Energy Choice Matters

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Levco Suspends Enrollments due to Uncertainty over DPUC Dominion Order

Connecticut aggregator Levco Tech is not currently adding new customers due to the uncertainty created by a final DPUC decision regarding Dominion Retail's supplier license renewal, in which the Department directed changes to Dominion's relationship with Levco, Levco said in an interrogatory response at the DPUC (99-09-21RE01). The DPUC is also reviewing Levco's aggregator license.

Dominion had been using Levco to enroll Connecticut customers, which had made it the dominant residential supplier in the market. However, the DPUC ruled that the arrangement did not meet statutory customer protection requirements because, among other things, customers did not sign an agreement with Dominion, and only signed a letter of agency with Levco (Matters, 12/4/08).

Levco and Dominion are negotiating a revised arrangement that may take effect in the near future, Levco said. Levco has also been in contact with suppliers other than Dominion and has had discussions relating to pricing, terms, and conditions that could be provided to customers that Levco aggregates.

Levco told the DPUC it is evaluating whether and how to aggregate electric customers in the future, given the DPUC order in the Dominion case. Levco noted that its original aggregator license approval is based upon a business model, found by the Department to be in the public interest, under which "Levco intends to consolidate its residential and commercial customers into one group and ultimately use one electric supplier."

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Calif. PUC to Review Novated Contracts as Bilateral Transactions

Novated or replacement contracts that California IOUs enter to remove the Department of Water Resources from its supply role will reviewed on their own merits as a bilateral contract, the California PUC said in an assigned commissioner ruling from PUC President Michael Peevey.

The standard of review for bilateral transactions could prove useful in evaluating replacement contracts, the PUC said. The Commission further noted that it has never made a finding that the DWR contracts are “just and reasonable,” and thus even novating contracts “as is” will require PUC review and approval.

To the extent that a replacement agreement merely replaces an existing DWR contract with no other substantive changes, the replacement would not necessarily affect the IOU’s Long-Term Procurement Planning framework, the Commission confirmed. On the other hand, “any replacement agreement that would extend the term of a contract should also be reviewed by the Commission for consistency with the long-term procurement planning criteria,” the PUC said.

The PUC ruled that the Tier 3 advice letter process is to be used to review and approve replacement contracts. The Tier 3 advice letter approach will allow for more streamlined processing than would be possible under a formal application, but would also include a 30-day

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PUCT Staff Oppose AEP Appeal of ERCOT 2009 Congestion Zone Designations

PUCT Staff opposed AEP Energy Partner's appeal of ERCOT's designation of 2009 Commercially Significant Constraints (CSCs), Transmission Congestion Zones, Closely Related Elements (CREs), and related determinations, arguing in a brief that ERCOT protocols permit the designations which resulted in AEP's Oklaunion plant remaining in the West Congestion Zone, rather than the North Zone (36416).

Staff believes that the primary procedural issue in the case is whether the protocols prohibit the use of post-contingency shift factors in the determination of congestion zones, since post-contingency shift factors were used to develop the so-called Scenario 3i, approved by the ERCOT Board, which placed the AEP plant in the West (Matters, 11/20/08).

While Staff noted pre-contingency shift factors have been used for clustering in the past, the protocols are silent on whether pre-contingency shift factors must be used for the clustering analysis, Staff said. "Therefore, the Protocols do not preclude the use of post contingency shift factors in the clustering analysis, and the adoption of 2009 congestion zones based on Scenario 3i represents a proper procedural application of the ERCOT Protocols," Staff said.

Staff also argued ERCOT's designations were proper since the ultimate designations provide ERCOT with greater operational control compared with alternatives, and also provide more down balancing energy that could be used to resolve congestion on the West-North CSC. Since balancing energy is the tool that is used to resolve zonal congestion, if ERCOT runs out of balancing energy in a zone, it must resort to non-market techniques such as Out of Merit (OOM) deployments. The cost of OOM deployments is uplifted to the market rather than being directly assigned to parties that cause the congestion, Staff noted.

AEP countered that there is no evidence that down balancing resources in the West Congestion Zone would ever exhausted, or that OOM costs would be incurred, if Oklaunion moved to the North Zone.

Opponents of ERCOT's designations, such as Rio Grande Electric Cooperative, argued that the use of a post-contingency analysis is an, "unprecedented departure from prior practice." Placing the Oklaunion plant in the West Congestion Zone rather than in the North Zone increases congestion in the West, thereby affecting Rio Grande and other market participants, Rio Grande said. AEP noted the ERCOT designations would make Oklaunion bear a disproportionate and "legally untenable" portion of the social cost of congestion management in ERCOT.

But Direct Energy countered that the commercial impact to AEP of the ERCOT Board's decision is not relevant in determining whether or not the ERCOT Board's decision was a result of proper procedural or substantive application of the ERCOT protocols.

AEP alleged that the contingency analysis ultimately adopted was first developed in private by market participants who were able to move their resources from the West into the more lucrative North Zone. But by keeping the low-cost Oklaunion plant in the West, the congestion zone designations reduced supply and competition in the major load-serving areas in the North Congestion Zone, AEP said.

PSEG Texas contended that market participants in ERCOT must be able to rely on a "predictable and transparent" application of the protocols, and that the "unusual" process resulting in the development and approval of Scenario 3i should be rejected.

In every prior CSC case, ERCOT Staff has applied a steady-state pre-contingency model in performing the clustering analysis used in development of the Congestion Zones as part of the annual CSC analysis process, PSEG said. "That course of conduct has led to a pattern of expected processes for determining CSCs and clustering buses around the CSCs," PSEG noted.

In what PSEG called another "irregularity," ERCOT treated Oklaunion, a coal-fired unit, as a unit deemed likely to vary its output in the CRE designation process. "That assumption is not in conformance with [Protocol] Sections 7.2.4 which requires ERCOT to exclude resources fueled by coal or lignite from its list of generators likely to vary their output," PSEG said. Treating the Oklaunion plant as a movable unit differs from the treatment afforded to other coal-fired units in the 2009 analysis, and differs from treatment afforded coal-fired units in analyses for prior years, PSEG observed.

PPL Expects Strong C&I Shopping Upon Rate Cap End

PPL CEO James Miller sees the potential for significant customer shopping at the Pennsylvania utility in 2010, though it will depend on how quickly the market develops, Miller said during an earnings call yesterday.

As is typical, larger C&Is are expected to shop first, especially as they are not part of the default service portfolio PPL has been acquiring, and will be subject to a procurement later in 2009.

As for the mass market, Miller said it will depend on the results from the remaining default service RFPs and where market prices go. But based on where forward prices are today, Miller would expect competitive suppliers to be able to come in under the projected PPL default supply rate for residential and small commercial customers.

If results from the four procurements to date continue on the same trend, the average PPL residential customer rate would increase by about 36% when rate caps expire at the end of the year, PPL said. If current forward prices remain where they are today for the remaining procurements, PPL estimates that the increase in residential customer bills would be lower by at least a couple of percentage points from the projected 36%. PPL has two remaining procurements for 2010 default service supplies.

About 10% of PPL's delivery customers are participating in PPL's pre-payment program for when the rate caps expire, the company reported.

In fourth quarter results, PPL's Supply segment reported lower earnings from ongoing operations of $78 million, down from $107 million in the year-ago quarter. GAAP earnings for the quarter were $182 million, including $130 million in mark-to-market gains, versus GAAP earnings of $114 million a year ago.

Fourth-quarter 2008 earnings were hurt by lower wholesale energy margins in the eastern U.S. driven by higher average fuel prices, and lower margins from marketing and trading activities, partially offset by higher baseload generation.

Yearly earnings from ongoing operations for the Supply segment were $303 million, down from $544 million a year ago. On a GAAP basis, annual Supply earnings were $479 million, versus $568 million a year ago.

The Supply unit is currently hedged 79% for 2010, and 47% hedged for 2011. Including just baseload supplies, PPL is over 80% hedged for 2010.

Yearly earnings for parent PPL Corp. were $930 million, down from $1.29 billion a year ago.

DPUC Moves Certain UI Charges into Generation Rates

The Connecticut DPUC affirmed a draft ruling which moves several generation-related charges out of United Illuminating's distribution rates and into the Generation Services Charge or bypassable Federally Mandated Congestion Charge, in a final order on UI's rate case (Matters, 1/21/09).

The DPUC approved UI's proposal to allocate both generation-related regulatory assessment expenses and the generation-relation portion of the non-hardship uncollectible expense to the Generation Services Charge. Certain generation-related working capital allowances will also be removed from distribution rates and included in the Generation Services Charge.

The Department also accepted 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 will create 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.

Briefly:

RSG Charges Caused JJR Power Default

The default of power trader JJR Power in the Midwest ISO was caused by the settling of Revenue Sufficiency Guarantee charges that contributed to the marketer's Total Potential Exposure exceeding its Total Credit Limit, the Midwest ISO confirmed in a request to terminate JJR Power's market participant agreement (Matters, 1/29/09).

DPUC Accepts UI LRS, SS Procurement

The Connecticut DPUC approved United Illuminating's recent procurement of supplies for Last Resort Service and Standard Service. The Standard Service procurement fills a portion of the load for 2010 and 2011, while the Last Resort Service procurement fills load for the April through June 2009 period. Last Resort Service rates for April through June are to be posted by February 13.

PUCO Staff Opposes Deferral of Dayton Power & Light Fuel Charges

A fuel and purchased power deferral proposed by Dayton Power and Light in its electric security plan is not appropriate, PUCO Staff said in testimony, due to a prior Stipulation regarding Dayton Power and Light rates. The Stipulation, among Dayton Power and Light and several intervenors, provided that rates would be stable through the end of 2010, through implementation of a Rate Stabilization Charge, an Environmental Investment Rider, and (after December 31, 2008) the elimination of certain residential discounts. No other generation-related rate increases were contemplated by the Stipulation, Staff said. Staff further argued that Dayton Power and Light is likely recovering all of its fuel and purchased power costs, and thus would not meet the statutory requirement for a fuel expense rider to be added to the ESP. Staff also opposed Dayton Power and Light's proposal to offer "special customer services" such as designing and constructing customer-owned electric facilities, addressing power quality issues on customer equipment, and performing customer equipment maintenance. Staff stated more detail needs to be provided on the proposal, and suggested that it be addressed in a stand-alone case. Under its proposal, Dayton Power and Light would notify customers that other suppliers may offer the special services to customers.

NiSource Fourth Quarter Retail Marketing Earnings Dip

NiSource reported fourth-quarter operating earnings for its Other Operations segment, which mostly includes commercial and industrial gas marketing activities, of $0.8 million, down from $2.0 million in the prior-year period. GAAP earnings for the fourth quarter were $0.7 million, down from $1.9 million a year ago. Lower earnings were due to decreased revenues from commercial and industrial gas marketing activities, NiSource said. Revenue for the segment fell from $275 million a year ago to $271 million for the quarter. Yearly operating earnings in the segment were flat at $1.8 million. On a GAAP basis, 2008 earnings for the retail marketing unit were $2.2 million, up from $0.7 million a year ago. Yearly segment revenues were $1.17 billion, versus $1.05 billion in 2007. Across all of its business units, NiSource, Inc. posted income from continuing operations for 2008 of $369.8 million, compared with $302.9 million a year ago.

Levco *... from 1:*

Levco's model of selecting and negotiating rates with a single supplier (such as Dominion) and enrolling all customers with that supplier is thus consistent with its original license, Levco said. The DPUC had noted that various agreements make Levco the exclusive agent of the customer, but also an exclusive agent of Dominion Retail, and asked whether such relationships raise conflicts of interest, or jeopardize Levco's fiduciary duty to the customer.

Levco explained that initially, it solicited permission from approximately 10,000 potential aggregation customers to select an electric supplier. Levco then selected Dominion and notified the customers that it had selected Dominion as the electric supplier, Levco explained. Levco discloses to its customers that (1) there is a single electric supplier, (2) that the supplier is Dominion, and (3) the price they will pay for electricity for a stated period of time. "By providing such disclosure and acting in accordance with its DPUC license, Levco is dealing fairly with its customers and has not breached any fiduciary duty to them," Levco said. The aggregation has since grown to some 60,000 customers, without significant customer terminations, showing customers are satisfied, Levco argued.

Levco reported that Dominion has been the sole supplier to Levco customers since it received its aggregator license, and said that negotiations with Dominion generally occur at least annually and sometimes more frequently.

DWR Novation *... from 1:*

review period. A Tier 3 advice letter may not be deemed approved without formal Commission action. An expedited Tier 1 advice letter process would not provide sufficient opportunity to review replacement contracts, particularly contracts with modifications beyond novation "as is," the PUC said, while a formal application process for each of the 26 DWR contracts would add more procedural complexity.

The Commission directed that Phase II(b) of its review of reinstating direct access not proceed until progress is made on novating DWR contracts, in the interest of efficiency and allowing parties to concentrate on Phase II(a) issues such as novation. In view of the uncertainties as to how quickly replacement contracts can be implemented, it is premature to set a schedule for Phase II(b) at this time, the PUC held. Phase II(b) would examine various conditions necessary to support a return to direct access.

The PUC also confirmed that completing the removal of DWR from supplying power will not automatically reinstate direct access. The Commission must resolve issues in Phases II (b) and III of the proceeding prior to any possible reinstatement of direct access, it said.

The working group created to work on contract novation will develop protocols and strategies for prioritizing and scheduling the negotiations for replacement contracts, but will not engage in the actual negotiations with counterparties for individual replacement contracts, the PUC clarified. Only each IOU and DWR will be responsible for the actual negotiation. The authority to determine whether a replacement contract is just and reasonable has not been ceded to the working group, the PUC stressed.

As the roles and responsibilities of the Procurement Review Group are separately defined and circumscribed within the Long-Term Procurement Planning framework, it would unduly complicate the contract novation/ negotiation process to introduce an additional layer of review by including the Procurement Review Group in the novation process, the PUC added.