Energy Choice Matters
December 12, 2008

Universal Energy Acquires Commerce for $26 Million

Universal Energy Group yesterday acquired Commerce Energy for $26 million, as Commerce accepted a foreclosure by its secured lenders, one of which was a Universal subsidiary.

Universal picks up 90,000 electric and gas customers in the Mid-Atlantic and California, as well as other areas. The book represents about 170,000 Residential Customer Equivalents. Commerce had reported 156,000 customers as of July 31, 2008, and sold 57,500 Texas customers to Ambit Energy and 500 Maryland gas customers to MXenergy in the fall (Matters, 10/28/08).

Universal executed the transaction through its Commerce Gas and Electric Corp. subsidiary, and also assumed certain letter of credit obligations related to the existing supply arrangements required to serve the Commerce customer base. These obligations will unwind as current suppliers are replaced with Universal Energy Group supply and credit arrangements.

The move is something a coup for Universal, as Commerce was originally seeking only to sell its Ohio gas and Pennsylvania, New Jersey, Maryland and Michigan electricity books, while retaining its more robust California book, and other customers in select Southeast U.S. gas markets. Under the draft agreement, Universal would have paid $16 million for the five books, and would have received an equity stake in Commerce (Matters, 11/13/08).

To date, Universal's lone U.S. marketing effort has been in Michigan gas, which has been marked by strong enrollments but marred by a complaint from PSC Staff in which Staff is seeking license revocation (Matters, 10/23/08). Commerce's mix of monthly and fixed contracts will also require

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Maryland PSC to Study Adding New Economic Generation Via Utility Ownership or PPAs

The Maryland PSC is recommending that lawmakers pursue "incremental" re-regulation -- meaning pursuing new cost-of-service generation for reliability and economic purposes -- but found the return of existing generation to the utility ratebase to be too risky, despite probable ratepayer benefits, the Commission said in a report on re-regulation, accompanied by companion analyses by Levitan Associates and Kaye Scholer.

The PSC currently has the authority to require IOUs to build, own and operate plants under cost-of-service regulation or to issue competitive solicitations for new plants, and recommended that any legislation preserve or expand the PSC's flexibility to address cost recovery for such plants, as well as changing industry conditions. Lawmakers should permit the PSC to engage in more aggressive management of the ongoing supply mix, including investment in conservation, demand response and energy efficiency, as well as reasoned, ratepayer-conscious decisions about when and what to add and on what terms, the PSC said.

The Commission has used its authority to issue RFPs for utility-procured demand response and is still weighing whether, as a result of the RFP, added measures such as generation will be needed for reliability.

Maryland ratepayers would reap economic benefits from additional capacity in the form of new generation or demand-side resources, the Commission concluded. Thus the PSC will also initiate an investigation in the coming year to determine whether to build additional generation for economic reasons, and whether cost-of-service regulation of new plants is the best option for ratepayers.

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ESCOs Must Commit to KeySpan Referral Program for Five Years Under Proposal

New York ESCOs wishing to participate in the new ESCO Referral Programs at National Grid's KeySpan LDCs would be required to commit to five years of funding and participation at start-up, Grid said in a filing with the New York PSC (07-M-0458).

The Commission's recent retail access order (Matters, 10/16/08) directed utilities without ESCO Referral Programs to implement them. KeySpan had already submitted a proposal to start a referral program this summer to be funded by ESCOs, and updated its proposal in light of the Commission's order.

If sufficient interest among ESCOs exists, KeySpan would enter into an agreement with participating ESCOs in which the total actual costs of the referral program would be paid by the ESCOs over a five-year period.

The payment for the first year would be based on estimated costs and must be paid before KeySpan would begin work. At the time the agreement is executed, the ESCO would be required to provide a letter of credit, cash deposit or other security acceptable to KeySpan for the ESCO's share of the project costs.

Participating ESCOs would not receive a refund or reimbursement if they choose to terminate their participation at any time, even if they do so before the ESCO Referral Program is implemented. Security would be drawn upon in the event a participating ESCO drops from the program before its share of implementation costs are paid.

ESCOs seeking to participate at any time after the project is initiated could do so. In such a case, KeySpan would recalculate the payments due from each participating ESCO based on the new level of participation. New ESCOs would be required to enter the same five-year payment agreement. Payments received from a new participating ESCO would be credited to existing ESCO participants to reflect their new share of the implementation costs. Price inflators or deflators may be used to reflect the time difference of the ESCO contributions.

CenterPoint Files Stipulation for Territory-Wide Advanced Meter Deployment

CenterPoint Energy submitted an unopposed Stipulation to deploy advanced meters to all of its 2.4 million Texas customers, projecting savings of $120.6 million during a 144-month surcharge period (35639). CenterPoint's original proposal, filed in May, only covered 250,000 advanced meter installations.

No party opposed the pact, and only TXU Energy did not sign it, citing perceived high costs.

Under Rider AMS, to start February 9, 2009, customers would pay a monthly surcharge according to the following schedule through January 2021:

Class	Fee
Residential	
	$3.24 (for initial 24 billing cycles)
	$3.05 (for remaining 120 billing cycles)
Secondary <= 10 kVA	$3.14
Secondary > 10 kVA	$3.16
Primary	$3.16

CenterPoint's revenue requirement is $962 million, with estimated capital investment at $639.6 million.

The AMS surcharge will include $5.6 million for customer education and up to $7.5 million to cover the costs of supplying in-home energy monitors to low-income customers.

CenterPoint will be able to support prepaid service (consistent with P.U.C. Subst. R. 25.498) for customers with advanced meters by the first day of the eighth full calendar month following the filing of a signed final order in the docket (the Functionality Date).

By the Functionality Date, CenterPoint shall have in place the Interim REP Portal capable of providing 15-minute VEE (Validation, Editing, and Estimation) interval data to REPs via a CenterPoint-hosted File Transfer Protocol (FTP) site. CenterPoint will continue to provide REPs with 15-minute VEE interval data through the Interim REP Portal until the Common Repository and Common Portal are in place pursuant to Project No. 34610.

CenterPoint plans to install 145,000 advanced meters in 2009, 536,500 advanced meters in 2010, 558,000 advanced meters annually in years 2011-2013, and 46,500 advanced meters in January 2014. CenterPoint will file monthly reports listing the ESI IDs with advanced meters.

Pepco, Delmarva File Coordination Tariffs to Shorten Enrollment Window, Implement Contest Period

Delmarva and Pepco filed updated General Terms and Conditions for Furnishing Electric Service as well as Electric Supplier Coordination Tariffs with the Maryland PSC, consistent with an October order (Matters, 10/10/08).

Among other things, the revised tariffs implement the change in the enrollment and drop window to 12 days before a meter read (versus the current 17 and 35 days, respectively), and eliminate the non-residential rescission period.

A new EDI transaction to allow for the electronic correction of enrollment errors was developed as well. While much of the discussion regarding enrollment errors were centered around new suppliers correcting inadvertent ministerial mistakes (such as transposing an account number) in enrollments, the filed tariffs hold that incumbent suppliers may also submit error transactions for their customers with pending enrollments with competitors, upon verifiable customer consent.

This provision essentially creates a "contest period" for incumbent suppliers. All transaction errors must be submitted within five days to be honored by the utility, and those submitted by incumbent suppliers must also be within 24 hours after receiving verifiable customer consent. Stopping a pending enrollment via an error transaction without customer consent is considered unauthorized enrollment under the tariff.

Suppliers may view the new coordination tariffs under Maillogs 114045 and 114046.

New York PSC Doesn't Rule on Staff Enforcement Powers in NFG Rehearing Order

The New York PSC dismissed a rehearing request regarding the ability of PSC Staff to suspend an ESCO's authority to enroll customers or revoke its eligibility, finding recent changes to the Uniform Business Practices have made the question moot. However, in dismissing the request as moot, the Commission did not answer the salient issue of whether the Commission can delegate to Staff the authority to suspend ESCOs' enrollment authority or eligibility (06-M-0647).

The rehearing request, submitted two years ago by National Fuel Gas, relates to the Commission's 2006 order instituting mandatory price reporting for ESCOs. Under the 2006 order, Staff was authorized to enforce the reporting requirements through suspension of an ESCO's ability to enroll customers or revocation of the ESCO's eligibility to operate in New York. Staff revoked the license of at least one ESCO for failure to report prices (Olympic Power in March 2007).

National Fuel Gas claimed such delegation is improper. Because suspending ESCO enrollments or revoking ESCO eligibility requires action on the part of utilities, NFG contended only the Commission, through written order, may direct the utilities to take such action.

In its order denying rehearing, the Commission noted that recent UBP changes included revisions to Section 2.D.5 of the UBP, so that a Commission Order will implement the imposition of consequences such as suspending customer enrollments by ESCOs or revoking ESCO eligibility.

Thus, the Commission considered the rehearing request moot, and found that it did not need to render a determination as to the validity of NFG's assertion that authorization of Staff to impose the consequences of the Price Reporting Order is an improper delegation of Commission our authority.

Texas Co-Op Rates Lower Than Competitive Rates, Study Says

Texas cooperatives and municipals offer lower prices than customer choice areas of the state, the Texas Coalition of Cities for Utility Issues reported in a study comparing September 2008 residential rates among unregulated cooperatives, REPs, and non-ERCOT IOUs.

The average of competitive rates in the survey remains above the average of rates for cooperatives, municipally-owned utilities and investor-owned utilities outside ERCOT, the study said. Of the top 10 residential prices, eight were from non-REPs.

For purposes of the comparison, the analysis considered the lowest rates offered by all competitive electric providers serving North Texas. "Offerings from competitive retail providers operating in other parts of the state can be expected to be similar," the report said. However, rates at CenterPoint and AEP Texas Central tend to be higher while rates at AEP Texas North and Texas New Mexico Power tend to be lower, mostly due to congestion issues.

"Non-competitive providers are subject to the same external factors that ultimately affect the price of electricity (extraordinary weather events, generation fuel cost increases, and other such factors), so the comparison between deregulated prices and non-competitive rates is relatively straightforward," the cities coalition said.

The study did not address what the spread was between ERCOT IOUs and cooperatives and non-ERCOT IOUs prior to deregulation.

The cities coalition blamed uniform marginal pricing for the higher competitive rates, noting IOUs and cooperatives use average cost pricing. The cities also suggested wholesale market reforms are needed to prevent market power.

The report does concede a cooperative or municipal utility can operate with lower costs than a REP can because cooperatives and municipal utilities can obtain financing at lower rates than a private corporation, and can receive advantageous federal tax treatment.

TCCFUI ANNUAL ELECTRIC RATE REPORT

RANKING OF AVERAGE RESIDENTIAL BILLS; ALL CATEGORIES OF PROVIDER	
Southwestern Electric Power	$ 75.59
Upshur-Rural	$ 92.28
San Antonio CPS	$ 96.28
Austin Energy	$ 99.38
SWEPCO North Texas	$ 100.66
Southwestern Public Service	$ 109.60
City of Granbury	$ 116.90
StarTex Power - Star Secure 8-month Plan	$ 118.00
Cap Rock Energy	$ 120.19
Champion Energy Services - One Rate Fixed 6	$ 124.00
Spark Energy - Online Advantage	$ 125.00
Denton Municipal Electric	$ 125.25
El Paso Electric	$ 125.38
Garland Power and Light	$ 125.84
Dynowatt - 6 month Rate Escape Plan	$ 126.00
Gexa Energy - Gexa Guaranteed 6	$ 127.00
LPT LLC A Liberty Power Company - Home Independence	$ 127.00
Entergy Texas	$ 127.28
TriCounty Cooperative	$ 127.50
Mxenergy - Guaranteed Rate 12 Months	$ 129.00
Reliant Energy-- Secure 6 ePlan	$ 129.00
Simple Power -Simple 6	$ 129.00
Ambit Energy - Lone Star Select 6 month	$ 130.00
Commerce Energy - Sure Choice All-In	$ 130.00
YEP - 6 month Fixed Rate Guaranteed	$ 130.00
Amigo Energy - Online 12-month Commitment Program	$ 131.00
City of Bridgeport	$ 131.52
Texpo Energy - Try Us Out Plan	$ 133.00
Gateway Power Services - Tex Flex Plan	$ 134.00
Stream Energy - Six Month Fixed	$ 134.00
Wise Cooperative	$ 135.45
Farmer's Cooperative	$ 136.00
Co-Serv Cooperative	$ 136.54
Greenville Electric Utility Service	$ 138.41
Cirro Energy - Smart Pass 12	$ 139.00
Texas Power - 6 Fixed Oncor	$ 139.00
Hilco Cooperative	$ 142.70
Grayson Cooperative	$ 143.00
City of Weatherford	$ 149.25
Trinity Valley Cooperative	$ 150.00
Direct Energy - Price Protection	$ 151.00
First Choice Power - Simply Better Price	$ 156.00
TXU Energy - TXU Energy Texas Choice 24	$ 159.00
Brilliant Energy - Brilliant Low Price	$ 169.00
U.S. Energy Savings Corp. Electricity Price Protection Program	$ 171.00
Hudson Energy Services - Texas Super Saver	$ 172.00
Nueces Electric Cooperative (Opt-In Plan)	$ 177.00
Mega Energy - 24 month MEGA Plan	$ 195.00

Data for Sept. 2008 as reported by TCCFUI, REP offers are for North Texas

Briefly:

PUCT Staff Removes Provision for Third-Party Distributed Renewable Generation Ownership in Latest Proposal

PUCT Staff submitted a revised proposal for adoption concerning distributed renewable generation, finding that PURA does not support ownership of distributed renewable generation or independent school district solar generation by third parties (34890, Matters, 12/5/08). Accordingly, various provisions in the proposed rule concerning third-party ownership were removed. The revised proposal also removes language concerning registration exemptions for distributed renewable generation, except for small, non-QF facilities outside of ERCOT. The proposal does not change any finding regarding REPs' obligation with respect to distributed generation, including the finding that rates for excess generation sales from customers must be set through negotiation between a REP and the customer.

Commerce ... *from 1*

Universal to adjust its marketing strategy, as it primarily relies on five-year fixed price contracts, though it had started offering two-year deals in Michigan.

AP Finance, LLC and Universal's Commerce Gas and Electric Corp. subsidiary, the holders of Commerce's secured debt, notified Commerce on Thursday that a default existed under certain agreements relating to Commerce's secured debt. AP Finance and Universal also proposed, under Section 9-620 of the Uniform Commercial Code as in effect in the State of New York, to accept all of the Commerce's stock in Commerce and certain other securities held by Commerce in satisfaction of Commerce's liabilities and obligations with respect to its secured debt pursuant to the terms and conditions of an acceptance agreement among Commerce, AP Finance and Universal.

While Commerce had a right not to consent to, and thereby delay, the Consensual Foreclosure, Commerce recognized that a delay would likely not prevent a foreclosure and instead chose to accept certain inducements offered by AP Finance and Universal by consenting to the Consensual Foreclosure and executing and delivering an acceptance agreement. Pursuant to the terms of the acceptance agreement, AP Finance and Universal agreed to allow Commerce to pay a dividend in the aggregate amount of $3.1 million.

As a result of the Consensual Foreclosure, Commerce ceased all operations but will continue to market gas and electricity in its current markets as a subsidiary of Universal's Commerce Gas and Electric Corp.

Maryland ... *from 1*

"At the moment, recouping the cost of building generation under cost-of-service regulation could provide slightly greater economic benefit to ratepayers, but we cannot say that this will always be the case. From a policy perspective, then, we believe that Maryland ratepayers will benefit if merchant generators can build here, so long as the Commission simultaneously retains the authority to direct the construction of utility-owned generation if they don't," the PSC said.

Levitan's analysis demonstrated that ratepayers will benefit from adding approximately 1,080 MW of combined cycle plants beyond that needed for reliability needs, with the benefits roughly the same whether the utility owns the plants or an IPP owns the plant and sells output via a long-term PPA. "Although there was a small but insignificant increased benefit of IOU-built new generation, after factoring in the risk of cost overruns the long-term PPA may edge out the IOU build," the Commission said. Regardless of owner, Levitan projected annual savings of roughly $300 million to nearly $800 million compared to the "business as usual" reference case.

An analysis of overbuilding capacity beyond 1,080 MW found some additional benefit, but not nearly enough to offset the risks and costs of the overbuild, the PSC reported.

The Commission also reported it will continue its review of Standard Offer Service procurement to determine whether altering the current method could bring additional benefits.

Levitan evaluated the costs and benefits of returning the former Pepco plants to the ratebase, but did not perform a similar analysis for Baltimore Gas & Electric because the valuation of those plants is a question before the Commission in the ongoing Constellation Energy merger proceeding. Under full market valuation, the cost to acquire the generation assets located within the Maryland portion of the Pepco service territory is estimated to range from $6.1 billion to $7.9 billion.

While benefits from such a return to ratebase could reach $1 billion even under a full market valuation, the Commission found the sheer cost too high, with too many risks, to recommend the option.

For example, such state-wide re-regulation may have the effect of chilling merchant build-out in Maryland, thereby requiring the IOUs or a state authority to support additional generation required for reliability, the PSC noted. Ratepayers would be exposed to both earning upsides and downsides each year, and such exposure could be "extreme" given the current volatility in markets. Such exposure would be, "much too risky to place upon the ratepayers of this State, many of whom are struggling in these uncertain times," the Commission determined.

Pepco's former fleet is aging and largely coal-based, which will require costly maintenance, and ongoing environmental upgrades if state or federal environmental regulations tighten -- perhaps even becoming technologically obsolete, the PSC reported. Billions would be invested in very old generation instead of new generation. Protracted legal battles are another risk in returning the plants to the ratebase.

If a state power authority acquired the plants, the size of the debt issuance required to purchase the plants would exceed the outstanding indebtedness of the Maryland Transportation Authority by more than four times, and any such issuance may negatively affect the state's bond rating, the PSC noted. Finally, a return of existing plants to the ratebase would likely require an end to the customer choice program, as permitting customers to migrate from IOU service could have a significant negative impact on the ratepayers who remain on IOU service, the Commission said.

A state power authority would also be less efficient operationally at start-up, and would force customers to bear full responsibility for any adverse outcomes, such as fuel volatility, credit market abnormalities, technological obsolescence, and environmental impact, the PSC said.

The PSC noted restructuring has failed to stimulate construction of new power plants in Maryland, with only 700 MW of new capacity added since 2000.

"Under deregulation, merchant generators were expected to respond to market signals regarding needed generation, but despite high LMPs and capacity payments, Maryland's generation needs are not being met. Indeed, one merchant generator testified before the PSC that no matter how high RPM payments were, it could not finance a new generation project in Maryland without a PPA for at least ten years," the PSC noted, referring to CPV.

"Complicating the situation is the fact that merchant generators and companies owning generation share a vested interest in maintaining high LMPs and capacity payments," the PSC added.

Kaye Scholer provided a brief review of deregulation in Maryland and select other markets, and one statement stood out:

"Most notably, however, Texas set its default service rates well above market prices, thus giving retail suppliers ample room to offer attractive, competitive prices." (Report at P. 16).

Kaye Scholer did not define or justify its "well above" characterization of the price to beat, and did not list what percent above market prices it considered well above, nor did it offer any comparison of price to beat rates versus competitive offers during the transition period.

However, Kaye Scholer did include a notation with its statement, which read:

"See Consumer Strategist, Manual on Choosing a Texas Electricity Company, (Oct. 27, 2006) (available at http://www.electricity-texas.com/) (describing the default service rate as a 'premium rate')."

While most other footnotes referred to state market monitoring reports or academic or independent studies, Kaye Scholer justifies its characterization of the price to beat as being "well above" market prices by referencing electricity-texas.com, a for-profit broker and affiliate of Eisenbach Consulting. Regardless of whether the price to beat actually was valued at a premium, citing a for-profit entity with a vested interest in getting customers to switch off of default service, and thus with an incentive to describe default service as penal, hardly seems to qualify as reasoned and thoughtful analysis of the Texas market, and should prompt readers take a skeptical look at Kaye Scholer's report.

Undoubtedly, there were times in which the price to beat was above "market prices" (although that term, too, is undefined and theoretically could refer to the wholesale balancing or bilateral market, or both, or retail prices), but retailers, particularly those squeezed out of the market, can well attest to times the price to beat lagged quick and sharp increases in the market price of electricity, particularly September and October 2005. It is, at best, incomplete to describe the price to beat as a premium rate when it did not always or automatically track price rises in the ERCOT market. The price to beat by operation did not place a premium on balancing energy prices, such as 125% of MCPE, and the price was at times below market or at market.

While Kaye Scholer's ultimate point may be that the price to beat was designed with a headroom margin, which we do not dispute, any actual headroom in the base price to beat was not permanent, and actual headroom varied with the market. Thus, as market prices increased, and affiliated REPs did not file to increase their fuel factors in the price to beat, the original headroom, or premium, would decrease. Simply put, there was no guarantee that the price to beat would remain a premium price (and at times, it was not).

Taken another way, Kaye Scholer may be technically correct in suggesting the price to beat was a premium price, in that it was typically the highest non-renewable price in the market. This, however, does not mean the price to beat was always well above market in these circumstances. Rather, it means by being a mostly static default rate available to all mass market customers, any retailer offering a price higher than the price to beat -- even when market conditions called for a higher price -- would lose customers and fail to enroll new ones. Thus, retailers with market prices above the price to beat had little choice but to track the price to beat in rising cost environments, and in such cases, the price to beat actually acted not as a premium price, but a de facto price cap that blunted any rising market costs that otherwise would have been reflected in competitive rates. While the price to beat may have been the highest retail market price during these times, and technically the premium price, such characterization hardly reflects the reality of the situation.

Lastly, any comparison of the old price to beat with competitive rates is a bit like comparing apples to oranges, depending on the product. Typically, the lowest rates in Texas have been month-to-month rates. While the price to beat may have indeed been higher than such rates, the price to beat, while not fixed for a set term, could only change, at most, twice a year, and provided a somewhat stable hedge for consumers. Such hedges naturally contain a premium for the value of the hedge. Thus, calling the price to beat a premium over volatile, monthly prices is comparing two totally different products, and any comparison of the price to beat to "market prices" should only examine similar fixed products, such as six-month or one-year products.