Energy Choice Matters
December 30, 2008

Merrill Lynch Sues Reliant Over Termination of Working Capital Facility

Merrill Lynch & Co. filed a suit against Reliant Energy in the Supreme Court of the State of New York, alleging that under a Credit Sleeve and Reimbursement Agreement between Merrill Lynch and certain Reliant Energy affiliates, Reliant did not have the right to terminate a $300 million Working Capital Facility with Merrill (Matters, 12/8/08).

Reliant said that the Working Capital Facility expressly provides that Reliant may at any time terminate the facility, which it terminated on December 5 to avoid violating a minimum EBITDA Covenant in the facility. Such termination does not constitute an event of default under the credit sleeve, Reliant reported. Merrill alleges that termination without its consent constitutes an event of default under the credit sleeve.

In the complaint filed December 24, Merrill reports that Reliant has informed Merrill that Reliant, "is currently engaged in discussions with one or more third parties in furtherance of its announced plan to explore strategic alternatives."

Reliant reported that if Merrill's action for declaratory judgment is successful, Merrill could seek to exercise remedies under the credit sleeve, including seeking to foreclose on its collateral under the arrangement. Reliant believes that such actions by Merrill, even if successful, would not have a material impact on its wholesale business.

Reliant and Merrill entered into the credit sleeve agreement and Working Capital Facility in September 2006. In its complaint, Merrill described the two arrangements as, "contemporaneously negotiated and drafted and were part of an integrated transaction." Merrill claimed Reliant cannot

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AEP Ohio EDCs Seek to Serve Ormet at Current Tariffed Rates on Interim Basis

AEP's Ohio Power and Columbus Southern Power utilities applied at PUCO to allow Ormet Primary Aluminum Mill Products Corporation to purchase generation service at currently applicable tariff rates and riders from December 31, 2008, until the utilities' Electric Security Plans (ESPs) are approved.

The proposed generation rates would be lower than the already below-market price of $43/MWh that Ormet pays as set in another proceeding. The change in generation price is needed because Ormet cannot afford the $43/MWh rate for generation service under its current economic circumstances, AEP said. If Ormet were charged $43/MWh, it could result in a breach of certain covenants in its Bank Agreement which, in turn, would jeopardize the continued operation of its Hannibal facilities, AEP told PUCO.

AEP's offer of a lower generation rate is conditioned on PUCO allowing AEP to defer, as a regulatory asset beginning in 2009, the difference between the 2008 market price approved by the Commission for use in administering the special arrangement between the utilities and Ormet, and a blend of Ohio Power's and Columbus Southern Power's current standard service offer generation rate. Specifically, Ormet would pay Ohio Power's Schedule GS-4 tariff rates and riders for one-half of Ormet's load, and Columbus Southern Power's Schedule GS-4 tariff rates and riders for the remaining one-half of Ormet's load.

Columbus Southern Power's energy charge for GS-4 customers is 2.48085¢/kWh (plus applicable demand charges), and Ohio Power's energy charge for GS-4 customers ranges from 1.91¢ to 1.92¢

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Md. OPC Opposes Summer Differential in Allegheny Rate Transition Credit

The Maryland Office of People's Counsel opposed an alternate proposal from Maryland PSC Staff which would reflect a summer-non-summer differential in rate transition surcharge credits that will be paid to participating Allegheny Power residential customers starting January 1, 2009, in connection with the move to market-based rates.

The PSC had previously approved a phase-in program which allowed Allegheny customers to pre-pay a share of the expected cost increases associated with the move to market rates in 2009, through a rate transition surcharge collected in 2007 and 2008.

Allegheny has filed to return the pre-payments to customers as a credit over a one-year period starting January 1, 2009 (with additional credits for 2010 subject to a future filing).

Staff has proposed an alternative approach to the transition surcharge credits that would reflect a summer-non-summer differential, stating that Allegheny's approach does not give customers a correct price signal and therefore would not induce normal economic reaction to market-based generation prices. Allegheny's approach runs counter to the need for energy conservation, Staff noted.

However, OPC finds Staff's recommendation to be inconsistent with the goal of a smooth transition to market-based rates embodied in Order No. 81331 (Case 9091). OPC noted that the Order stated the credit mechanism is to be used to, "maintain rate stability until its termination on December 31, 2010," and that, "[t]he purpose of the Transition Plan is to avoid rate shock for customers when capped settlement rates expire and to smooth the transition to market rates."

"In contrast, it appears that Staff would like to use the credit mechanism to achieve other goals of its own regarding price signals," OPC said.

FERC Accepts Settlement Maintaining Dynegy Market-Based Regulation Rates

FERC accepted a settlement under which Dynegy and Ameren Services Company will extend Dynegy's agreement to provide certain ancillary services to the Ameren Illinois Utilities at market-based rates for the period commencing January 1, 2008, and ending on the earlier of December 31, 2008, or the start date of the Midwest ISO Ancillary Services Market (ER07-323, et. al.). Dynegy will also make one-time payments to several intervenors in the case (Matters, 9/19/08).

Under the stipulation, Dynegy will continue to provide regulation service to the Ameren Illinois Utilities at the quantities and rates set forth in the Dynegy 2008 Contract (which includes both a capacity charge and an energy charge) from January 1, 2009, through the earlier of (i) March 31, 2009 or (ii) the start date of the Midwest ISO Ancillary Services Market.

The settlement resolves protests from Constellation Energy and other parties who argued market-based rates for Dynegy ancillary services were not appropriate given the limited competition in an RFP used to procure regulation services for Ameren (Matters, 2/13/08). In one of the RFPs there were only three bidders, and Ameren had to accept all of those bids in order to obtain the required ancillary services, Constellation had noted. Constellation and other parties had also argued that FERC erred in removing the condition that the ultimate rate that Dynegy charges the Ameren Illinois Utilities for ancillary services should be no higher than the cost-based rates charged by Ameren affiliates for such ancillary services.

In consideration for withdrawal of the protests, Dynegy will pay intervenors the following blackbox amounts:

Entity	**Allocated Share**
Constellation	$444,266
Illinois Municipal Electric Agency	$96,779
Prairie Power	$81,062
J. Aron	$52,643
Southwestern Electric Cooperative	$25,250

FERC Trial Staff said the amounts constitute reasonable consideration for the resources intervenors expended in the proceedings, including raising the contested issues and analyzing Dynegy's filings.

DPUC Forms Working Group to Transition Home Energy Solutions Program into Market-Based Offering

The Connecticut DPUC has formed a working group to explore potential near-term modifications to the Home Energy Solutions (HES) program, and to establish a plan to transition HES to a market-based initiative over the next few years.

The Home Energy Solutions program is a fuel-blind, integrated in-home service designed to help Connecticut's residents lower their energy bills. The program includes an in-home analysis by participating vendors and addresses the entire home, covering weatherization; heating, ventilation and air conditioning; lighting and appliances; and water conservation. The program is financed through the Connecticut Energy Efficiency Fund, though participants are charged a nominal fee for the visit.

The analysis includes a "kitchen table wrap-up" where a vendor technician reviews the work that was done (such as a blower-door test or duct test) and shares information about additional resources that can help the customers save energy and money, including information on shopping for electricity.

The DPUC's goal is to create a competitive supply of services for the Home Energy Solutions program, and develop a residential "whole house" efficiency trade.

FERC Allows MISO to End Use of Dynamic Scheduling for Jointly-Owned Units

FERC accepted Midwest ISO tariff revisions which remove the ability of owners of a jointly-owned generating unit to individually enter dynamic schedules for all or a portion of their interest in the jointly-owned resource in the co-optimized Energy and Ancillary Services Market (ER08-1252).

In the current energy market, dynamic scheduling permits joint owners to make separate offers into the markets with the requirement that the owners coordinate offers relating to key non-price operating matters, such as unit availability. However, problems have arisen when jointly-owned unit owners have failed to coordinate adequately regarding the actual operating status of the jointly-owned unit, resulting in inconsistent offers. In the Ancillary Services Market, such inconsistencies create even more difficulties.

After MISO explained the problems, all owners of jointly-owned operating units that previously used the dynamic scheduling option have converted to using either a coordinated offer (which treats the unit as if it were owned by a single owner), or a pseudo-tie option (under which each owner makes its own separate offer as if that owner's interest were a separate generation resource).

At the request of Consumers Energy, FERC directed MISO to send one aggregate dispatch instruction signal to the designated operator of the jointly-owned unit. Under the mechanism, MISO will aggregate dispatch instructions for each product in order to physically dispatch the unit, but will treat each ownership share's market bids separately. The need to send one dispatch signal to the operator of the jointly-owned unit, regardless of whether the unit is pseudo-tied, is essential to maintain reliability, Consumers had argued.

Lack of Customers on Time-Based Rates Inhibiting Demand Response, FERC Says

The limited number of retail customers on time-based rates continues to be a major obstacle to greater demand response, FERC said in a third annual Assessment of Demand Response and Advanced Metering.

While chronicling progress in overcoming regulatory and financial hurdles for demand response and smart metering in the past year, the Commission cited restrictions on customer access to meter data and the scale of the financial investment necessary to deploy enabling technologies during an economic downturn as factors which could continue to limit opportunities for continued growth in load response and smart metering.

"There is a significant opportunity for increased demand response if retail customers were on time-based rates," FERC's report said, noting that customers that do not see time-based rates do not lower their demand when wholesale prices are high. The report noted activity to implement time-based rates has been limited, apart from hourly pricing for select C&I customers in a handful of states.

The availability of only a limited variety of demand response programs that accommodate the operating needs of potential demand response providers may also be a barrier to increased participation, the report found.

FERC's 2008 survey showed that the ratio of advanced meters to all installed meters has reached 4.7%, a significant jump from less than 1% in 2006. Market penetration of advanced metering programs has risen substantially throughout the country, with the largest increase coming in peninsular Florida, which has seen smart meter penetration grow from less than 1% in 2006 to 10.4% in 2008, FERC said.

ERCOT showed the next greatest increase in smart meter usage, with penetration reaching 9.0%, with 77% of the growth attributed to Oncor's deployment.

While cooperatives, municipal utilities, investor-owned utilities, public utility districts, and federal utilities all saw increases in smart meter usage since 2006, the high penetration levels achieved by cooperatives in the past two years is "particularly impressive," FERC's report said. Cooperatives' advanced metering penetration increased from 3.8% in 2006 to 16.4% in 2008.

About 8% of energy consumers are in some kind of demand response program, and the potential demand response resource contribution from all such U.S. programs is close to 41,000 MW, or 5.8% of U.S. peak demand, FERC's report found. The total represents an increase of about 3,400 MW from the 2006 estimate. The largest demand response resource contributions are from the Mid-Atlantic, Midwestern and Southeastern regions of the U.S., FERC said.

Briefly:

PUCT Opens Rulemaking to Expedite Customer Switches

The PUCT has opened Project 36536 for a rulemaking relating to expedited customer switch timelines. Commissioners have expressed a desire for shortening the current 45-day switching window, as it will alleviate logistical problems associated with giving customers adequate notice and time to switch when REPs change rates or other material terms of contracts, or when a contract expires (Matters, 12/19/08).

UI Says Seasonal Transmission Rate Requires Greater Review

A June seasonal adjustment to United Illuminating's retail transmission rate requires careful consideration and presents several challenges, UI told the Connecticut DPUC. The Department has directed UI, as part of the semi-annual Transmission Adjustment Clause (TAC) reconciliation, to establish transmission rates for the first six months of the year, including a seasonal rate for June. The June rate is also to apply in July, August, and September, with any mid-year adjustments required for reconciliation not applied until October. UI noted such a seasonal rate will impact the semi-annual TAC filings, and may also affect the process used to adjust other rate components. UI recommended that a seasonal transmission rate be explored in a contested case hearing, rather than being rushed into implementation by January 1, 2009.

Discount Power to Start Marketing in ERCOT in First Quarter of 2009

Discount Power (Nooruddin Investments) intends to start marketing in ERCOT in the first quarter of 2009, it reported to the PUCT, after completing ERCOT testing and contracting with a QSE (Matters, 5/12/08). Nooruddin Investments has also completed the certification process to act as its own QSE and expects to take those duties in-house in the first quarter of 2009.

Maine PUC OKs License Transfer to Northeast Energy Solutions

The Maine PUC approved the transfer of Maine Energy Solutions' competitive electric provider license to affiliate Northeast Energy Solutions (Matters, 12/25/08).

Suez Energy North America Closes FirstLight Acquisition

Suez Energy North America has completed its acquisition of FirstLight Power Enterprises and its 1,538 MW fleet from Energy Capital Partners (Matters, 9/3/08). Suez reported that the acquisition makes it the fifth largest generator in New England. FirstLight's 16 plants, mostly hydro with one coal unit plus a gas-fired peaker under development, in Massachusetts and Connecticut will be added to Suez's portfolio in the region, which includes six renewable and natural-gas-fired assets.

Reliant ... *from 1*

initiate or acquiesce to the cancellation, termination, or suspension of performance under any of the arrangements without Merrill's prior consent, which cannot be "unreasonably" withheld or delayed.

The Working Capital Facility contained an EBITDA Covenant to protect Merrill, which specified Reliant and its subsidiaries would maintain, on a consolidated basis, a specified minimum level of earnings before interest, taxes, depreciation, and amortization. The Covenant holds that, on the last day of each fiscal quarter, consolidated Reliant EBITDA for the period of four fiscal quarters most recently ended shall be at least equal to $150 million.

According to Merrill, in late September 2008, Reliant advised Merrill that Reliant would not be able to comply with the EBITDA Covenant as of the fiscal quarter ending September 30, 2008, and ultimately reported to Merrill on November 24, 2008, that its consolidated EBITDA for the prior four quarters was negative $42 million. On September 29, 2008, Merrill agreed to waive the EBITDA Covenant during a transition period meant to explore new terms or unwind the agreement, with the transition period eventually extended until December 5, 2008.

Merrill said in its complaint that on November 28, 2008, Reliant's counsel requested that Merrill consent to terminate the Working Capital Facility, though Reliant reserved its position that such consent was not required.

Merrill informed Reliant it would agree to such termination only if the credit sleeve was amended to include the EBITDA Covenant. Reliant refused what Merrill termed a "reasonable" offer, and terminated the Working Capital Facility on December 5.

Reliant's obligations to Merrill under the credit sleeve are secured by certain assets of Reliant's retail energy business. Merrill told the Court that it is accordingly interested in the condition and integrity of those assets, "particularly in light of recent announcements of weaker operating results by Reliant Inc."

Merrill stated in its complaint that it will continue to perform under the credit sleeve and provide credit enhancement to Reliant in connection with the conduct of its retail energy business. Reliant is continuing to pursue longer term arrangements to unwind the credit enhanced retail structure with Merrill.

Reliant intends to vigorously oppose Merrill's suit.

AEP Ohio ... *from 1*

depending on voltage (plus applicable demand charges).

AEP proposed to recover the deferral in the fuel adjustment clause (FAC) mechanism in its pending ESP, beginning immediately following the Commission's decision in the ESP cases.

The proposed slice of system purchase power mechanism in AEP's ESP, if approved, could result in Ormet taking future service under the standard service offer for generation. However, AEP reported that apart from the ESP cases, it and Ormet have also been working in good faith to try and negotiate a mutually agreeable solution that would directly address a longer-term service agreement between the parties. AEP expects a filing requesting approval of a new special arrangement prior to approval of the ESP case.