Energy Choice Matters
January 21, 2009

Infinite Energy to Expand into ERCOT Market

Natural gas marketer Infinite Energy is branching into electric retailing, applying for a REP certificate for the ERCOT market.

The marketer retails natural gas in Georgia and Florida, and, under its Intelligent Energy brand, in New York and New Jersey. It applied to add the trade name "123 Energy" to its REP certificate, in addition to Infinite Energy.

Infinite will use current vendor Energy Services Group for transaction management in the ERCOT market. The marketer plans to apply to become a Level 2 QSE and will be able to perform its own load forecasting, using internal staff. Infinite has retained Competitive Assets to assist in regulatory monitoring and compliance.

The marketer plans to use its own staff to provide call center capability to handle customers' requests, reports and inquiries.

Infinite reported it had over $700 million in revenue in 2008, with a trading/scheduling group responsible for moving over 40 million dekatherms of natural gas during 2007.

Not counting senior management, Infinite will dedicate 14 staff persons to Texas market entry and operations, and will rely on support from its remaining 300 staff persons as needed.

N.Y. PSC Truncates Authorized Term of NYSEG Fixed Price Offer, Requires Review Before 2010

Due to their common design, renewal of NYSEG and Rochester Gas & Electric's fixed-price offer (FPO) should be considered at the same time, the New York PSC said in an order which accelerates review of the NYSEG FPO (07-E-0479).

The RG&E Commodity Order already provides that its FPO expires in 2009, but may be renewed for 2010 upon PSC approval. However, the NYSEG FPO Order established a three-year term for the FPO that includes 2010, but also provided that the PSC could "disrupt" the approved term pursuant to subsequent Commission orders.

Several recent Commission orders, particularly findings made in the RG&E Commodity Order, compel a review of the NYSEG FPO before the 2010 term, the PSC said. The FPO was intended as a transitional mechanism pending the development of competitive retail markets for residential customers, the Commission noted, and the PSC recently decided that certain policies facilitating the maturation of retail markets will continue. Thus, "it is still our expectation that those markets could be expected to serve as the source of fixed price services," the PSC stated.

"Moreover, we observed in the RG&E FPO Order that because RG&E earns a profit on its FPO, it sees an incentive to increase its sales of electricity, which runs counter to our goals for implementing energy efficiency initiatives. That incentive is also present when NYSEG offers its FPO," the Commission added.

"A utility FPO poses unique issues in our efforts to provide greater benefits to residential consumers from the retail electricity markets. We are concerned that the utility fixed offer may impose, without adequate notice, higher costs on consumers than utility variable price offers for comparable periods," the Commission added.

Under the RG&E Commodity Order, RG&E must submit by March 1, 2009, a filing justifying renewal of the FPO if it wishes to renew the FPO for 2010.

"The policies and orders supporting our review of RG&E's FPO prior to its implementation for 2010,

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AEP Ohio EDCs Apply to Defer Interim Fuel Costs

AEP's Columbus Southern Power and Ohio Power have applied to PUCO for authority, pursuant to §4905.13, Ohio Rev. Code, to defer as regulatory assets a portion of their respective fuel and fuel-related expenses incurred beginning January 1, 2009, during the period in which AEP continues 2008 rates as PUCO reviews its electric security plan.

AEP's current Standard Service Offer (SSO) rates do not include a mechanism to separately recover fuel and fuel-related expenses. Instead, those expenses are built into the total SSO rates for each Company.

As part of their pending electric security plans (ESP), the AEP utilities have proposed to "unbundle" their generation rates into a Fuel Adjustment Clause (FAC) component and non-FAC component. With the FAC rate components removed from the current generation rate, the Companies would recover their FAC costs based on projected, and later trued-up for, actual 2009 FAC costs.

Since the ESPs have not yet been approved, AEP proposed deferring for recovery in future FAC rates the difference between the amounts identified for each Company as the unbundled FAC, adjusted for losses, in the ESP cases, and the actual FAC expenses incurred by each Company beginning January 1, 2009. The unbundled FAC rates in the ESP cases are 2.562¢/kWh for Columbus Southern Power and 1.780¢/kWh for Ohio Power.

Because these deferrals are expected to remain on each Company's books for a short period of time -- from January 1, 2009 until the first FAC reconciliation under the Commission's rule pertaining to fuel clause mechanisms -- the Companies are not requesting any carrying charge on the deferrals.

Parties who have raised issues concerning the FAC proposal will not be harmed by granting the deferral, AEP said, as the amount of expenses deferred will be trued-up according to the Commission's order in the ESP proceeding.

DPUC Draft Would Remove Certain Generation-Related Costs from UI Delivery Rates

Several charges would be moved from United Illuminating distribution rates to the generation service charge and bypassable Federally Mandated Congestion Charge (FMCC) under a draft decision by the Connecticut DPUC in UI's rate case (08-07-04).

Consistent with the treatment of the charges at Connecticut Light and Power, the draft would approve UI's request to place the GSC portion of the regulatory assessments expense in the GSC, rather than in distribution rates, where it resides currently. "The Department believes it is not appropriate to charge distribution customers for an expense which is not distribution related, but is instead related to a rate component that all distribution customers do not pay," the draft says.

Additionally, the GSC portion of the non-hardship uncollectible expense is not a distribution company expense, and would be moved to the GSC from distribution rates.

The DPUC draft would also accept UI's proposed new Term and Condition in its tariff to eliminate the possibility of generating post-dated final bills or back-dated move outs that can occur when a customer terminates service (moves, etc.) but fails to notify UI. The proposal affects only unmetered accounts since there is no automatic process to generate a final bill when service is terminated. A final bill is automatically generated when a meter is removed or replaced, but there is no meter on an unmetered account. Therefore, the automatic process does not happen.

UI relies on the customer to notify UI upon termination. When this does not happen, a problem arises when notification takes place long after service was actually discontinued because ISO New England energy market settlement is finalized 90 days after the operating day. After 90 days UI cannot reduce the energy assigned to a supplier, but if UI eliminates the energy billed to the customer, UI cannot collect sufficient revenue to compensate the supplier.

UI proposed a new process modeled after Term and Condition 6D from Connecticut Light and Power's tariffs which states that a customer is liable for service until such time as the customer requests termination of service. UI also modified the Term and Condition to clarify the differences in the service termination process between metered and unmetered accounts.

As to distribution rates, the Department draft would allow UI to increase its distribution revenue requirements by $2.4 million in 2009, $48 million lower than the requested $51 million increase. However, as UI has already increased its revenue requirements by $7 million on January 1, 2009, due to another proceeding, the draft would decrease the revenue requirements by $4.6 million.

During the course of the proceeding the Department, "was disappointed to discover that UI had granted higher executive incentives and hired more employees than authorized in the last ratecase driving down their rate of return," the draft says. The draft has reduced executive incentives from the proposed level, and would not consider the impact of higher awards as the basis for any future rate requests.

The draft would allow a rate of return on equity of 8.75%, which is a reduction of 1% from the ROE approved for UI in its last rate case of 9.75%. The revenue requirement for 2010 will be set in a future decision.

Columbia Says Proposed Maryland Gas Regs Should be Limited to Mass Market

As a result of historical background and inherent differences between the two types of customers served, Columbia Gas of Maryland opposed adopting a wealth of proposed retail gas market rules and regulations (under RM 35) for general transportation service customers, and recommended limiting the rules to residential and small commercial customers.

Proposed COMAR 20.59 would cover natural gas utility-supplier relations, non-residential protections, and residential protections, including advertising, marketing and contracting rules. Chief among its provisions is requiring LDCs to either purchase a marketer's receivables, or pro-rate partial payments between delivery and commodity charges. Many provisions are similar to RM 17 on the electric side.

Columbia noted it has been offering large volume customers transportation service since 1984, but that mass market choice was developed in 1996. Due to the different timelines, as well as the size and needs of the customers, Columbia reported there are minimal similarities in the programming, administration and design of the two programs. Applying the proposed new rules to transportation level customers would entail significant administrative and programming costs, the utility said.

Calling its transportation service program very successful, with the vast majority of supply competitively served, Columbia saw little benefit to adding the RM 35 protections and procedures to large volume customers. Should the PSC adopt the rules for all customers, Columbia said it intends to ask for a waiver for its general transportation service customers.

Furthermore, in the mass market, supplier participation at Columbia over the past 12 years has dwindled from five active (and eight approved) suppliers to a single supplier, Columbia said.

"This decline is not attributable to process or business practice changes on Columbia's system, but, rather, it is due to the size of the customer base available to the suppliers and the declining desire of customers to purchase gas from a retail gas supplier," Columbia asserted.

With only 32,000 mass market customers spread over a wide geographic area, it is difficult to develop a cost-effective marketing plan, Columbia noted. Suppliers, Columbia contended, instead look to larger markets where they have a greater chance for a positive return on their investment. While suppliers may choose to "test the water" in Columbia's territory, Columbia expects supplier interest to continue to decline.

Columbia sought a change to ensure that suppliers do not game a provision meant to compensate suppliers for gas used by the customer immediately upon the switch, but before the switch is recognized in billing. Columbia cautioned that suppliers could drop all their customers just before the new rules take effect, then "add" them back to competitive supply, in order to arbitrage any price difference between the current purchased gas cost rate and the rate at customer enrollment.

Columbia also objected to adoption of any standards not published in the original rulemaking, as a document entitled "MD Gas RM 35 COMAR 20.59 Implementation Standards" has been circulated among a working group.

Consolidated billing should be limited to those accounts for which the utility already offers consolidated billing service, Columbia added. Furthermore, utilities should not have to bill for consolidated charges other than gas supply, due to backoffice limitations, Columbia said.

The Office of People's Counsel reiterated its previously enumerated opposition to purchase of receivables, stating, "The expenses related to these receivables would be paid by residential ratepayers for the sole purpose of removing an ordinary cost, and therefore risk, of doing business ("bad debt") from the competitive gas suppliers, and requiring residential consumers to shoulder the risk and bear the cost." OPC noted, that unlike with electricity, the PSC does not have a statutory mandate to promote retail gas competition, and thus, POR justification is even weaker than in RM 17, which covered electricity.

Baltimore Gas and Electric, "cannot stress enough that implementation of POR will take time," in repeating its opposition. "POR is a complex process and the system to support it cannot be properly programmed and tested in a matter of weeks or even a few months," BGE said. Optimally, the process is estimated to take eighteen months.

Furthermore, BGE cannot begin implementation and incur expenses that will be borne by its customers until after Commission approval of its compliance plan, the utility stressed.

"This is the only prudent course of action because the rules could be revised between the time of the notice of proposed action and final adoption. History has shown this to be true during the RM17 process," BGE said.

NRG, Exelon Meet, But Little Progress Made on Merger

NRG Energy is focused on "market discovery" regarding potential suitors other than Exelon that have expressed interest in merger or acquisition with NRG, Exelon said in an SEC filing disclosing that NRG CEO David Crane and Exelon CEO John Rowe met Monday to discuss the current impasse in Exelon's hostile bid for NRG.

At the meeting, which resulted in little progress in the proposal, NRG denied Exelon's request to conduct due diligence. Rowe stated Exelon would not increase its offer without an opportunity to conduct due diligence designed to verify assumed values and identify additional value. Crane, however, believed that due diligence would not move Exelon's offer price, which NRG has said is too low, very much. Rowe agreed that a price movement, if any, as a result of due diligence would be small.

The meeting ended without any agreement or arrangement concerning further discussions, due diligence or other exchange of information, though NRG said it may allow due diligence at a future point.

NRG said Exelon informed NRG that it would raise its offer price only once.

Briefly:

Public Power & Utility Seeks Maine License

Connecticut-based Public Power & Utility has applied for a competitive electricity provider license in Maine, to serve all customer classes at Central Maine Power and Bangor Hydro-Electric.

ERCOT to Uplift Short-Pays from QSE Defaults

ERCOT has moved to begin uplifting $2.5 million of uncollected monies resulting from the default of five QSEs during the summer from market participants. The defaulting QSEs include Pre-Buy Electric, LLC, National Power Company Inc., Hwy 3 MHP LLC, Sure Electric LLC dba Riverway Power Company, and Leach Energy Trading LLC. Uplifts will be collected from the QSEs representing LSEs on a Load Ratio Share basis, with payments due January 27. ERCOT intends to distribute the funds to previously short paid entities on January 28, 2009.

Revised DPUC Draft Is Harsher in Criticism of Submetering due to Lack of Choice

A revised draft decision from the Connecticut DPUC regarding a submetering application from Becker Development includes even stronger language rejecting the application because it would eliminate retail choice for submetered customers (08-06-18). The proposal, under which the developer of a mixed-use building would sell electricity to submetered customers, was opposed in the original draft because, among many reasons, submetering would deny customers an opportunity to shop for a competitive supplier, since they would not be metered by United Illuminating (Matters, 12/17/08). The revised draft went further, stating the submetering proposal would, "contravene Connecticut law and public policy to allow retail choice of generation charges for all electric customers." Connecticut's major regulatory restructuring of the electric industry requires retail choice of electric generation supply by individual electric customers (Conn. Gen. Stat. §16-244c), but Becker's proposal would eliminate retail choice for tenants, the draft says.

Eagle Energy Enters LaaRs Settlement with PUCT Staff

Eagle Energy Partners and PUCT Staff have entered into a settlement under which Eagle Energy would pay a penalty of $151,500 for failing to deploy 95% of its Load acting as a Resource within 10 minutes of ERCOT instruction as required on July 2, 2007 and February 26, 2008. The stipulation is subject to Commission approval.

Md. PSC Awarding Three Allegheny Residential Blocks, Not Two

In an errata to its order on RFPs for Type I and residential SOS, the Maryland PSC clarified that it has accepted the winning bids for two 12-month residential blocks at Allegheny Power flowing June 1, 2009, in addition to accepting the winning bid for one 12-month residential block at Allegheny Power flowing June 1, 2010. The PSC's original order erroneously stated only one 12-month Allegheny block for delivery starting June 1, 2009 was being awarded (Matters, 1/19/08).

Constellation Sells International Commodity Business to Goldman Sachs

Constellation Energy reached a definitive agreement to divest the majority of its London-based international commodities business to an affiliate of Goldman Sachs, in a move to increase liquidity and reduce collateral requirements. The transaction is expected to close by the end of the first quarter of 2009. Terms of the transaction were not disclosed. As previously reported, Constellation is also pursuing the sale of its Houston-based downstream natural gas trading unit.

FPO ... *from 1*

and the strong similarities between the NYSEG FPO and the RG&E FPO, warrant a simultaneous review of the NYSEG FPO," the PSC explained.

Therefore, the Commission directed NYSEG to also make a renewal filing, by March 1, 2009, unless it decides to cancel the FPO offering for 2010. If NYSEG wishes to discontinue the product, NYSEG must commit to the cancellation in a filing made by the March 1, 2009, deadline.

Reviewing both FPOs prior to 2010 will conserve both administrative resources and the resources of parties interested in retail access issues, the Commission noted.

To aid the PSC's decision, the NYSEG/RG&E filings should describe the current status of the fixed prices that ESCOs offer in the service territories; include data on the levels of customer subscriptions to all commodity offerings from 2005 through 2009; show and compare customer bill impacts for the various utility commodity offerings from 2005 through 2008; include calculations of the amounts, if any, for 2005 through 2008 earned by the utilities and shared with customers under applicable formulas for sharing FPO profits; and evaluate the results of outreach and education programs conducted in connection with the subscription periods when customers may select among commodity offerings.