Energy Choice Matters

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Dominion Retail Earnings Fall in Fourth Quarter

Earnings from retail energy marketing operations at Dominion fell $7 million for the fourth quarter of 2008, compared with year-ago earnings, Dominion said in a reconciliation of 2008 to 2007 quarterly earnings. Dominion did not provide a total amount of GAAP earnings for its competitive retailer in its earnings statements or 8K. For the year 2008, earnings from retail energy marketing operations were $2 million lower than for the year 2007.

Dominion Retail earnings before income and taxes (EBIT) for the fourth quarter of 2008 were $36 million, versus $45 million a year ago. Operating revenue for the quarter was $463 million. EBIT for the year 2008 was $134 million.

For the three months ended December 31, 2008, Dominion Retail reported 1.62 million customers, up from 1.60 million a year ago. Electric customers at quarter-end grew to 344,000 versus 301,000 a year ago, while gas customers fell to 621,000 from 627,000 a year ago. Products and services customers were 651,000 at the end of the fourth quarter, versus 668,000 a year ago.

Dominion Retail electric volumes sold in the fourth quarter were 766,000 MWh, versus 1.1 million MWh a year ago. Natural gas volumes were 28,000 mmcf, relatively flat versus last year's 27,000 mmcf.

Dominion Generation, which includes merchant plants as well as regulated Virginia Power assets, posted fourth-quarter net income of $236 million, up from $133 million a year ago. Merchant generation margin was up $20 million during the quarter, driven by higher realized capacity prices and energy volumes in the Northeast, especially from results at the Millstone and State Line nuclear plants and Fairless combined cycle plant.

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PUCO Directs Staff to Draft New FirstEnergy Electric Security Plan, Encourages Parties to Talk

The absence of an electric security plan in the FirstEnergy Ohio service territories may deny stable rates to Ohio businesses, "and this is a problem that needs to be resolved as quickly as possible," PUCO said in an order directing Staff to develop a proposal to establish an electric security plan for FirstEnergy and circulate it among the parties to the case.

The Commission requested that FirstEnergy and other parties "seriously consider" Staff's proposal to determine if an agreement can be reached on an electric security plan. Within such a context, PUCO also asked FirstEnergy to "reconsider" its prior withdrawal of its electric security plan, an action taken after PUCO heavily modified the proposed plan to remove a minimum nonbypassable default service charge and the deferral of base generation rate increases.

PUCO set a Staff conference on the matter for February 5. FirstEnergy said it was interested in reviewing the subsequent Staff proposal, but assumes it would differ from PUCO's original ESP ruling.

FirstEnergy is currently using short-term RFPs, conducted outside of prior PUCO review, to procure default service supplies on an interim basis. It has not yet filed either a new ESP or Market Rate Offer, though it did petition for rehearing of a November order denying its original MRO proposal. Although several parties have argued that PUCO has authority to compel FirstEnergy to file a new ESP or MRO given the current impasse, FirstEnergy ostensibly could continue to procure power through interim RFPs outside of either an ESP or MRO indefinitely, absent a Commission order to the contrary.

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PUCT Adopts New REP Customer Disclosure Rules

The PUCT approved new rules regarding REP contracts and customer disclosures, adding a few final revisions to Staff's latest proposal.

Among the final changes is that REP pricing must include all recurring charges, except state and local sales taxes. Other taxes, such as the state margin tax, must be bundled in the price, to permit an apples to apples comparison of offers, in an accepted change offered by Commissioner Kenneth Anderson. The original proposal would have allowed all taxes to be excluded from price.

The Commission also adopted a proposal from Chairman Barry Smitherman that will allow REPs to change non-price and non-term conditions of fixed-price contracts, upon notice to customers and under the provision that customers may cancel the contract at no cost due to such changes. The provision is meant to address changes which may be out of a REP's control, such as changes to affinity programs caused by the actions, or dissolution, of the affinity partner (such as an airline ceasing bonus miles or going of business). The published rule's preamble will address the types of non-price and non-term changes contemplated by the Commission (such as to rewards programs), to put REPs on notice as to the types of changes that will be permissible, and those which would be deemed as outside of the provision.

Though ultimately voting for the provision, Commissioner Donna Nelson expressed concern that allowing such changes could be a slippery slope, and would deprive customers of the benefit of their bargain if the change comes when prices are high, and alternative offers are not a realistic prospect.

Anderson noted that the provision, by allowing customers to exit their contract without penalty, will make REPs wary of making any changes to their contracts, except where absolutely necessary, and thus incent REPs to honor their original terms.

Otherwise, the Commission adopted the rule as proposed by Staff, discussed at length previously here (Matters, 1/26/09, 1/15/09). Major provisions include establishing three set product types (fixed, indexed and variable).

Fixed rate products must include a price (including recurring charges) that is the same for each billing period of the contract term, except that the price may vary from the disclosed amount solely to reflect actual changes in TDU charges, ERCOT/TRE fees, or similar changes in laws that impose modified fees or costs on a REP that are beyond the REP's control

An indexed product has a price, including recurring TDU charges, that varies according to a pre-defined pricing formula that is based on publicly available indices or information and is disclosed to the customer.

A variable product's price may vary according to a method determined by the REP, and includes products for which the price can increase no more than a defined percentage as indexed to the customer's previous billing month's price. For residential customers, a variable price product can only be a month-to-month contract, and REPs must disclose the price history of the variable product to residential customers only.

The new rules require at least 14 days notice for all contract expirations, and termination fees may not apply 14 days before a contract expires. REPs are required to be in compliance with the new rules within five months.

FERC Approves Settlement to Keep Duquesne in PJM

FERC accepted, without modification, a settlement among Duquesne Light, PJM, several generators and other parties that will keep Duquesne a member of PJM and prescribes the manner in which Duquesne will participate in the RPM auction going forward, given the exclusion of Duquesne load in the most recent auction, due to its then-pending switch to the Midwest ISO (ER08-194 et. al.)

The settlement did not address the terms pursuant to which Duquesne will be permitted to terminate its obligations to the Midwest ISO, including Duquesne's responsibility to pay financial obligations incurred prior to the effective date of its withdrawal from MISO. As such, FERC ruled that those issues cannot be resolved in the instant cases.

The Midwest ISO or other affected parties may make a separate filing in a new proceeding to raise such issues, or they may pursue such issues in an appropriate judicial forum, FERC said. MISO had argued that the settlement should not be approved absent a finding regarding Duquesne exit fees.

FERC held that Duquesne's re-integration into the PJM RPM process will not affect industrial customers' access to various PJM demand response programs, dismissing a concern raised by industrials. The Commission also rejected the argument advanced by the Pennsylvania PUC and industrials that Duquesne's ratepayers should be held harmless with regard to the costs Duquesne incurred in pursuing its plan to integrate into MISO. "We have held that, under the PJM agreements, there is no general obligation to hold parties harmless from costs occasioned by a withdrawal contemplated under such agreements," FERC said, though it noted approval of the settlement does not constitute a finding that the costs that have been or will be incurred by Duquesne in the Duquesne Withdrawal Proceeding were prudently incurred by Duquesne, or that such costs should be recoverable in rates.

The Commission also denied the Pennsylvania PUC's request that the settlement be revised to include additional provisions explaining, in detail, the terms and conditions of all bilateral agreements that Duquesne has executed, or may be required to execute, in satisfaction of its RPM supply commitments.

Under the settlement, Duquesne will satisfy RPM capacity procurement obligations for all load within the Duquesne zone for the 2011-12 delivery year through bilateral agreements, and will implement an out-of-time Fixed Resource Requirement (FRR) Plan. Other LSEs in the Duquesne zone may elect to opt out of Duquesne's out-of-time FRR Plan.

Illinois Power Agency Seeks Intervention in Broker Dockets, Cites Impact on Procurement

The Illinois Power Agency has moved to intervene in both the Illinois Commerce Commission ABC Law rulemaking docket, and the docket for the complaint of BlueStar Energy Services against three ABCs, stating both may affect the agency's future procurement plans.

With respect to BlueStar's complaint against American Energy Solutions, Affiliated Power Purchasers International, and Lower Electric, the IPA said any ruling in the proceeding may affect the demand for electricity supplied by Commonwealth Edison and Ameren, which the IPA procures. Furthermore, the IPA, "has an interest in how consumers are notified of their rights to purchase electricity from alternative suppliers, and the Agency has an interest in how the agent, brokers and consultants ('ABC') laws and rules are applied."

In the complaint docket, the agency said it does not intend to file testimony or cross examine witnesses, but reserves the right to file comments as they pertain to the application of ABC rules.

In the ABC licensing rulemaking, the IPA did not offer substantive comments at this time, as it seeks intervention, but said its interest was prompted by BlueStar's recent brief on exceptions (Matters, 1/27/09). The IPA opposed BlueStar's motion to file such exceptions, and if such exceptions are allowed into the record, the agency said it wishes to respond to those exceptions.

BlueStar's exceptions were limited to suggested language for the definitions of "attempts to procure" and "attempts to sell" contained in the proposed ABC rules.

PUCT Staff: Ripeness of Exelon Merger Application Unclear

PUCT Staff recommended that the presiding officer certify to the Commission the question of whether Exelon's application for PUCT review of its proposed merger with NRG Energy is premature (36555, Matters, 1/22/09). Under such a process, the PUCT would rule on the discrete legal question posed, to allow the presiding offer to then conduct the proceeding under such precedent.

Staff said that it is not clear the hostile transaction is ripe for review under PURA § 39.158, given its "substantial uncertainty." The issue appears to be one of first impression for the Commission, since as far as Staff is aware all previous PURA §39.158 applications that have been filed at the Commission have involved transactions that have been agreed to between the affected companies.

Staff also called Exelon's filing insufficient, as under PURA § 39.158(a), the Commission must account for each "owner of electric generation facilities that offers electricity for sale in this state" that will "merge, consolidate, or otherwise become affiliated." However, Exelon has not indicated in its application which Exelon and NRG affiliate companies offer electricity for sale in Texas, including any such affiliates that are not wholly owned by Exelon or NRG, Staff said. Because Exelon is seeking to acquire NRG without NRG's consent, Exelon should also be required to detail how it determined which NRG affiliates offer electricity for sale in Texas, Staff added.

Muni Group Says Arizona Should Not Experiment With Retail Choice

Arizona should not "experiment" with retail electric competition, and should wait for other states' experiences to play out more, the Arizona Municipal Power Users' Association said in comments on an Arizona Corporation Commission investigation into retail access (Matters, 11/17/08).

The muni group argued competition only works for large industrials, and would leave customers with higher rates.

"Electricity is not a commodity and its service reliability can be threatened (as happened in Texas)," the muni association said, without elaborating as to specific "reliability" problems.

However, the munis did attack the POLR experience in Texas.

"Texas is a prime example of competitive entities enticing customers, failing to perform, failing to get sufficient supplies and capital, and leaving the market and leaving the customers and delivering the problem to the Provider of Last Resort," the muni group said.

Retail competition encourages "cannibalization" of existing "distribution electric utility facilities by attacking their customer base and leads to accelerated write-off of their facilities," the muni association said. Such cannibalization also makes it difficult to get financing for needed infrastructure, munis added.

Briefly:

Increase in Post-Rate Cap Pa. Rates Would be Lower if Supplies Bought Today

The Pennsylvania PUC released its latest quarterly projection of default service prices customers may experience when rate caps end at remaining utilities in 2010 or 2011, with the current downturn in power prices producing lower increases if utilities went to market today. For example, the average statewide increase across MetEd, PECO, Penelec, PPL and West Penn Power would be 25.2% as of December 31, 2008, compared with a forecast 73.1% increase in June 2008. At PECO, which currently has among the highest rates in the state, the impact of today's lower market prices would be most noticeable. PECO residential rates would only increase 1% (versus 35% in June) while commercial rates would actually decrease 2% (versus a 42% projected increase in June), if PECO went to market at the end of the December. Full comparisons are available at http://www.puc.state.pa.us/electric/pdf/PriceEstimates/Electric_Price_Estimates012909.pdf

PUCT Staff Recommends Denial of Additional REP Certificates for Energy Services Group Subsidiaries

PUCT Staff recommended denial of the REP certificate applications from six separate subsidiaries of Energy Services Group, which currently has four subsidiaries certified as REPs, because each applicant's proposal for technical and managerial support was not judged to be adequate to operate multiple companies (Matters, 1/15/09). In each of the six new applications, each subsidiary relies on the same three individuals that currently staff three existing REPs to meet the PUCT's managerial qualifications. "Although qualified individuals may manage multiple companies, the use of the same three individuals ... raises concerns regarding the company's ability to truly implement and provide competitive retail electric service," Staff said. Staff contends that the identified personnel, "would not be able to provide adequate technical and managerial support to the number of companies for which their services have been retained." The legal entities applying for the certificates were TexRep5, LLC, and similarly named entities with different enumeration.

PUCT Staff Finds TCS Energy REP Application Deficient due to Encumbered Financial Support

PUCT Staff found the REP application of TCS Energy (legal entity Telecom Consulting and Services) to be deficient, because the resources used to meet PUCT financial qualifications are encumbered by the applicant's obligation to support REP Young Energy, LLC, Staff said (Matters, 1/23/09). According to Young Energy's most recent annual report, Young Energy relies on a credit agreement from Telecom Consulting and Services to meet its financial requirements, Staff noted. Brian Young, President of TCS Energy, has served as vice president of Young Energy, which has focused on prepaid service.

PUCT Issues Expedited Switch Draft for Comments

The PUCT voted to issue for comments a Staff proposal to introduce an "expedited" meter read process and eliminate the ERCOT postcard to accelerate the ERCOT switching process to within seven days (36536, Matters, 1/27/09). The Commission approved adding to the proposal questions suggested by Commissioner Kenneth Anderson regarding slamming protections (Matters, 1/29/09), as well as his proposed language to ensure customers exercising their right of rescission, but who have already been switched, are transferred back to their original REP at no additional cost to the customer. Staff will also add a question asking stakeholders to comment on the most appropriate form of cost recovery for TDUs to implement the expedited switches, as Commissioner Donna Nelson worried there could be TDU resistance to the current proposal.

PUCT to Defer to Legislature on Alternative Distribution Ratemaking

The PUCT will give Texas lawmakers an opportunity to address distribution ratemaking during the legislative session and will defer work on a Commission rulemaking relating to alternative ratemaking for distribution assets. Several lawmakers, such as Rep. Sylvester Turner, have cautioned against any ratemaking changes which would create more frequent rate increases given current economic conditions. Despite deferring action on the rulemaking, Commissioners still noted the need remains for distribution companies to receive timely cost recovery, given the aging infrastructure in many parts of the state which will need to be upgraded in the near future. REPs have voiced several concerns about alternative ratemaking, including the shifting of risks to ratepayers, and the impact on retail pricing from more frequent rate changes paid by REPs (Matters, 1/7/09). The PUCT may revisit the issue if lawmakers take no definitive action.

OCC Opposes AEP Interim Fuel Rider Request

The Ohio Consumers' Counsel opposed AEP's "back door" attempt to insert a fuel rider into existing Standard Service Offer rates, which are continuing on an interim basis until PUCO rules on AEP's electric security plan. OCC argued statute forbids the alteration of current SSO rates. AEP's request is based on a provision in the revised code that grants PUCO authority over a utility's system of accounts, with AEP's fuel rider request styled as a request for accounting authority to effectuate the deferrals. But the general accounting provisions in the code cannot trump the more recent and specific language of SB 221 which calls for 2008 rates to continue unchanged if an ESP or Market Rate Offer has not been set by January 1, 2009, OCC said.

West Penn Power Starts Enrollment for Wind Product

West Penn Power (Allegheny) has opened customer enrollment for its renewable energy option, approved this summer by the Pennsylvania PUC (Matters, 8/8/08). The optional product allows customers to buy blocks of 100 kWh of wind energy credits for $2.50 per block

PUCT OKs Constellation LaaRs Settlement

The PUCT accepted a settlement with Constellation Energy Commodities Group under which Constellation will pay a penalty of $115,000 for failing to deploy 95% of its 46 MW of Load acting as Resource (LaaR) within 10 minutes as required on December 12, 2007 (Matters, 12/31/08).

Dominion ... *from 1*

Higher contribution from merchant assets helped parent Dominion post overall net income of $348 million for the quarter, up from $299 million a year ago.

Bear Garden RFP

During an earnings call, executives downplayed a Virginia SCC hearing examiner's report that recommended Dominion Virginia Power be required to re-issue an RFP for 580 MW of supply, without any limitations on who can submit a proposal. Based on results from the RFP, Dominion sought to award a contract to its combined cycle Bear Garden self-build proposal.

The 2007 RFP, "unfairly disqualified electric suppliers that could reasonably meet the Company's capacity need from submitting a proposal," the examiner said, by eliminating three types of suppliers: (1) electric suppliers with existing "iron in the ground" in Virginia located within Dominion Power's transmission control area; (2) electric suppliers with existing "iron in the ground" in Virginia located outside of Dominion Power's transmission control area; and (3) existing electric suppliers located outside Virginia and outside Dominion Power's transmission control area.

The RFP language disqualified an existing Shell Energy plant within Dominion Power's transmission control area, near the Bear Garden site. Shell sought relief from the SCC.

"While the RFP states a requirement for 'new' generation, there is no justifiable reason why existing suppliers located in Virginia, or elsewhere, with excess capacity could not meet the Company's capacity needs," the hearing examiner determined.

Mark McGettrick, President of Dominion Generation, told investors that Dominion does not think the case will end with a re-issued RFP. McGettrick stated Dominion believes the legislature was very clear in a 2007 law that the state needs new facilities owned by utilities, and said Dominion will make that argument before the full commission.

The hearing examiner further recommended that the SCC grant Virginia Power authority to pursue development of Bear Garden, at its own risk, pending receipt of a proposal that is more favorable than its self-build option. A decision on Shell Energy's claims about the allegedly unfair evaluation method used to compare competitive bids against self-build options is not required at this time, the examiner said.

FirstEnergy ... *from 1*

"Establishing rates for successive short periods of time will do nothing to assist business in the state, which puts more jobs at risk, creating more personal hardships for Ohioans," PUCO said.

"The Commission believes that it, and all regulated public utilities in the state, have the responsibility to support and contribute to efforts to improve the state's economy. With regard to the electric industry, stable rates will assist businesses to control their costs of doing business in Ohio and will provide predictability for their future economic planning," PUCO said.