgment against three brokers against whom BlueStar has filed a complaint under the new ABC law (Matters, 11/10/08). BlueStar argued that an ALJ required American Energy Solutions, Affiliated Power Purchasers International and Lower Electric to respond to BlueStar's amended complaint by December 3, and that no answer or request for a stay has been filed. While the brokers filed for interlocutory review of an ALJ's decision to not dismiss the complaint (Matters, 12/2/08), BlueStar contended that such a petition is not a responsive pleading. BlueStar requested that with the default judgment, the allegations of the amended complaint should be deemed admitted, with the case proceeding to the penalty phase.

Reliant Terminates Retail Working Capital Facility

Reliant Energy has terminated its $300 million retail working capital facility with Merrill Lynch Capital Corporation, which addresses any possible issues that might have been raised regarding compliance with a minimum adjusted EBITDA covenant in the facility. A waiver of such requirements expired December 5. Reliant said it will continue to pursue longer term arrangements to unwind its credit-enhanced retail structure with Merrill Lynch, and that it has adequate liquidity to operate its business going forward. As of November 28, Reliant had available liquidity of approximately $1.6 billion, comprised of approximately $1.2 billion in cash on hand and available credit of $421 million. Reliant had drawn upon the working capital facility only once since December 2006, its effective date.

Live Energy to Boost Sales Force

Texas broker Live Energy said Friday it is adding 100 new positions, mostly in sales, as part of an aggressive expansion. In September, the company reported it had five employees and 15 independent sales representatives.

CenterPoint Informs REPs of AMS Surcharge Mechanism

CenterPoint Energy, expecting a settlement in its advanced metering system deployment docket to be filed this week (Matters, 11/26/08), informed REPs that the AMS surcharge would be reflected on the 810_02 (TDSP to CR Invoice) EDI transaction to CRs / REPs in the Segment: SAC 04 = MCS039, with the surcharge expected to be effective as of

February 1, 2009. CenterPoint will host a conference call to discuss questions REPs might have on January 6.

FERC OKs Increased LS Power, Luminus Stake in Calpine

FERC approved LS Power Development and Luminus Management's application to acquire, through their subsidiaries, up to 40% of the common stock of Calpine (Matters, 9/26/08).

FERC Dismisses Cargill Rollover Complaint

FERC dismissed a complaint from Cargill Power Markets against Central Maine Power, Nstar, and United Illuminating concerning rollover rights (EL09-5). Cargill sought to roll-over rights for a one-year term under Order No. 888, rather than for five-years under Order 890. While FERC ruled that the agreements were not subject to Order 890's five-year requirements, as they preceded its effective date based on the transmission owners' compliance filings, the Commission also determined that the agreements also did not contain a one-year rollover right, and that the transmission providers were not required to offer Cargill a one-year rollover.

FERC Dismisses Blue Earth ARR Complaint

FERC dismissed a complaint from the Blue Earth (Minnesota) Board of Public Works regarding Auction Revenue Right (ARR) allocation, as the Board and the Midwest ISO have reached a settlement (EL09-2). Blue Earth had complained that MISO denied it ARRs based on a change in MISO's practices to which it did not have adequate notice. Specifically, MISO personnel said that baseload ARRs would be allocated based on a transmission capacity or scheduling factor of at least 50%, but MISO later announced that Baseload Reserved Source Set eligibility should be based on a designated generating unit's capacity factor of at least 50%. The change meant MISO denied Blue Earth's Reserved Points registration because its designated generation unit operated at less than a 50% capacity factor. MISO noted that its tariff clearly details the eligibility requirements for ARRs, and that in cases of conflict, the tariff prevails over any contrary business practice. Nevertheless, in the interest of equity, MISO agreed to a proposal from Blue Earth under which Blue Earth will waive any claim to long-term transmission rights for Year 1 of the ARR allocation period (June 1, 2008 to May 31, 2009). However, for all future years, MISO will treat Blue Earth's designated generation unit as a Reserved Source Point in the Baseload Reserved Source Set for the purpose of ARR nomination and allocation into Stage 1A of the registration process.

Luminant ... *from 1*

On the other hand, if Commission approval of the settlement would not have any effect on the Mitigation Plan's status, despite Staff's statement, the Mitigation Plan language should still be omitted from the settlement as extraneous, Reliant said.

Addressing potential future enforcement proceedings is, "particularly inappropriate," Reliant argued, because interventions by other parties were opposed by Luminant on the grounds that nothing in the docket would be determined other than liability and the amount of a penalty.

"Indeed, when Reliant argued that intervention should be permitted because of the possibility that issues relating to permissible future market activity might be considered, Luminant protested that any issues beyond liability and penalty amount 'would impose unnecessary, extraneous, and irrelevant issues on the parties to the proceeding,'" Reliant said.

Furthermore, the proposed order which would approve the settlement includes a Conclusion of Law reciting that, "The Commission does not have statutory authority to order that a refund be paid to ERCOT." The conclusion is based on the Commission's June 27, 2007 preliminary order which held that the Commission does not have statutory authority to order that a refund be paid to ERCOT for a market participant's violation of PURA § 39.157(a) and P.U.C. SUBST. R. 25.503(g)(7).

Reliant contended that, "a refund directly to retail electric providers or processed through an ERCOT reallocation process absolutely is possible." The settlement's conclusion is, "clearly inconsistent with the past precedent that refunds can occur, particularly in settlements," Reliant said.

Staff's amended Notice of Violation from

September 2007 alleged Luminant's actions increased balancing energy prices by $57 million.

Reliant further objected to the Conclusion of Law because the conclusion is extraneous, since the settlement does not call for refunds.

The Commission's acceptance of the proposed settlement could set precedent which would deny any relief to affected market participants, Reliant cautioned, particularly since federal courts, citing the filed rate doctrine, have denied relief to petitioners pursuing private antitrust claims against generators for market power abuse, such as in actions brought against TXU from Utility Choice, L.P. and Texas Commercial Energy.

"It is difficult to conceive that the Texas Legislature, when it gave the Commission oversight authority to assure competition in the state was equitable, intended for injured parties to be unable to seek redress at the Commission and in the courts," Reliant said.

Module E ... *from 1*

retail electric suppliers also directly affects state commissions' responsibilities with respect to provider of last resort service to retail electric customers," OMS noted.

OMS proposed that MISO be required to report on the capacity positions of LSEs subject to rate regulation, or those, "using delivery services rates, terms or conditions established," by state commissions, in order to include competitive suppliers under the reporting requirements.