

Energy Choice

Matters

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Hedging Losses Weigh MXenergy Quarterly Results

Adjusted second-quarter earnings at MXenergy inched higher compared with the year-ago quarter, but unrealized hedging losses weighed GAAP results, as MXenergy reported a GAAP loss of \$20 million for the three months ending December 31, 2008, versus net income of \$2.7 million a year ago.

Adjusted EBITDA for the 2008 quarter, which excludes \$23 million in unrealized mark-to-market losses, rose to \$15.8 million from \$14.4 million a year ago. The lower GAAP results were primarily due to higher unrealized losses from risk management activities, lower natural gas gross profit before unrealized losses, and higher operating expenses.

Quarterly electricity gross profit before unrealized hedging losses grew \$3.7 million versus the 2007 quarter, to \$6.4 million. Natural gas gross profit before unrealized hedging losses fell \$700,000 from the year-ago quarter, to \$28 million.

Gross profit during the period was \$1.54/MMBtu for gas sales and \$29.87/MWh for electric sales. For electricity, the gross profit is up from \$20.25/MWh in the year-ago quarter, but gas gross profit was down versus \$1.94/MMBtu a year ago on "unusual and significant" decreases in natural gas market prices during the period.

Residential Customer Equivalents (RCEs) at quarter end were 654,000, up from 604,000 a year ago. Most of the growth came in electricity, which grew to 91,000 RCEs from 61,000 RCEs

Continued Page 6

Two Illinois Customers File Complaint Under ABC Law Against Broker LBE

Illinois end users Arlington Lanes and RLD Corporation (d/b/a Mont Clare Lanes and Banquets) filed a complaint at the Illinois Commerce Commission against LBE, LTD, alleging that the broker violated the code of conduct provisions of the state's ABC law by allegedly failing to disclose during solicitation the remuneration to be received from brokering (09-0096).

It is the second such verified complaint docketed at the ICC, and first brought by an end user (a complaint filed by BlueStar Energy Services in June is pending). While the ICC is still working on a rulemaking to implement the ABC law, the code of conduct has been in effect since the law took effect October 11, 2007, and applies to licensed entities, and entities that are required to be licensed. The code of conduct requires disclosure, in writing, to customers of total anticipated remuneration the ABC is to receive from third parties in connection with the sale.

Complainants submitted two faxes which each received from LBE on October 8, 2008, offering each end user an energy contract with LBE "partner" Hudson Energy Services. Though complainants averred each fax contained a Hudson offer sheet included with the solicitation from LBE, only one such offer sheet was included in exhibits submitted with the complaint. Under the offer made on October 8, 2008 for service starting December 15, 2008, Mont Clare Lanes (in the ComEd territory) entered into a five-year contract with Hudson at a fixed price of 9.18¢/kWh.

Continued Page 7

Pepco, Delmarva File June 1 Type I Rates

Pepco and Delmarva filed with the Maryland PSC rates for Type I SOS customers for the period June 1 through September 30, 2009.

Pepco (¢/kWh)

Generation Service Charge	
<u>Service Class</u>	<u>June 1-Sept. 30</u>
Schedule R	12.787
Schedule R-TM	
On Peak	13.956
Intermediate	12.770
Off Peak	11.840
Schedules GS and EV	12.862

Delmarva (¢/kWh)

Supply Capacity, Energy and Ancillary Rates	
<u>Service Class</u>	<u>June 1 - Sept. 30</u>
R	11.4854
R-TOU-ND	
On Peak	11.4854
Off Peak	11.4854
Small General Service –	
Secondary Service SGS-S	11.7579
Separately Metered Space	
Heating Secondary Service	
SGS-S and LGS-S	11.5579
Separately Metered	
Water Heating	
Secondary Service	
SGS-S and LGS-S	11.4664

NiMo Gas Joint Proposal Would Bifurcate POR Discount Rates

A joint proposal (JP) among parties to Niagara Mohawk's gas rate case would implement separate POR discount rates for the uncollectible components applicable to the S.C. 1 and non-residential service classifications. The JP is supported by NiMo, New York PSC Staff, the Small Customer Marketer Coalition, and Hess Corporation, among other parties (08-G-0609).

If approved, NiMo would implement the separate POR discounts as of the proposed effective date of May 20, 2009. The proposed discount rates reflect the 2.3% uncollectible rate for S.C. 1 customers and

the 0.3% rate for the non-residential service classes.

Additionally, the discount rate would no longer include a factor to recover collections processing costs, similar to recent rate design changes at other utilities. Instead, NiMo would implement a separate charge for collections processing costs equal to \$0.00419 per therm that will be assessed to ESCOs participating in the POR program. The charge would be based on deliveries to the ESCOs' customers. A charge of the same magnitude would be assessed to sales customers through the Merchant Function Charge (MFC).

The MFC, which will be adjusted monthly, will recover:

(a) uncollectible expense for S.C.1, S.C.2, S.C.12 and S.C.13 service classifications associated with the Monthly Cost of Gas;

(b) gas supply procurement costs;

(c) credit and collection costs associated with the Monthly Cost of Gas; and

(d) the return on the cost of gas in storage inventory.

The proposed MFC reflects the recovery of \$1.1 million gas supply procurement costs divided by 543 million therms, which is the projected throughput for S.C. 1, 2, 12 and 13 customers purchasing supply service from NiMo.

Under the JP, NiMo would continue to include information regarding retail access in its outreach and education plan. NiMo's welcome letter to new customers would continue to inform customers that they have the option to buy their natural gas from an independent ESCO, and NiMo would make a list of participating ESCOs available to customers.

ERCOT Approves \$658 Million Nodal Budget

The ERCOT board approved a not-to-exceed nodal budget of \$658.7 million, which includes \$58.6 million in contingency funds, at its meeting yesterday, as the budget will now move to the PUCT, whose Commissioners continued to express concerns about the nodal budget during the board meeting.

Dissatisfied that ERCOT is submitting a budget without completing work on vendor contract renegotiation -- requested by lawmakers in November -- Commissioner Donna Nelson said it appears ERCOT is "out of touch" and "unresponsive," adding that if the Commission submitted a budget with such unknowns to lawmakers, it would be laughed out of the statehouse.

ERCOT projected completing contract renegotiation, with the aim of lowering payments, in June, with the earliest possible acceleration being perhaps May. That's too late for Nelson, who noted much of the money under the contracts would already have been spent by the time they are renegotiated.

Commissioners and several board members also questioned the amount of contingency funds, as Chairman Barry Smitherman pressed to determine why the contingency funds have increased. While Commissioner Kenneth Anderson was no more pleased by the contingency funds, he added that it may also be preferable to "bite the bullet" now by budgeting so highly for contingencies, so that ERCOT does not come back yet again for more money at the Commission. Several board members espoused similar views, arguing that given the contingency included, the current budget has to represent the "last" budget for nodal implementation.

In terms of a nodal fee, the board approved an option with two possibilities, depending on whether the PUCT approves an increase in 2009 from 16.9¢/MWh to 22.6¢ effective March. In either case, ERCOT would apply for a new flat fee starting in 2010 lasting through 2014, though the fee could either be 27¢ or 28¢ depending how much is collected in fees in 2009.

In an update on integration efforts of various nodal program elements and software from different vendors, Utilicast's Mike Cleary gave integration progress to date a grade of "D," though things are improving.

ERCOT Board Instructs TAC to Bring PRR 776 to Board at Next Meeting

In a procedural mess, the ERCOT board instructed the Technical Advisory Committee to bring an actionable recommendation back to the board on Protocol Revision Requests 776 and 791 at next month's board meeting, so the board can take final action which will likely trigger an appeal to the PUCT by either load or generators, depending on how the vote goes (Matters, 2/12/09).

Texas Industrial Energy Consumers, which has been advocating for PRR 776 since August to solve ex post pricing adjustments during periods of non-spin, appealed TAC's tabling of the PRR at TAC's last meeting. Recommending PRR 776 alone out of TAC fell shy of the needed two-thirds majority by a single vote, and the tabling was meant to give more time to review PRR 776 in tandem with PRR 791, which would use an administrative design to achieve scarcity pricing. Generators and other wholesale marketers have sought to link 776 and 791, arguing that 776 will inhibit scarcity pricing needed for reliability under an energy-only market design, and that current scarcity pricing provisions which allow "small fish" to offer scarcity bids are not working effectively.

However, as TAC took no "action" under the protocols with respect to PRR 776, since neither approval nor rejection garnered the needed supermajority to get it in front of the ERCOT board, the PRR was effectively in limbo at TAC -- a result the board found unacceptable. ERCOT Legal will draft changes to the protocol process so that PRRs do not become stuck in limbo.

Another problem was that the version of PRR 776 which reflects the most recent consensus on what the PRR should look like was never entered onto the record, per se, as a motion to approve the PRR with the latest stakeholder modifications failed at TAC, meaning the language was never added, and the board could not call up a version of PRR 776 reflecting such language.

The board discussion of the PRRs

descended into something of a farce as board members disagreed on whether there was technically any issue before the board, whether it could call up the PRRs absent TAC "action," and whether it could interpret its bylaws to consider tabling as an appealable item. Exasperated, Public Counsel Don Ballard called the board's process, "stunning."

Commenting on the substance of PRR 791, Chris Brewster, for the City of Eastland, said the PRR would increase costs to consumers by over \$775 million annually, though the Independent Market Monitor disputed the calculation, and supported approving both 776 and 791.

Chairman Barry Smitherman told proponents of PRR 791, who say the PRR is needed to correct the ineffective scarcity pricing construct in the PUCT rules, that the PRR had not been vetted at the Commission, and suggested they started educating the Commissioners and Staff about it.

Generators Assail "One-Sided" RPM Settlement

A coalition of generators and affiliated transmission owners opposed a proffered settlement reached among PJM, several industrial customers and municipal utilities concerning revisions to PJM's Reliability Pricing Model capacity market, arguing that the pact was crafted without the knowledge or participation of any single entity in the so-called Supplier Caucus, whose members are said to own over 97% of the transmission assets and over 95% of the generating capacity within PJM (ER09-412).

The settlement was first reported by Matters a week ago, and as noted in our initial story, no generator or independent marketer were among the signatories, or listed as a party not opposing the settlement (Matters, 2/10/09).

Chief among the settlement's provisions would be setting Cost of New Entry at a level 10% below what PJM originally proposed in a December indicative filing on RPM changes, though well above current levels. Under the pact, Cost of New Entry for CONE Area 1

would be \$122,040/MW-year; \$112,868/MW-year for CONE Area 2; and \$115,479/MW-year for CONE Area 3.

The Supplier Caucus bemoaned the fact that after all-party settlement talks ended in mid-January, PJM and several load representatives, "apparently continued negotiating until they produced the Settlement Offer," with no knowledge or participation among members of the Supplier Caucus.

According to the Suppliers, PJM subsequently floated a draft settlement term sheet to members of the Supplier Caucus on January 29, 2009, shortly before filing the Settlement Offer. "While PJM solicited support from the Supplier Caucus, it made clear that there was no opportunity at that point to negotiate or substantively affect any term or condition in the Settlement Offer."

"The Supplier Caucus believes that such a one-sided practice sets an unfortunate precedent that could disadvantage any set of stakeholders and could lead to decisions that are harmful to markets," the Supplier Caucus flagrantly charged.

"The lack of participation in the negotiation process and the lack of support for the settlement product by any member of the Supplier Caucus completely overcome any presumption that the Settlement Offer has any value as a consensus solution to the issues addressed," the Caucus added, noting individual members would address substantive issues on the terms of the pact in subsequent filings.

Despite the rhetoric about precedent, it should be noted that while the Supplier Caucus itself was not active as a group in the Duquesne Light PJM exit proceeding, many of its individual members were, and those members proceeded to negotiate what has been termed a "private" settlement among suppliers, Duquesne, and PJM, to the exclusion of load representatives.

Indeed, while FERC ultimately accepted the settlement which keeps Duquesne in PJM, the Pennsylvania PUC complained during the process that there was no indication, prior to the announcement of a settlement among suppliers, Duquesne and PJM, that parties were meeting outside of

FERC-conducted mediation sessions. "The settling parties have essentially 'cut out' other parties from their negotiations, to the extent that the PaPUC was simply unaware that negotiations were being held until the deal was done ... Excluded parties were neither consulted nor informed of the progress of negotiations, the issues or subject matters being discussed until it was too late," the PUC claimed in a protest.

However, in rebutting the PUC's arguments, PSEG Energy Resources & Trade (filing with its affiliates) said in supporting the settlement among suppliers, Duquesne and PJM that, "Notwithstanding the actual sequence of events, there would have been nothing nefarious in individual parties – including the PaPUC – meeting with Duquesne to discuss settlement prospects in the interim." PSEG Energy Resources & Trade is a member of the Supplier Caucus now protesting one-sided settlement discussions in the RPM docket.

The ad-hoc Supplier Caucus includes 28 members, including integrated companies owning both transmission and merchant generation, such as Exelon, the PPL Companies and Pepco Holdings, as well as stand-alone merchant generators, such as Reliant Energy and Mirant.

NYSEG Rate Request Opens Door for Commodity Program Review, PSC Staff Says

NYSEG's commodity program has been reopened due to the utility's filing of a major rate case, New York PSC Staff said in testimony supporting a motion to dismiss delivery rate increase requests from NYSEG and sister Rochester Gas & Electric (Matters, 2/13/09).

NYSEG's electric commodity program, established under a July 10, 2007 Joint Proposal, originally set a three-year program, including authorization for a fixed price option each year. However, the Joint Proposal also states that, "the three-year term shall be reopened if NYSEG files a major electric delivery rate case with the Commission," Staff noted. The PSC had previously ruled in

January that NYSEG's fixed price option should be reviewed prior to its continuation in 2010 despite the original three-year authorization, so it can be assessed at the same time that RG&E's fixed price option is reviewed (Matters, 1/21/09).

Staff also called NYSEG and RG&E's rate filing deficient because the filings omit the favorable impacts of commodity income and cash flows from their earnings analysis. Additionally, specifically for RG&E, the omission of the electric merchant function charge (MFC) related to electric commodity programs in the rate filing could distort the level of RG&E's electric delivery revenue requirements, Staff argued.

The MFC could reduce the delivery revenue requirement through the addition of electric merchant function charge revenues, offset by the loss of the retail access surcharge, Staff noted.

Staff also attacked the rate increase request as unsupported, and questioned Iberdrola's assurances in the Energy East merger case that the acquisition would improve NYSEG and RG&E's access to capital. "The merger case is littered with positive assertions made by Iberdrola to use its financial strength for the benefit of NYSEG and RG&E and their ratepayers," Staff said.

Staff interpreted various statements by Iberdrola as, "threatening to withhold capital from NYSEG and RG&E if what it views as a 'reasonable' return on equity is not allowed by the Commission."

"It appears that Iberdrola will invest within its system where it will achieve the highest returns among competing investments. For example, it would invest in nuclear generation in Europe where it recently formed a venture with other companies. Their strategy is summed up by their CEO who stated, 'We can be part of the solution or we can make more problems. If we will not get a proper return, we will not make the investment,' when announcing reduced capital expenditure plans for 2009 compared with 2008," Staff said.

"This new and undisclosed hurdle for investment in NY directly contradicts Iberdrola's public assertions of financial support," Staff argued, contending that

NYSEG and RG&E still have access to capital and have not justified their rate increase. The two utilities are prohibited from seeking a rate increase within 12 months of the Iberdrola-Energy East merger close unless financial performance would otherwise fall to levels jeopardizing reliable service.

Briefly:

ERCOT Says Reserve Margin OK Despite Luminant Retirements

Given the recent (and much hyped locally) announcement by Luminant that it would mothball 1,600 MW and retire 2,200 MW of inefficient peaking generation units, ERCOT said at its board meeting that it reviewed its reserve margin analysis, typically updated only twice a year, and found that the retirements present no problem. ERCOT is still projected to be above its reserve margin for the next several years, indicating that retirements of 40-50 year old peakers is not something that should be unexpected in the market.

Oncor Resolves Difference with TCS Energy

Oncor has moved to withdraw its intervention in the REP certification docket of TCS Energy (36593), stating it has resolved its differences with TCS Energy. Oncor had intervened because a principal at TCS (Brian Young) was also recently listed as a vice president at Young Energy, which Oncor said was in default on obligations to Oncor at the time (Matters, 2/9/09).

Blakk Power Seeks Texas Aggregation Certificate

Blakk Power Company filed for an aggregator certificate at the PUCT to pool residential and C&I customers.

ERCOT Wind Complaint Abated

A PUCT ALJ abated a complaint docket concerning wind generators' appeal of an ERCOT protocol interpretation relating to reactive power requirements, to allow for the pursuit of informal resolution. A status report is due June 17 (36482, Matters, 12/15/08).

Consumers Energy Reports Retail Sales for Choice Cap

Weather adjusted retail sales at Consumers Energy in 2008 were 37,149,202 MWh, the utility told the Michigan PSC (U-15805). The total is to be used to set the 10% cap on choice sales.

MXenergy ... from 1:

a year ago. MXenergy attributed significant organic customer growth in Texas, Connecticut and New York for the year-over-year increase, which was largely due to targeted direct sales marketing activities during fiscal year 2008 and the first three months of fiscal year 2009, plus a wider range of products. Gas RCEs grew to 563,000 from 543,000.

Average in-contract customer attrition was approximately 26% for the 12 months ended December 31, 2008, compared with 22% for the three-year period from July 1, 2005 through June 30, 2008. MXenergy said that customers signed at then-competitive fixed or introductory rates during the summer have migrated to competitors offering market rates that are better than their original fixed rates or their post-introductory period variable rates from MXenergy. In-contract attrition is also higher to due more aggressive disconnection of service by MXenergy to reduce bad debt.

MXenergy also trimmed its direct mail marketing, advertising and overall marketing expenditures during fiscal year 2009, as compared to the prior fiscal year. It believes that the lower marketing expenditures had a negative impact on brand awareness and contributed to the increased level of attrition. Quarterly advertising and marketing expenses fell to \$456,000 from \$889,000 a year ago.

Gas sales for the quarter were \$230 million, and electric sales were \$29 million.

MXenergy will hold an earnings call on February 19.

ABC Complaint ... from 1:

Complainants alleged that the faxes did not disclose remuneration as required under the ABC law. While the ABC law does not require the disclosure if a broker is acting as an exclusive agent of a supplier, the presence of such exclusive relationship must also be disclosed, and the complainants alleged that the faxes did not contain any such disclosure either.

Should the Commission find that LBE violated the ABC law, complainants recommended preemptively suspending or denying LBE's broker license.