Energy Choice Matters

February 25, 2009

ICC Staff Suggests 1.5% POR Discount Rate at Ameren

Ameren's Purchase of Receivables discount rate should be set at 1.5%, which includes a "balance factor" meant to permit Ameren to recover future higher uncollectible costs while keeping the discount rate stable over two years, Illinois Commerce Commission Staff recommended in testimony.

Keeping the discount rate stable will increase the likelihood of suppliers taking the bundled POR and utility consolidated billing service, which will increase cost recovery paid for by marketers rather than all delivery customers under Ameren's split cost recovery proposal (Matters, 12/25/08), said Torsten Clausen, Director of the ICC's Office of Retail Market Development, on behalf of Staff. Ameren proposed recovering 75% of POR and utility consolidated billing implementation costs from all delivery customers via a customer charge, with the remaining 25% factored into the POR discount.

If the ICC adopts Ameren's proposed five-year cost recovery schedule, Clausen recommended that the discount rate not be changed until the initial rate period expires in May of 2012, which would keep the rate stable for about two and half years (depending on exact implementation date which could be as early as this fall).

Continued Page 3

Fonfara, Downes Cite Problems with Four Conn. Bills on Re-regulation

A Connecticut state power authority would be unworkable because entering into supply contracts for default service load would require collateral postings in the amount of $1.5 billion, DPUC Chairman Donald Downes said in testimony before the Connecticut General Assembly joint Energy and Technology Committee. The committee was hearing testimony on four bills which would impact the competitive electric market.

H.B. 6507 would end choice for customers under 500 kW effective January 1, 2010, with renewals of current contracts limited. H.B. 6507 would instead create a set of utility-offered products in addition to the current standard service, such as a fixed-price utility option. Customers above 500 kW would also be allowed to choose such utility product alternatives, in addition to the quarterly Last Resort Service.

H.B. 6510 would establish the Connecticut Electric Authority which would procure power for the distribution companies, and would have the authority to build generation.

H.B. 6512 would require distribution utilities to abandon sole reliance full requirements procurements for standard service and use a managed supply portfolio by January 1, 2012. Procurements would be for short- or long-term bilateral contracts and individual supply components (e.g., energy, capacity, etc.), with six-month fixed pricing, subject to true-ups.

H.B. 6514 would impose a windfall profits tax on generators.

The grossest misstatement, to put it kindly, during the lengthy hearing goes to Rep. Vickie

Continued Page 5

Dayton Files ESP Pact to Extend Current Rates with Fuel Rider

Dayton Power and Light filed a stipulation for an electric security plan which would keep its current rate plan in effect thorough December 31, 2012, with the addition of a bypassable fuel rider, in a settlement signed by PUCO Staff, the Ohio Consumers' Counsel, Dominion Retail, Constellation NewEnergy, and various large consumers.

Under the proposal, DP&L will implement a bypassable fuel recovery rider to recover retail fuel and purchased power costs, based on least cost fuel and purchased power being allocated to retail customers. The rider will initially be established at 1.97¢ per kWh, an amount which will be subtracted from DP&L's residual generation rates.

DP&L will make a filing by November 2009 at PUCO to establish a revised fuel rider to become effective January 1, 2010. Thereafter, the utility would file quarterly adjustments for recovery of the cost of fuel and purchased power.

DP&L would also withdraw its request for the deferral of fuel costs for 2009-2010 under the stipulation.

The stipulation includes a bypassable rider for alternative energy resource compliance, and nonbypassable economic development and energy efficiency riders (though qualified mercantile customers may opt out of the efficiency charge).

The current Rate Stabilization Surcharge (RSS) will continue as a nonbypassable charge through December 31, 2012. Accordingly, through December 31, 2012, shopping customers who return to DP&L shall pay the Standard Service Offer rate under the applicable tariff. In 2011 and 2012, governmental aggregation customers who elect not to pay the RSS will return to DP&L at a market-based rate.

DP&L will meet with competitive suppliers at least annually to discuss customer choice issues and related tariff provisions. DP&L will post a supplier hotline telephone number on its website and designate an individual to serve as the primary contact for competitive suppliers in resolving operational and other issues.

Under the settlement, DP&L will withdraw its application in the electric security plan case to provide behind-the-meter services, but may file a separate application for such services.

DP&L may also apply for separate riders to recover costs of new environmental legislation (such as carbon), transmission cost recovery rider (TCRR) costs, and RTO costs not included in the TCRR.

Briefly:

FirstEnergy Merchant Income Rises in Q4

Fourth-quarter net income at FirstEnergy's competitive subsidiaries (combined wholesale and retail) posted higher net income of $155 million versus $107 million a year ago, on higher generation revenues, increased output and fewer outages, and lower transmission costs incurred by FirstEnergy Solutions. Competitive retail sales during the quarter slipped 24% to 2.3 billion kWh from 3.1 billion kWh a year ago. Consolidated fourth-quarter net income for FirstEnergy Corp. was $332 million, up from $268 million a year ago.

Sempra Generation Earnings Up, Commodities Fall

Sempra Energy earned $164 million in the fourth quarter from its share of the RBS Sempra Commodities joint venture, down from $186 million a year ago, although executives remain bullish on the unit's prospects given the declining competition in the commodities trading space. Yearly net income to Sempra from the joint venture was $345 million, down from $499 million for commodity operations a year ago. Sempra executives assured investors during a conference call that RBS was not planning on exiting the joint venture given RBS' ongoing challenges, and said support from the U.K. government to RBS will keep RBS stable. At the Sempra Generation unit, net income rose to $60 million for the fourth quarter, up from $40 million a year ago, due primarily to lower income-tax expense. Yearly net income for Generation was up at $222 million versus

$162 million in 2007.

FERC Says Virtual Traders Entitled to Marginal Loss Surplus

FERC clarified in an order yesterday that virtual traders are to receive credits resulting from the surplus created by over-collection of marginal line losses in PJM. An October FERC order clouded the issue by using the term "load" in discussing the surplus payments, suggesting the exclusion of virtual transactions. But the Commission clarified that it did not intend to exclude virtual traders to the extent that those traders make transmission payments that contribute to the fixed costs of the transmission grid. Financial marketers Black Oak Energy, EPIC Merchant Energy, and SESCO Enterprises had sought FERC action to ensure virtual traders would receive surplus payments (Matters, 12/3/08).

Nelson Suggests Workshop on CREZ Dispatch

PUCT Commissioner Donna Nelson suggested that a workshop, over which the Commissioners would preside, be held concerning the Commission's rulemaking on Competitive Renewable Energy Zone dispatch priority and financial commitments, which has been open for a year and a half (34577, Matters, 9/30/08). The urgency for finalizing the rules increases as the Commission approaches the time that TDUs will begin filing for CCNs for CREZ projects. Nelson is interested in hearing from parties on the proof of financial commitment required from wind developers, and whether or how that is interrelated with dispatch priority.

PUCT Staff: Texas Electricity Aggregation Must Resolve Name Problem

PUCT Staff recommended that the application of Texas Electricity Aggregation be abated until the issue regarding its name is remedied by the applicant, as it is similar to current aggregator Texas Energy Aggregation, which has protested the application (Matters, 2/13/09).

PG&E Files for 250 MW of Utility Solar

Pacific Gas and Electric filed plans with the California PUC for a five-year program to develop 500 MW of solar photovoltaic power, including 250 MW of utility-owned generation, consisting primarily of 1-20 MW installations mounted on the ground or rooftops within its service area. The 250 MW to be built by merchant developers would be offered a standard contract and pricing derived from the utility's own costs to streamline review of their applications.

FERC Denies Relief on Duke/Progress Bilaterals for PJM Imports

FERC denied granting expedited relief in a complaint brought by Progress Energy Carolinas and Duke Energy Carolinas concerning PJM's termination of bilateral agreements on pricing imports into PJM, as the bilateral agreements give PJM the right to cancel the agreements (Matters, 12/26/08). Absent the agreements, PJM reverted to its tariff for import/export pricing (using SOUTHIMP/SOUTHEXP), which FERC found to be appropriate. The decision was limited to the request for expedited relief regarding the bilateral contract cancellation, and did not address PJM's larger request to introduce a new import/export pricing regime, though FERC did encourage parties to seek settlement of the larger dispute.

PUCT Issues Final REP Disclosure Rules

The PUCT released its final written order codifying new customer disclosure rules for REPs (docket 35768). REPs have five months to comply with various new provisions on product type and renewal notices, among other things (Matters, 1/26/09, 1/15/09).

Ameren POR *... from 1:*

To achieve such stability, Clausen proposed that the POR discount rate be set at 1.5%, which is higher than the rate proposed by Ameren. The Staff rate would include a balance factor of 0.41%, which is an additional component to the discount rate which would reflect potential increases in the Ameren uncollectible rate built into the existing rate, so the rate could be kept stable should uncollectibles increase. To the extent the balance factor is not needed to pay for higher uncollectibles, it will serve to recover more POR and consolidated billing costs from competitive supply customers, reducing the amount to be paid by all delivery customers.

However, Dominion Retail said Ameren's proposed 1.2% discount is already on the high side, in testimony from William Barkas, Manager of State Government Relations for Dominion Retail. The higher rate, Barkas said, is due to the recovery of utility consolidated billing costs via the POR discount, which Barkas argued should be excluded from the rate. Allocating utility consolidated billing costs to the POR discount would create barriers to new entry for suppliers, Barkas said.

The Citizens Utility Board opposed Ameren's 75-25 allocation because it would force full service customers to "subsidize" retail supplier operations. "This subsidization masks the true cost of market entry, and thereby encourages inefficient entry into the market," said CUB Policy Director Christopher Thomas.

Thomas proposed a "Fair Cost Allocation Adjustment" which would reimburse delivery customers for the customer charge imposed to recover POR and consolidated billing costs. The refund would be paid as suppliers actually use the services, by including the Fair Cost Allocation Adjustment as a component of the POR discount paid by suppliers.

Direct Energy Services opposed Ameren's "all-in" or "all-out" requirement regarding the placement of customers on utility consolidated billing and POR, under which a supplier would be forced to commit all of its customers in a class to utility consolidated billing, or forego use of utility consolidated billing and the attendant POR. Ameren proposed the limit to prevent suppliers from only placing customers with poor credit on POR.

The New York market's POR mechanism does not include such an all-in requirement, and POR discount rates there, even in high migration territories like Consolidated Edison, have not become inflated due to any supplier action, noted Ron Cerniglia, Director of National Advocacy for Direct Energy Services.

Since suppliers have been active in the Illinois territory for over a decade, with only the option of dual billing or supplier consolidated billing, Ameren's proposed restriction would have the unintended consequence of essentially "punishing" suppliers that have been active to date, requiring them to either change their current customer billing practices, or forego the use of utility consolidated billing and POR for new customers, Cerniglia said.

The diversity of customers in Ameren's proposed POR subgroups is particularly unworkable, Cerniglia added, as suppliers would be forced to choose a single billing type for groups containing customers with different needs. Ameren would divide customers into Subgroup A with customers under 150 kW and subgroup B for customers 150 kW to 400 kW (customers above 400 kW would not be eligible for POR). All of a supplier's customers in a subgroup would have to be billed in the same manner, either on utility consolidated billing, or not.

But customers in the 150-400 kW subgroup may have different levels of sophistication, Cerniglia noted, and typically will be on rates and products reflecting such differences. The more sophisticated customers may demand a detailed bill that could not be provided under Ameren's proposed utility consolidated bill due to restrictions on messaging, a prohibition on the ability to bill for value added services, limitations on the number of lines for charges, issue dates, due dates, and late fees. Other customers in the subgroup, however, may be not have specific billing-related demands, and may be more efficiently served by Ameren's utility consolidated billing service, Cerniglia said.

Another provision opposed by Direct is Ameren's proposal to limit POR to only charges for "Power and Energy Service," defined as only those components the supplier is obligated to procure to meet its customers' instantaneous electric power and energy requirements which may also include charges for Transmission Services and related Ancillary Transmission Services. The accounts receivable for suppliers shall not include items such as early termination fees or fees for "value added services." In a discovery response, Ameren said RECs would be considered a value added service.

Limiting recovery of such costs via POR, "inhibits product innovation, limits the universe of available products, and limits the ability of suppliers to meet their customers' demand for green energy," Cerniglia said. Additionally, the proposed Ameren limit would prevent suppliers from recovering costs of compliance with new renewable portfolio standards in the state, Cerniglia noted.

While Ameren asked that any POR mechanism be effective 60 days after ICC approval, to give the utility time to implement any changes required in the final order, Staff suggested that 30 days, as provided by statute, would be adequate.

The Citizens Utility Board called the POR tariffs premature because Ameren does not have in place several customer protections that address supplier pricing, cancellation fees, and other marketing practices, which are required to prevent failures in the market and consumer harm. CUB said longer cancellation periods should be mandated, and prohibitions on automatic contract renewals should be established.

Conn. Bills *... from 1:*

Nardello, D-Prospect, co-chair of the committee and frequent restructuring critic, who repeatedly stated that the newly created Illinois Power Agency had successfully completed (past tense) an RFP for default service, with savings of about 10%. In response to several opponents of the bills who cited several risks of the power agency model, Nardello encouraged witnesses to talk with the folks at the IPA, to see what they were doing.

We did. And IPA Executive Director Mark Pruitt confirmed yesterday what we already knew. The IPA has yet to complete an RFP or procurement of power on behalf of Illinois default service customers. It has had its procurement plan approved by the Illinois Commerce Commission, and is in the midst of an RFP which will gear up in April, but it has not executed any supply contracts to date.

This is not to say the IPA is not or will not be a successful means of procuring power in Illinois or to pass any judgment on the agency. But the simple fact is it hasn't bought power yet. It can only be presumed Nardello was referring to a procurement run by the ICC and utilities in 2008 for supplies during an interim period, which did indeed produce lower winning bids versus the previous procurement method, conducted under the old descending clock auction. While the products bought differed from the Connecticut model, the management of the RFP by the utility with ICC oversight was similar to Connecticut's methodology.

Responding to a line of questioning from committee co-chair Sen. John Fonfara, D-Hartford, who opposed the bills, Chris Kallaher, director of government & regulatory affairs at Direct Energy Services, noted that the Illinois Power Agency avoided the collateral problem cited by Downes because the utilities remain the counterparties to the supply contracts in Illinois, while H.B. 6510 would allow the Connecticut authority to enter into contracts itself.

Another popular theme of Nardello, and Robert McCullough of McCullough Research, was that "hedge funds" were the dominant suppliers under the current Connecticut RFP structure, citing JP Morgan and Goldman Sachs as the types of entities that are predominantly bidding. While non-winning bidders remain confidential (so it can not be publicly determined how many hedge funds participated), since United Illuminating went to market rates in 2007, of seven suppliers winning load in 14 different delivery periods, the only "hedge fund" winning load was J.P. Morgan Ventures Energy Corp, in a single delivery period (first half of 2007, standard service). Other winning suppliers were pure energy firms such as Consolidated Edison Energy, FPL Energy Power Marketing, and PPL EnergyPlus. At Connecticut Light and Power, no "hedge funds" are among the suppliers for the first half of 2009, and the only winning hedge fund we could find since

2007 in a quick docket search was J. Aron for only a portion of load in the second half of the 2007 standard service year.

While utilities opposed the state power authority, both Connecticut Light and Power and United Illuminating welcomed the types of changes in H.B. 6512, in advocating for greater use of long-term contracts, and alternate products other than full requirements service. United Illuminating said that only 10 suppliers in New England provide a full requirements product, while over 100 could compete for the individual supply components if broken up, thus increasing competition. Rep. Terry Backer, D-Stratford, doubted utilities would find any attractive pricing for long-term contracts, unless they paid a large risk premium.

Kallaher also noted that while the quarterly, market-reflective Last Resort Service rates have gone down coincident to the drop in wholesale prices, mass market customers are still paying about 12¢/kWh on standard service because of the laddered portfolio approach currently in use. Rates could be in the 7¢ range had the supply not been laddered, Kallaher said, showing the danger of long-term contracts and laddered portfolios.

The spread between the current standard service prices, and rates available in the market from competitors, means now is the wrong time to end retail choice, Kallaher said, who predicted that switching rates among smaller customers will accelerate.

Fonfara noted that about 26% of small business customers are currently on competitive supply, mostly likely saving money (though some may have switched for value-added or green services), and H.B. 6507 would deny them that savings opportunity, during a time of economic crisis.

CL&P justified ending small customer choice, however, because of the risk premium it places on prices, due to the migration risk wholesale suppliers face. While CL&P admitted the premium was pretty small for residential customers, it estimated the premium at 0.5¢ for small business customers.

The Manufacturing Alliance of Connecticut supported an end to residential and very small C&I choice, but said the 500 kW cutoff was too high, and suggested lowering it to 100 kW. The manufacturers also want lawmakers to impose a code of conduct on electric brokers, which are currently not regulated by the DPUC (although aggregators are). Nardello cited the problems caused by lengthy, complex contracts offered by suppliers which are not understood by customers.