Energy Choice Matters

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NRG Says Exelon Seeking "End Run" Around PUCT Market Power Authority

Exelon's application at the PUCT for a hostile acquisition of NRG Energy, "inappropriately seeks to 'end-run' the Commission's jurisdictional authority over market power in ERCOT," NRG charged in a filing which called Exelon's application deficient (36555).

While Exelon's application acknowledges that the combined entity its deal would create comes close to having a 20% share of the installed generation capacity in ERCOT, "Exelon informs the Commission that it has no choice but to approve the merger as proposed because Exelon asserts that the combined companies will have less than 20% of the installed generating capacity in ERCOT," NRG said.

Exelon, NRG claimed, would have the Commission erroneously construe its jurisdiction much more narrowly than the statutory scheme provides in PURA.

"The Legislature has given the Commission broad statutory authority under PURA to ensure that fair competition exists in the ERCOT market. Not only does the Commission have express jurisdiction and duty under PURA §39.158 to conduct a thorough evidentiary evaluation of whether the combined holdings of any consolidated entities would exceed the limits set forth in PURA § 39.154, the Commission also has clear statutory authority under PURA § 39.157 to determine whether Exelon's FERC-filed proposed divestiture plan and interim mitigation related to the Transaction are appropriate, not simply whether the 20% limit in Section 39.158 is exceeded," NRG said.

NRG also warned that the PUCT must act to prevent federal preemption of the Commission's authority.

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Turris Responds to Connecticut Complaint Over Broker Commission

Connecticut aggregator Turris Associates did not unreasonably fail to furnish adequate electric service at a reasonable rate as alleged in a complaint by consumer advocates, and the aggregator acted quickly to refund erroneous charges when discovered, Turris said in response to a complaint at the Connecticut DPUC (08-10-69).

At issue is a contract between Constellation NewEnergy and the Connecticut Consortium, a buying pool of several municipalities. Turris formed a joint venture with the Consortium, run by Ed Arum and Arum Associates, to broker the CNE deal. According to Turris, the Turris/Arum deal provided that Arum would receive a commission of 0.335 mills/kWh in addition to Turris' commission of 0.665 mills/kWh. Arum had the responsibility of disclosing both commissions to customers, Turris told the DPUC.

One of the Consortium customers, Southington Water Department, complained that the total broker fee being charged was 1 mill/kWh, when the contract only called for a 0.665 mill fee (Matters, 11/3/08). Turris told the DPUC that Arum had not fully informed Consortium members of his 0.335 mill/kWh fee. Upon learning that the Arum commission had not been fully disclosed, Turris sought to make customers whole, by offering to refund amounts which went to Arum's commission by deducting such amounts from future bills (for customers preferring budget certainty over a lump sum).

Over 75% of Consortium members have agreed to Turris' resolution, Turris said, reflecting over 80 customers. Some 11 customers have declined Turris' offer, while 17 have not yet responded. For

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Texas RPS Lowers Retail Prices in AEP Texas North Zone

Texas' goal for renewable energy (HB 1090) has transformed the AEP Texas North service area from one of the highest-priced service territories to one of the lowest over the past two years, the PUCT said in a letter to Texas Gov. Rick Perry concerning the renewable mandate.

All or most of the AEP Texas North service area is in the western congestion zone that experiences the greatest impact from wind energy. As wind output has increased, retail prices in the service area have fallen, the PUCT noted.

Average residential prices in the AEP North service area fell by nearly 20% from October 2006 to November 2007, while the prices in most of the service areas fell by 15%. As gas prices began to rise during the winter of 2007-08, residential electric prices rose in all areas in the competitive electricity market, but they rose by a smaller amount in the AEP North service area. In most areas, prices rose to a level that was 15-20% above the October 2006 level. For AEP North, prices at their peak were still 5% below the October 2006 price, the PUCT said.

In September 2008, as prices fell throughout the competitive areas, average prices in the AEP North service area were 17% below the October 2006 price, while the prices in other areas ranged from 3% below the October 2006 price to 7% above it.

Prices are also lower ERCOT-wide when there are large amounts of wind energy produced, the Commission added. An analysis from the Independent Market Monitor of the clearing prices in the ERCOT balancing energy market in intervals without inter-zonal transmission congestion during the first ten months of 2008 indicated that there is a strong statistical correlation between market clearing prices, on one hand, and wind production, system load, and fuel prices, on the other. The analysis showed that for each additional 1,000 MW of wind produced, the clearing price in the balancing energy market fell by $2.38, the PUCT said.

Final Itron Report Recommends Keeping TDU Role for Efficiency in Texas

A final report from Itron concerning reaching energy efficiency targets in Texas maintains draft recommendations to keep TDUs in their current role as standard offer providers, due to lack of interest from most REPs in promoting energy efficiency. The final report was posted in docket 35266 yesterday.

Consistent with its earlier draft (Matters, 12/16/08), Itron reported that experience over the last thirty years of energy efficiency suggest that investor owned utilities are a relatively stable and robust form of funding for efficiency programs. "Utility funding appears to be the key to meeting the expanded savings goals for efficiency in Texas because there is no strong evidence yet that other market players are willing to self fund an expanded marketing effort," Itron said.

"While some of the retail electricity service providers have expressed an interest in providing more energy efficiency information to customers, the vast majority report they provide no energy efficiency information because they expect this function to be fulfilled by the private market," Itron found.

While commercial survey results suggest there is a demand for more information about energy efficiency opportunities by Texas residential and commercial customers, Itron noted that this information for the most part is not being provided by the private market, "in part because it is not in the private firms interest to provide customers with information on a variety of products and service providers."

Itron suggested that the PUCT should consider supporting a concerted effort to form efficiency partnerships between the TDUs and "progressive" REPs interested in energy efficiency, with an appropriate relaxing of market rules that prevent such coordination. Policies could be adjusted to allow TDUs and REPs to share both the costs and benefits of load management and energy efficiency programs. Itron also recommended allowing utilities to market their programs directly to their customers in addition to providing indirect marketing messages through energy service companies.

Nucor Files Ohio Complaint Over Ohio Edison Interruptible Rates

Nucor Steel filed a complaint at PUCO against FirstEnergy's Ohio Edison utility, seeking an immediate suspension of calling economic interruptions pending the resolution of Nucor's complaint regarding the methodology for calling economic interruptions (Matters, 1/8/09).

Nucor first raised the issue in a case dealing with FirstEnergy's tariff filings to continue its 2008 rates into 2009, absent an electric security plan or market rate offer (Matters, 1/6/09).

Since January 5, 2009, Ohio Edison has been calling economic interruptions for Nucor in every hour of every day, and has quoted Nucor buy-through prices between 6.5 and 6.7 cents/kWh, Nucor said. "These buy-through prices are well in excess of both the average hourly day-ahead cost of power for the month of January so far (the average price for the first 20 days of January is $38/MWh, or 3.8 cents/kWh)," Nucor told PUCO.

Ohio Edison's actions are apparently the result of a new FirstEnergy internal policy for calling economic interruptions and establishing buy-through prices, Nucor noted.

"By calling for constant economic interruptions with high buy-through prices, this new policy defeats the purpose of interruptible rates, effectively eliminates the discount under the interruptible rates, [and] generally prices interruptible rates effectively well above firm rates," Nucor said.

Nucor has previously said that the effect of FirstEnergy's new approach will be to convert FirstEnergy's interruptible rates into de facto hourly real-time pricing rates for most hours, by dropping the strike price from 6.5 cents/kWh to 2.9 cents/kWh or lower.

The new policy for calling economic interruptions is contrary to Section 4928.143(C)(2)(b) of the Revised Code, Nucor claimed, as FirstEnergy must continue the provisions, terms, and conditions of its most recent standard service offer absent an electric security plan or market rate offer.

FirstEnergy has argued it can change internal operating procedures for the interruptible rates without Commission approval.

Nucor recommended that a reasonable numerical limit should be placed on monthly and annual economic interruptions. Additionally, FirstEnergy should be permitted to call economic interruptions only when the current/expected load obligation will exceed available planned resources (including any resources secured under RFPs), Nucor said.

FirstEnergy should look at the published, independent, day-ahead, hourly Midwest ISO market price, not an RFP price, to determine whether the strike price has been exceeded, Nucor suggested, and buy-through prices for economic interruptions should equal Midwest ISO hourly day-ahead prices applicable to FirstEnergy.

ICEA Protests Exclusion from Ameren POR Case

The Illinois Competitive Energy Association asked for reconsideration of an ALJ's ruling denying the trade group's intervention in Ameren's POR case at the ICC.

ICEA, which is run by former ICC Chair Kevin Wright and includes Constellation NewEnergy, Direct Energy Services, and Integrys Energy Services, was denied intervention in the case, despite no objections from other parties. The ALJ's ruling noted Direct and Integrys had been granted intervenor status through the Retail Energy Supply Association, while CNE had also been granted intervenor status on its own.

ICEA argued that it met the standard for intervention, and that Wright, its president, would not otherwise receive service of pleadings and data requests/responses absent intervenor status, as he is not an employee of any other intervenor.

Even if two trade associations have identical memberships, intervention by one such group does not ensure that the legal interests of the other association are protected, ICEA said. A national trade organization has a unique perspective to offer the Commission, as does a state organization that focuses exclusively on Illinois, ICEA argued. To find otherwise would establish a race of the clerk's office to gain standing, ICEA cautioned.

ICEA stressed it did not seek to create duplicative workload for the Commission or parties through its intervention. ICEA listed several cases where individual suppliers as well as multiple established and ad-hoc associations of suppliers were granted concurrent intervention.

IEP Grows More Concerned of PG&E Dual-Role CEO

The Independent Energy Producers Association's concerns about allowing PG&E Corp. and utility Pacific Gas & Electric to share the same CEO have increased as the prospect for a prolonged waiver has grown, IEP said in a brief at the California PUC.

Citing testimony from TURN, IEP noted that a CEO with dual roles would possess the potential to skew the results of competitive solicitations, by favoring utility projects. Even if potential undue influence is not brought to bear, "when the facts become known there is likely to be a damaging perception in the marketplace that such favoritism may have been exhibited," IEP said.

"At a time when California is trying to attract investment in energy infrastructure, creating doubt about the fairness of competitive solicitations for generating resources is not the message the Commission should send," IEP added.

PG&E, however, stressed that with no merchant subsidiaries, and a host of protections and other measures proposed as part of the application, granting a waiver to allow a dual-role CEO would be in the public interest.

Briefly:

PUCO Removes Generation Issues from FirstEnergy Distribution Decision

PUCO held that the question of recovery of deferred fuel costs at the FirstEnergy distribution utilities should not be adjudicated in a distribution rate case, the Commission said in a ruling granting the FirstEnergy utilities a collective delivery rate increase of $138 million. PUCO agreed with Staff that deferred fuel costs from the Rate Certainty Plan should be addressed in Case No. 08-124-EL-ATA. PUCO also denied FirstEnergy's request to address uncollectible revenues related to generation in the distribution case. FirstEnergy was directed to work with Staff to conduct a study of advanced metering/smart grid technology and deployment options. The study should include an assessment of potential advanced metering technology investments, open system architecture planning, large-scale AMI deployment, and a cost/benefit analysis of such programs. The assessment and proposed deployment strategy shall be filed by June 1, 2009.

MISO Seeks to Cancel Old Towne Participant Agreement

The Midwest ISO sought at FERC to terminate the Market Participant Agreement of Old Towne Energy Associates, due to Old Towne's credit default (Matters, 1/13/09). Settlement of Revenue Sufficiency Guarantee charges on January 6, 2009, resulted in Old Towne's potential exposure exceeding its credit limit, and the marketer failed to cure the deficiency. MISO asked FERC for guidance on when it may share amounts owed by defaulting members with other MISO members, who have made numerous inquiries regarding the identity and amount owed by Market Participants in default. MISO at this point has treated such information as confidential, as its tariff is silent on whether such data can be disclosed prior to the MISO determining such amounts are uncollectible, at which time the information is posted on OASIS.

DPUC OKs CL&P LRS Procurement

The Connecticut DPUC approved results from Connecticut Light and Power's January 20's procurement of Last Resort Service. Retail rates for the quarter April through June are to be posted by February 14.

MeterSmart to Turn in Competitive Metering License

MeterSmart, formerly Hunt Power, petitioned the Illinois Commerce Commission to relinquish its Certificate of Service Authority as a Meter Service Provider. Dallas-based MeterSmart, which received its license in 2005, is not presently performing any metering services as defined by 83 Ill. Adm. Code 460.10, does not intend to in the near future, and wishes to exit the Illinois retail market at this time.

CHP Standard for REPs Floated in Report to PUCT

Imposing a Combined Heat and Power (CHP) goal on REPs, similar to the RPS, was among the recommendations considered in a report from Summit Blue Consulting on increasing CHP investment in Texas. While a CHP standard would set a specific target and assign responsibility for meeting that target, drawbacks cited by Summit Blue included requiring CHP investment regardless of cost (absent a cost ceiling), creation of a new regulatory tracking system for CHP, and the potentially high cost of CHP credits. Alternatively, assigning a CHP mandate to TDUs, similar to energy efficiency goals in Texas, was also discussed.

Reliant REPs Folded Into Reliant Energy Retail Services

Reliant subsidiaries Reliant Energy Solutions and StarEn Power have both been merged into the legal entity Reliant Energy Retail Services, LLC, Reliant reported in amendments to each REP's certificate at the PUCT.

NRG ... from 1

"It appears that Exelon views the jurisdiction of FERC over such matters as superior to the jurisdiction of this Commission. In fact, Exelon made its ERCOT divestiture commitment to the FERC (not to this Commission) and further has specifically asked FERC to approve its proposed interim mitigation, but has not provided the PUC with any of the detail on these plans," NRG alleged.

"Given Exelon's approach regarding regulatory approval of the Transaction, if FERC does rule on the ERCOT aspects of the proposed divestiture plan and interim mitigation, then Exelon may well take the position that this Commission is foreclosed from considering such aspects of the proposed Transaction due to federal preemption," NRG cautioned.

Given the lack of divestiture information, NRG called Exelon's application deficient, arguing it should be amended to include such information.

Turris ... from 1

customers not agreeing to the proposed solution, Turris is willing to pay a lump sum refund.

Southington Water had further alleged that Turris made material misrepresentations concerning a capacity charge flow through provision of the supplier contract. Rather than being an all-in fixed energy charge, the disputed contract included pass-throughs for various capacity charges.

However, Turris reported that the contract was negotiated by the Consortium's attorney and Constellation, and did not involve Turris. Thus any ambiguity or one-sided provisions rest with the parties to those contracts, not Turris, Turris said.