Energy Choice Matters

March 2, 2009

New Settlement on FirstEnergy ESP Allows Gov't Aggregators to be Paid Uncollectibles

A revised stipulation which would establish the FirstEnergy Ohio utilities' electric security plan would allow suppliers of governmental aggregations to collect unpaid receivables from the FirstEnergy utilities, if providers elect to provide customers with rate phase-in credits, in a provision which prompted the Northeast Ohio Public Energy Council (NOPEC) and Ohio Consumers' Counsel to sign the settlement (Matters, 2/20/09).

The OCC said the amended stipulation will, "remove competitive barriers to aggregation."

The revised stipulation amends the original process for governmental aggregators to elect to provide rate phase-in credits to their customers, should PUCO order a phasing-in of Standard Service Offer rates. As before, governmental aggregation suppliers providing the phase-in credit would be entitled to receive such credits on a deferred basis from the FirstEnergy utilities, which would add such credits to the regulatory assets created for Standard Service Offer customers. Such credits would be recovered on a nonbypassable basis.

Additionally, the settling parties now agree that any uncollectible government aggregation receivables arising out of supplying generation and transmission to a government aggregation group electing to phase-in prices as approved by the Commission shall be included in the

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WMECO Revises Renewable Access Plan to Remove Limit on Number of Suppliers

In response to criticism from REC brokers, Western Massachusetts Electric Company has amended its proposed renewable energy retail access plan at the Massachusetts DPU, removing a previous provision limiting participation to two suppliers (08-54).

WMECO's original proposal was similar to green options offered at sister utility Connecticut Light and Power. WMECO's original plan would have limited competitive green options to two suppliers selected via an RFP, with pre-determined prices and percents of renewable energy offered (Matters, 1/29/09).

In response to criticism of the limitation by brokers, WMECO has offered to remove the limitation on suppliers, and now says the program could grant access to any competitive supplier of RECs, similar to the access provided by other utilities' plans in Massachusetts. The revised green option program would be open to any competitive supplier or broker registered by the DPU.

However, WMECO would still limit suppliers to offering only 50% and 100% renewable products. The product mix (e.g. class and geographic location of RECs) of a supplier's 50% option and 100% option would have to be identical. WMECO also suggested that pricing for the 50% option should be one-half of the 100% option.

Eligible RECs shall come from a generator that meets the definition of a Class I or Class II renewable energy generating source and is identified as belonging to one of three areas: (a) the New England states; (b) the regional area (New York and PJM); or (c) national (all other states in

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CL&P Reports January Shopping Data

3rd Party Supplier	Jan. '09 Residential	Jan. '09 C&I	Jan. '09 Total	Dec. '08 Total
CLEARVIEW ELECTRIC	1	0	1	1
CONSOLIDATED EDISON SOLUTIONS, INC.	1,506	1,240	2,746	2,598
CONSTELLATION NEWENERGY, INC.	800	8,357	9,157	9,639
DIRECT ENERGY BUSINESS LLC	110	1,489	1,599	1,622
DIRECT ENERGY SERVICES LLC	13,621	3,614	17,235	17,373
DISCOUNT POWER INC	0	0	0	0
DOMINION RETAIL INC	41,826	1,735	43,561	43,867
GEXA ENERGY CONNECTICUT, LLC	1	239	240	120
GLACIAL ENERGY OF NEW ENGLAND INC	175	1,318	1,493	1,492
HESS CORPORATION	312	392	704	697
HORIZON POWER AND LIGHT LLC	0	0	0	0
INTEGRYS ENERGY SERVICES	387	3,198	3,585	3,620
LIBERTY POWER HOLDINGS LLC	0	112	112	115
MXENERGY ELECTRIC INC	1,763	3,168	4,931	5,001
PEPCO ENERGY SERVICE, INC.	0	0	0	0
PUBLIC POWER & UTILITY, INC	7,910	1,766	9,676	8,340
ROYAL BANK OF SCOTLAND	0	0	0	0
SEMPRA ENERGY SOLUTIONS LLC	6	1,004	1,010	933
SUEZ ENERGY RESOURCES NA	4	505	509	437
TRANSCANADA POWER MARKETING LTD.	27	2,179	2,206	2,158
WHOLE FOODS MARKET GROUP INC	0	4	4	4
WORLD ENERGY	0	0	0	0
STRATEGIC ENERGY LLC	0	1	1	0
Total All 3rd Party Suppliers	**68,449**	**30,321**	**98,770**	**98,017**

Data as reported by CL&P

Aggregate Data

C&I Standard Service-CL&P		%
TL # ALL Accts	121,699	
TL ALL MWhs	612,390.356	
TL 3rd Party Accts	29,369	24.1%
TL 3rd Party MWhs	311,121.176	50.8%

Residential Standard Service-CL&P		%
TL # ALL Accts	1,092,820	
TL ALL MWhs	1,017,318.891	
TL 3rd Party Accts	68,449	6.3%
TL 3rd Party MWhs	79,311.541	7.8%

Last Resort Service-CL&P		%
TL # ALL Accts	1,197	
TL ALL MWhs	503,594.245	
TL 3rd Party Accts	952	79.5%
TL 3rd Party MWhs	430,621.831	85.5%

Total All CL&P		%
TL # ALL ACCTS	1,215,716	100%
TL ALL MWhs	2,133,303.492	100%

Infinite Energy Cleared to Market in ERCOT

Infinite Energy has received a REP certificate from the PUCT, as the retailer prepares to branch into electric retailing from its current focus on natural gas in several Northeast and Southeast markets.

As only reported by Matters (Matters, 1/21/09), the ERCOT market represents a new endeavor for the marketer, which currently retails natural gas in Georgia and Florida, and, under its Intelligent Energy brand, in New York and New Jersey. Its Texas REP certificate includes the trade name 123 Energy.

Infinite intends to become a Level 2 QSE and will be able to perform its own load forecasting, using internal staff. The marketer plans to use its own staff to provide call center capability to handle customers' requests, reports and inquiries. Not counting senior management, Infinite will dedicate 14 staff persons to Texas market entry and operations, and will rely on support from its remaining 300 staff persons as needed.

Infinite reported it had over $700 million in revenue in 2008, with a trading/scheduling group responsible for moving over 40 million dekatherms of natural gas during 2007.

Equitable Gas to End Pa. Agency Program

Equitable Gas will terminate its Agency Program within 60 days for all but certain customers under a settlement approved by Pennsylvania PUC in Equitable's rate case last week.

Equitable's Agency Program is a tariff-based program that permits Equitable to act as an agent for customers to secure gas supply, storage services, and transportation capacity to transport a customer's gas to Equitable's city gate. Essentially, Equitable serves as agent for the customer to obtain gas supply and then delivers that supply using Rate GDS, General Delivery Service. As of October, Equitable had approximately 1,377 customers in its Agency Program.

Equitable, in response to a discovery request by Hess Corporation, said it was planning to wind down the Agency Program, but gave few details. Hess intervened in the rate case to ensure that Equitable Gas's competitive supplier affiliate, Equitable Energy, was not given undue preference in the wind down process (Matters, 10/30/08).

Under a settlement with Hess and other parties, Equitable agreed to wind down the Agency Program within 60 days of the PUC's final order. Equitable will no longer act as an agent on behalf of customers to secure supply services, except in the limited circumstance of a customer attempting to bypass or otherwise leave Equitable’s system for another LDC (so-called gas-on-gas competition). Outside of that limited exception, Equitable will no longer acquire new agency customers, and will cease renewing existing agency contracts within 60 days of the order.

Equitable will send current agency customers a program termination letter, explaining that they can take tariffed service from Equitable, or supply from a list of competitive marketers. The letter will explain that purchasing gas supply from Equitable Energy will not result in any benefit to the customer with respect to its gas distribution service from Equitable, and customers leaving the Agency Program will not be directed to affiliate Equitable Energy for gas supply service.

The settlement also contains several operational changes meant to ease burdens on marketers. First, Equitable's imbalance trading period will be extended from one day to three days. Equitable will also post customer consumption data as meters are read throughout the month, allowing suppliers to better manage pool imbalances. Equitable will also automate the enrollment/drop process, and will consider automation of the reporting function of the Nomination Online Management System (NOMS).

FERC Leaves Non-conforming MISO RA PPAs to New Process

FERC denied the Midwest ISO's motion to qualify several non-conforming PPAs as Capacity Resources, as FERC recently directed MISO to establish a new process to be used for such qualification. FERC did not rule of the merits of the PPAs' use as capacity resources in its order (ER09-566).

MISO originally proposed to qualify several PPAs between various Minnesota utilities and Manitoba Hydro or Ontario Hydro as Capacity Resources for purposes of meeting Resource Adequacy Requirements under discretion provided in its tariff, since the contracts do not, as required by the tariff criteria, identify one or more specific resources that can be verified by the Midwest ISO.

Competitive suppliers including Reliant Energy and Integrys Energy Services protested, arguing that MISO cannot ignore the explicit criteria in the tariff, and that such discretionary qualification would be discriminatory (Matters, 2/6/09).

FERC agreed, to a certain extent. FERC rejected MISO's application to qualify the PPAs in the instant proceeding because a February 19 FERC order on Module E compliance directed MISO to develop tariff provisions that set out alternative verification procedures in the event a PPA does not expressly specify every requirement needed for Capacity Resource qualification. To ensure non-discriminatory treatment, all non-qualifying PPAs should be evaluated under such to-be-created alternative verification procedures, FERC said, and it refused to rule on the status of the PPAs at issue.

However, FERC did stress that MISO does have authority to certify PPAs even if they do not contain express language required to meet the criteria currently in the tariff. Such qualification must occur through the new alternative verification procedure, which will allow MISO to look outside the express terms of the PPAs themselves to verify compliance.

Calpine Says No New Build Without Long-Term Contracts

Calpine will only pursue new builds under long-term contracts, executives said during an earnings call in which Calpine announced a narrowed loss for the fourth quarter.

Calpine posted a net loss of $109 million for the three months ending December 31, 2008, versus a net loss of $142 million in the year-ago period. The gains came from Calpine's ERCOT fleet, where commodity margin was up 44% over the prior-year quarter, due to higher realized spark spreads on hedged positions, despite lower market spark spreads. These results were mitigated, however, by lower realized spark spreads in the North and West.

Net loss, excluding reorganization items, discontinued operations, other one-time items and non-cash mark-to-market gains or losses, was $146 million in the fourth quarter of 2008, compared to $90 million for the same period of 2007.

Outside of very incremental additions to the existing fleet at a low per-kW price, Calpine said any new build would require a long-term contract. Calpine is also eschewing hedging in the power trading markets in favor of bilaterals with utilities and other LSEs with native loads.

On a yearly basis, net income excluding reorganization items, discontinued operations, other one-time items and non-cash mark-to-market gains or losses improved by $340 million in 2008 to $15 million, compared to a loss of $325 million in 2007.

Compressed Spark Spreads Cut Mirant Adjusted Earnings

Lower energy gross margins, particularly in PJM, weighed Mirant fourth-quarter results, as adjusted net income was $77 million versus $191 million a year ago.

The adjusted figure excludes impacts such as unrealized gains from hedging, which improved results on a GAAP basis to $593 million for the quarter, up from $16 million a year ago.

Compressed spark spreads in the Mid-Atlantic hurt Mirant, as did lower realized gross margins from fuel oil management and proprietary trading activities. The IPP also saw lower realized value of hedges. Higher capacity revenues partially mitigated these factors.

Adjusted net income from continuing

operations for the year 2008 was $517 million versus $805 million a year ago. The decrease was due to lower realized gross margin and higher net interest expense.

MBR Applicants' Employee History Subject of FERC Scrutiny

FERC has asked two applicants for market-based rate authority whether individuals involved with the companies are the same individuals who pleaded guilty to charges of natural gas price manipulation in 2006.

At issue are the applications of Vista Energy Marketing (ER09-553) and Vista Energy Trading (ER09-614) for various market-based rate authority in several RTOs. Vista Energy Marketing said in its application that it is primarily engaged in the business of being a Retail Energy Provider in deregulated natural gas markets. Vista Energy Trading said it is primarily engaged in the business of wholesale electric power and energy purchases and sales as a marketer.

Irish Marketing LLC, a Texas company, is the sole General Partner of Vista Energy Marketing and Vista Energy Trading. Michael Whalen is identified as a member of Irish Marketing in each application.

FERC Staff asked the applicants whether that individual is the same Michael Whalen who pleaded guilty to conspiracy to manipulate the price of natural gas and signed a plea agreement with the U.S. Attorney's Office on June 19, 2006 in Docket No. CR 06-0265 MHP.

Additionally, the application of Vista Energy Marketing includes an email communication from Paul Atha, who is identified as the Director of Trading for Vista Energy Marketing. FERC Staff asked whether that individual is the same Paul Atha who pleaded guilty to similar gas price manipulation charges in June 2006 under the same docket.

Whalen and Atha also signed consent agreements with the CFTC agreeing to pay civil penalties to resolve similar charges of submitting false prices to indices.

FERC Staff requested the applicants state whether Whalen or Atha is currently engaged in selling or trading natural gas or electricity, or futures of natural gas or electricity in the United States. Additionally, FERC asked the entities to describe the current and expected future interaction of Whalen and Atha in their roles at the applicants, and whether such interaction was consistent with a probation order which Atha may be subject to, or whether such conditions have been lifted.

According to the applicants, two members of Irish Marketing LLC, including Michael Whalen as well as David Ranslem, sit on the board of Bounce Energy, which has been selling in the ERCOT mass market since receiving REP certification from the PUCT last spring.

PUCO Says FirstEnergy MBR Filing Must Account for End of Ohio POLR Obligation

FERC should require the FirstEnergy Operating Companies to resubmit their triennial market power updates for the Midwest ISO markets to include a delivered price test analysis because, among other reasons, the FirstEnergy Companies have not updated their analysis to reflect the end of a long-term native load commitment to their affiliated Ohio distribution companies, PUCO said in comments at FERC (ER01-1403 et. al.).

FirstEnergy's filing shows that, assuming the long-term native load commitment which was in place in 2007 remains and that the entire Midwest ISO footprint is the appropriate market, its Horizontal Market share analysis, which includes both the pivotal supplier screen and the wholesale market power screen, passes the FERC-established thresholds for market-based rate authority.

However, PUCO noted the FirstEnergy Operating Companies (including FirstEnergy Solutions and various merchant affiliates) no longer have any long-term obligation to serve native load in the State of Ohio as of January 1, 2009. Native load is being served via a competitive RFP through March 31, 2009. FirstEnergy Solutions, if a new stipulation on the FirstEnergy utilities' electric security plan is approved, would serve all native load for only the two months of April and May 2009, before another competitive procurement is used to procure supplies starting June 1, 2009.

The end of the FirstEnergy Operating Companies' native load obligation should have been reported to FERC as a material change under FERC's Order 697-A, PUCO said.

"Moreover, the Ohio Commission questions how FirstEnergy could indicate in its December 29, 2008 application that its long-term native load obligations would remain unchanged when at that same time the company was preparing and issuing an RFP inviting bids for short-term generation service to serve Ohio's FirstEnergy load," PUCO added.

"The company's statement is either erroneous or based on an implied assumption of market power, i.e. that no supplier had the ability to serve the retail loads of FirstEnergy's operating companies," the Ohio Commission alleged.

PUCO further argued that the FirstEnergy Companies' analysis should consider deliverability, since the Midwest ISO's independent Market Monitor in a market power study for the Midwest ISO ancillary services market determined that in the Midwest ISO central region and FirstEnergy zone, there was at least one pivotal supplier for 34.4 percent of the time.

"This is a clear indication that not all Midwest ISO generation is deliverable to [the] FirstEnergy zone, where uncommitted FirstEnergy generation is the dominant supplier, or at least that some Midwest ISO generation is not deliverable to FirstEnergy for significant periods of time," PUCO said.

FirstEnergy in October received FERC approval for its updated market power analysis in PJM.

Solomons Introduces Bill for Standard REP Billing Terms

Texas Rep. Burt Solomons has introduced bills relating to uniform billing terminology to be used by REPs as well as distributed generation.

HB 1822 would require the PUCT to develop a list of defined terms common to the telecommunications and electricity industries and require that applicable terms be labeled uniformly on each retail bill sent to a customer by a certificated telecommunications utility, retail electric provider, or electric utility, to facilitate consumer understanding of relevant billing elements.

HB 1866, relating to distributed generation, currently only addresses interconnection, and would provide that all buyers of retail electric services are entitled to the opportunity to interconnect distributed renewable generation according to conditions established by PUCT rule. However, the issue of payments for distributed generation is expected to come before the legislature, after the Commission concluded that PURA currently requires a negotiation between the REP and customer for the rate to be paid for any excess distributed generation, thus barring application of a feed-in tariff or price floor.

While dozens of bills are introduced relating to the electric market every session, Solomons, as previously reported, is the chair of the House State Affairs Committee, which has gained jurisdiction of utility matters in the House.

Briefly:

PUCT Staff Recommends Approval of Energy Services Group REP Applications

PUCT Staff has recommended approval of the REP certificate applications from six subsidiaries of Energy Services Group (TexRep5 through TexRep10), based on supplemental information filed by the applicants (Matters, 2/13/09). Staff had initially raised concerns that all the applicants were relying on the same individuals to meet PUCT technical and managerial qualifications (who were also responsible for three current Energy Services Group REPs), but the applicants submitted supplements listing 11 other qualified senior managers. With the expanded information, Staff deemed the applicants to sufficiently possess the technical and managerial requirements necessary to provide retail electric service.

OCC Opposes Duke FERC Affiliate Waiver

The Ohio Consumers' Counsel protested an application from Duke Energy Retail Sales for determination that FERC affiliate restrictions do not apply to it, which would clear the way for Duke Energy Retail Sales to sell to Duke Energy Ohio without FERC pre-approval, to serve the utility's native load customers (ER09-655). Although Duke Energy Retail Sales said such blanket authorization is appropriate since Ohio's restructured retail market means Duke Energy Ohio has no captive customers, the OCC said customers are captive since no competitive suppliers are currently offering service in the Duke territory. In prior cases where OCC has raised such an argument (such as FirstEnergy), FERC has maintained that it will not judge the efficacy of state retail choice programs.

EnergyConnect, ClearChoice Among Pa. Conservation Service Provider Applicants

Curtailment service providers EnergyConnect and ClearChoice Energy are among the companies thus far to apply for registration as a conservation service provider with the Pennsylvania PUC. Electric distribution companies must use at least one independent conservation service provider in meeting legislative efficiency targets. ClearChoice Energy (a d/b/a for Comperio Energy) is run by Carolyn Pengidore, a veteran of Strategic Energy and TXU Energy. Other firms seeking registration include Navigant Consulting, Lockheed Martin Services, CMX Inc., ClearResult Consulting, Conexus, Conservation Consultants Inc., Global Energy Partners, Orion Energy Systems, Staples Marketing Communications, the Sustainable Energy Fund, and TRC Environmental Corp.

AES North American Generation Income Falls

Income from continuing operations before taxes and other items from North American Generation at AES Corp. was down in the fourth quarter, to a loss of $8 million versus income of $94 million a year ago. For the year, such income from continuing operations was down at $380 million from $536 million a year ago. North American Generation consolidated gross margin was down at $108 million from $167 million a year ago. On a consolidated basis, AES posted a net loss of $47 million for the fourth quarter, reversing earnings of $8 million a year ago.

FirstEnergy ... from 1:

calculation of the utilities' Generation Service Uncollectible Rider. If there is any remaining unpaid amount existing 30 days following the due date on the customer's bill, such amount shall be paid to the governmental aggregation supplier at that time.

If governmental aggregators provide phase-in credits to customers, the once-bypassable Generation Service Uncollectible Rider would become unavoidable, except for Rate GT and Rate GSU customers on competitive supply with a provider other than a governmental aggregator. The rider would initially be set at the average rate of 0.0539 cents per kWh, and reconciled quarterly. If no phase-in occurs, then the rider would only reflect Standard Service Offer uncollectibles, and be fully bypassable.

The revised settlement would also create a program by June 30, 2009 for residential customers with distributed generation to sell RECs to the utilities. Costs would be recovered through the bypassable renewable energy rider.

WMECO ... from 1:

the continental U.S. and parts of Canada). In addition, RECs may come from Low Impact Hydropower Institute (LIHI) certified run-of-river hydropower units up to 30 MW in the New England and regional area.

Although broker Mass Energy has advocated greater user of Massachusetts RPS-eligible RECs, WMECO argued customers should be permitted to choose the quality of RECs purchased from competing suppliers.

REC suppliers and brokers would be required to follow current EDI Protocols as outlined in the Electronic Business Transactions (EBT) Report.

WMECO would issue a monthly bill for

RECs provided to customers. WMECO would use the rates and pricing options supplied by each REC supplier/broker to calculate the REC portion of customer bills, and integrate such billing with the company's billing in a single monthly mailing to the customer. WMECO would provide the REC supplier/broker with customer usage and billing information in accordance with the EBT Standards.

REC suppliers and brokers would be required to present WMECO with a customer signature in order for the utility to provide the customer's account number.

RECs for WMECO's program must be delivered through the NEPOOL GIS tracking system, and WMECO stressed that the Clean Energy Choice program of the Massachusetts Technology Collaborative does not constitute a tracking system.