Energy Choice Matters

April 24, 2009

Energy Savings Tips Areas for Growth, Says Market Conducive to More Consolidation

Energy Savings Income Fund intends to focus its U. S. growth in Pennsylvania, Ohio (gas), and California (gas) upon completing its acquisition of Universal Energy (Matters, 4/23/09), Energy Savings CEO Ken Hartwick told us yesterday.

The ability of Energy Savings to accelerate its U. S. growth was one of the mains attractions of the Universal acquisition. Hartwick said that, in particular, Energy Savings plans to concentrate on growing the existing Universal customer base in Pennsylvania, Ohio (gas), and California (gas). Those markets are seen as a good fit with Energy Savings' product.

Energy Savings had already intended to enter the Pennsylvania gas market before the acquisition, submitting an application for a gas license in March (Only in Matters, 3/30/09). Hartwick credited the Pennsylvania gas market's stable regulatory environment for attracting Energy Savings. Though Hartwick sees other potentially attractive markets in both electric and gas (citing Massachusetts and Connecticut), he said Energy Savings will be prudent in expansion, and will continue to approach markets one at a time as it has done previously.

Energy Savings' five-year product will continue to be the "predominant" offering for residential customers, Hartwick said. Universal, which itself has focused on five-year products, had been adjusting its U. S. product line to include shorter deals, something which Energy Savings has said

Continued Page 6

Exelon Generation Reports Margin Improvement due to Hedging

Exelon Generation net income rose to $528 million in the first quarter of 2009, from $438 million a year ago, on mark-to-market gains from hedging activities, slightly better margins, and a favorable tax ruling. The unit includes Exelon's merchant wholesale operations as well as competitive retail sales.

Generation reported mark-to-market gains of $112 million from economic hedging activities before the elimination of intercompany transactions in the quarter, which were offset by, among other things, a non-cash charge of $135 million associated with the impairment of certain Texas plants (Handley and Mountain Creek), which Exelon recorded due declining ERCOT power prices.

Excluding the impact of these items and other unrealized charges, Generation’s net income in the first quarter of 2009 increased $116 million compared with the same quarter last year, primarily due to higher energy gross margins, lower operating expenses, and tax benefits.

Generation’s average realized margin on all electric sales, including sales to affiliates and excluding trading activity, was $39.25/MWh in the first quarter of 2009 compared with $38.77/MWh in the first quarter of 2008, as hedging shielded the unit from lower spot prices in 2009. Exelon said it was able to grow its margins even though around-the-clock market prices were roughly 28% lower at PJM Western Hub and 36% lower at NiHub in the first quarter of 2009 as compared to the first quarter of 2008. Results were also helped by fewer refueling outages

Continued Page 7

PUCT Adopts Final REP Certification Rules

The PUCT formally adopted new REP certification rules (35767), approving Staff's most recent proposal with one added change from Commissioner Kenneth Anderson to ensure certificate applicants are required to report the complaint histories of firms with which they have merged (Matters, 4/21/09).

As more fully detailed in our March 26 analysis, the new rule sets two types of financial standards REPs may meet in order to be certified.

Investment-grade REPs, and REPs with tangible net worth greater than or equal to $100 million (along with associated financial criteria), would not have to post a letter of credit for certification. REPs could meet either of those two standards by relying on one of four types of guarantors which meet the standards, including an affiliate, financial institution, or wholesale power supplier that provides credit support.

REPs failing to meet the investment-grade or tangible net worth standard would be required to post a $500,000 letter of credit with the PUCT to maintain certification. REPs which begin to serve load after January 1, 2009 will also be required to demonstrate shareholder's equity of not less than $1 million for certification, and maintain that level for two years.

A REP that obtained certification before the effective date of the new certification rules which does not meet all of the requirements of the new rules may continue to operate as a REP until 12 months after the effective date of the new rules.

Customer deposits must be kept in a segregated cash account or escrow account, or backed by a letter of credit. The rule permits lockbox arrangements to meet the requirement under certain circumstances.

The final rule also bolsters the managerial and technical requirements for certification, including a mandate that the REP have at least one principal or permanent employee who has five years of experience in energy commodity risk management of a substantial energy portfolio (a value of at least $10 million). A REP may enter into a contract for a term of not less than two years with a provider of commodity risk management services that has previously managed a substantial energy portfolio for at least five years in order to meet the requirement.

An individual that was a principal of a REP that experienced a POLR mass transition may not be used to meet the managerial requirements, and may not own more than 10% of a REP, or directly or indirectly control a REP.

Mass Energy Says WMECO REC Billing Provisions Burdensome

Although REC broker Mass Energy welcomed changes that Western Massachusetts Electric Company has made to its proposal to extend retail access to green power suppliers, the broker still found many provisions, particularly regarding billing, to be unduly burdensome, it told the Massachusetts DPU (08-54).

Originally, WMECO filed a renewable retail access plan, as required under last year's Green Communities Act, that would have created a utility-administered program with an RFP to select only two REC providers offering pre-determined REC percentages and prices. In response to stakeholder comments, WMECO revised its proposal to create a program open to all REC brokers (Matters, 3/2/09).

However, in its updated program, WMECO proposes that payments to REC brokers will be made only after the proper vintage of RECs have been delivered, with payment based on the number of RECs delivered to WMECO during the preceding month. Mass Energy argued that since REC suppliers often have to provide compensation to generators in advance of REC deliveries in order to secure REC purchase agreements, WMECO's payment schedule represents, "an onerous and unnecessary provision."

Mass Energy recommended that suppliers should be paid via electronic funds transfer within five days of payment by the customer to WMECO. Although WMECO may be concerned about REC delivery compliance, Mass Energy said that it is more appropriate for the DPU to monitor the compliance of REC suppliers as opposed to WMECO. Should a REC supplier fail to deliver the appropriate number of RECs, it would be at risk of having its license revoked by the DPU, Mass Energy noted.

Furthermore, WMECO's filing states that the REC supplier will be required to deliver the number of RECs relating to customer usage, but will only be paid based on the amount the customer pays, regardless of the number of RECs delivered by the supplier.

"There is no practical reason or public policy rationale for a REC supplier to retire RECs on behalf of non-paying customers," Mass Energy said, drawing a distinction between RECs and actual energy, the latter of which is still supplied to non-paying customers for policy reasons.

"Furthermore, while distribution companies are able to place bad debt into rates and pass costs onto their customers, competitive suppliers and REC suppliers have no such recourse. It is imperative for the Department to set policies and practices that encourage rather than burden suppliers that participate in voluntary green power programs," the broker added.

Mass Energy recommended that WMECO report the monthly REC obligation for REC suppliers based on the kWh customers have paid for, rather than the kWh for which they were billed, or alternatively factor credits for delinquent payments into future load obligations. Suppliers should be able to reduce their delivery obligations based on customer non-payment, Mass Energy added, noting it has experienced the problem in National Grid's REC program as well.

Mass Energy also sought clarification on how REC supplier billing will be handled for customers on budget billing or repayment plans, reporting it has experienced problems under both scenarios in National Grid's GreenUp program. The REC broker argued that any partial payments made by customers should be pro-rated between WMECO and the REC supplier.

WMECO would require all REC suppliers to offer a 100% option and a 50% option with identical product mixes (e.g. the same class and source of RECs). Mass Energy said that such a requirement conflicts with the Massachusetts Technology Collaborative's program, in which the 50% product mix has a lower percentage of Massachusetts RPS-eligible content (15%) than the 100% product (25% Massachusetts RPS-eligible).

Suppliers should be allowed to bank RECs consistent with Green-e rules (i.e. RECs from Quarter 3 or Quarter 4 can be used to fulfill load obligations in the succeeding year), Mass Energy suggested, asking that the provision be applicable in all utility REC programs.

Telephonic enrollments should not require third-party verification, Mass Energy added.

Finally, Mass Energy recommended that REC program bill stuffers should be sent out via email in addition to being placed with paper bills, since customers on electronic billing would otherwise not receive the REC program material.

Mass Energy again urged the DPU to act on WMECO's and the other utilities' REC programs quickly, which have been pending since last fall.

Ontario Energy Board Won't Define Long-Term LDC Contracts

The Ontario Energy Board refused to define a specific timeframe for long-term contracts in adopting final guidelines to allow LDCs to apply for pre-approval of long-term transportation and supply agreements to facilitate the construction of new natural gas infrastructure.

The Board has concluded that long-term contracts may be justified to support the development of new natural gas infrastructure, in order to access new or diverse supplies.

However, although stakeholders petitioned for a bright-line definition of "long-term" in the final guidelines (Matters, 3/31/09), the Board declined to provide one.

"[T]he Board is of the view that defining long-term is not necessary since the pre-approval process is limited to projects that would support the development of new natural gas infrastructure. It is expected that the length of the contract will vary with, amongst other things, the nature and magnitude of the new natural gas infrastructure," OEB said.

Additionally, the Board said that while LDCs would have the option to seek pre-approval for such long-term contracts, it was not mandating that utilities seek Board pre-approval, even in cases where the contracts are with affiliates of the utilities. OEB also declined to extend its review to renewals of long-term contracts, as some stakeholders had suggested.

OEB Approves Price for Customers Electing to Leave Regulated Plan

The Ontario Energy Board approved, without modification, proposed amendments to the Standard Supply Service Code to (1) reflect changes in the classes of consumers and determination of rates and (2) to address inconsistencies in the application of the seasonal changes in the tier threshold for condominiums (Matters, 4/2/09).

The final rule reflects a recent change in Ontario Regulation 95/05 which allows customers eligible for the Regulated Price Plan through November 1, 2009 to opt off of the plan prior to that time. Such opting-out customers without interval meters will pay the weighted average hourly spot market price for default commodity supply.

Additionally, the amended code holds that the seasonally variable rate tier threshold for Regulated Price Plan customers does not apply to non-residential condominiums, which will have a flat threshold of 750 kWh for pricing year-round.

Pa. Consumer Advocate Says NFG Merchant Function Charge Impermissible

While supporting most aspects of National Fuel Gas Distribution's proposed voluntary Purchase of Receivables program, Pennsylvania's Office of Consumer Advocate challenged NFG's petition to unbundle uncollectibles and place then in a merchant function charge (Matters, 4/6/09).

Moving such write-offs out of base rates may run afoul of 66 Pa.C.S. § 1408, which states that the PUC shall not grant utilities any automatic surcharge for uncollectible expenses, OCA argued. The collection (and adjustments to collections) under the merchant function charge amounts to single-issue ratemaking, OCA added.

OCA also said it was unclear why unbundling in the manner proposed by NFG is necessary.

Interstate Gas Supply supported NFG's proposal as filed, stating the program, "will provide the tools necessary for [suppliers] to become more active in the territory and increase choices for consumers who may be interested in alternative supply arrangements for their natural gas purchases."

IGS said that as a result of the POR filing, it is in the process of amending its license to market in the NFG territory, as previously reported (Matters, 4/8/09).

PUCT Staff Favors Abatement of Exelon-NRG Docket

PUCT Staff supported a motion to abate the Commission's review of Exelon's hostile acquisition of NRG Energy, "because there is substantial uncertainty as to when the transaction will close or even if it will close at all."

Previously, an ALJ had called Exelon's filing deficient because it did not list a specific date for the transaction to close, which hinders the ability of the Commission to determine if the transaction would result in ownership of more than 20% of capacity in ERCOT, as installed generation capacity may fluctuate over time (36555, Matters, 4/10/09).

In response, Exelon said it anticipates completing the exchange offer and closing the transaction in the fourth quarter of 2009.

However, Staff said Exelon's stated time parameter for the closing of the transaction, "is insufficiently definite because it does not permit an accurate calculation of installed generation capacity since the installed generation capacity could be substantially different if the closing occurs at the beginning of the quarter or three months later at its end."

Staff said it is not attempting to delay the proceeding but said additional facts that bear on the timing of and existence of an actual transaction will become known following NRG's annual shareholders meeting, which will likely occur in late May 2009, and the extension of Exelon's tender offer deadline to June 26, 2009. Accordingly, it supported a motion to abate from NRG Energy pending such developments.

OEB Intends to Fine Direct, Universal for Alleged Violations

The Ontario Energy Board issued notices of its intent to order administrative penalties against Universal Energy Corporation and Direct Energy Marketing Limited for various alleged violations of the retail market code of conduct, including making false, misleading or deceptive statements to consumers.

OEB said the allegations stem from a recent Canadian Broadcasting Corporation report on door-to-door marketing.

The Board said it intends to levy a fine of $60,000 (all figures Canadian) on Universal for the alleged actions of two agents who, according to OEB, were employed by the retailer for a period of less than one month in late October and early November 2008. Among the allegations from OEB is that one agent told a customer that price protection plans have always saved money over five years, and that another agent said prices are going to go up every six months absent a protection plan. Additionally, another Universal agent, employed for about two months in 2007, was alleged to have forged the signature of a customer's deceased husband. OEB said Universal became aware of the forgery complaint during an attempted enrollment reaffirmation call. The agent involved was fired.

OEB intends to fine Direct Energy $15,000 for the alleged actions of a former agent, who reputedly told a consumer that a protection plan would be less than the market price whenever the customer consumed gas.

The retailers may request a hearing before the Board concerning the notices.

Tower Companies Say Emails Should Remain Confidential

The Tower Companies opposed PJM's motion to release publicly various emails among the companies that FERC collected as part of its investigation of the Companies, with Tower citing PJM's own proclivity to resist public disclosure of information which the RTO deems confidential (EL08-49).

PJM says the emails must be released because members must understand their content in order to decide on what recourse they should take in light of FERC's dismissal, in part, of a complaint from PJM against Tower.

As noted in our original story (Matters, 4/16/09), PJM's stance, particularly due to the inflammatory language used in its petition, is quite ironic given persistent criticism levied at PJM by certain state regulators and consumer advocates for its non-transparent operations and redacted data.

Tower seized upon that history in its reply at FERC, noting PJM in the past has gone so far as to seek confidential treatment for the names and titles of its employees, a motion which FERC granted.

Tower also said that it has offered to share certain emails in question with members of the PJM Board and counsel for certain PJM members on a non-public basis. That sounds very much like PJM's prior offers to various state regulators to share certain confidential bid data, if regulators signed various non-disclosure agreements.

Furthermore, Tower argued that release of the emails would set a, "disturbing precedent for participants in energy markets going forward by rendering their confidential business material public even though that material was submitted to the Commission in a non-public confidential proceeding."

Briefly:

Scana Energy Earnings Flat

Competitive natural gas marketer Scana Energy reported earnings of $22 million in the first quarter of 2009, flat versus the year-ago period. The retailer said it added 6,400 customers during the quarter, bringing its total Georgia customer count to 465,000, which it said maintains its position as the second largest natural gas marketer in the state. Consolidated net income for parent Scana Corp. was $114 million, up from $109 million a year ago.

Final Language Being Added to Texas POLR Rule

Texas stakeholders are working on the final provision of the revised POLR rule (Matters, 4/23/09); specifically, drafting language to effectuate the use of a defaulting REP's letter of credit to pay POLR deposits, under a waterfall which places the deposits required from low-income customers transferred to volunteer POLRs first in line (see discussion in Matters, 4/10/09). The final POLR rule is expected to be considered at the May 7 PUCT open meeting.

PUCT Staff Expects to Bring Accelerated Switching Proposal at Next Open Meeting

PUCT Staff said they expect to present the Commission with a final proposal for accelerating the switching timeline at the May 7 open meeting (Matters, 3/6/09).

PUCT Says Nodal Market Should Have Own Performance Measures

The PUCT said the ERCOT nodal market should have its own set of performance standards for market participants, apart from federal reliability standards, dismissing concerns from some stakeholders that the nodal standards would amount to double jeopardy.

DPUC, OCC File Own Complaint Over ISO-NE Capacity Import Delivery

The Connecticut DPUC and Office of Consumer Counsel have filed their own complaint against ISO New England regarding the capacity import transactions over the Northern New York AC interface that ISO-NE originally said failed to deliver, but now says were not actually dispatched (Matters, 4/23/09). The DPUC and OCC moved to consolidate their complaint with a previous complaint filed by Connecticut Attorney General Richard Blumenthal. Meanwhile, Blumenthal filed his first set of data requests to ISO-NE, requesting the identities, amounts, and other relevant data pertaining to the 108 instances in which the ISO originally said suppliers failed to deliver. Blumenthal also demanded that the ISO justify its statements earlier this week that it had erred in saying suppliers failed to deliver, and that none were actually dispatched, as the AG sought data for such a conclusion, and an explanation of the individuals involved in the examination.

Md. SOS Auction Sees Lower Prices

The results of the Maryland utilities' most recent solicitation for SOS supplies resulted in significantly cheaper power than recent solicitations, the PSC said yesterday, though the bid results remain confidential and retail rates have not been posted. The PSC did say, however, that Type II rates starting June 1 will decrease from about 15% to 38% depending on service area. Although the bid consultant's report was not available yesterday, the auction apparently was not plagued by the risk premiums seen in the two previous SOS solicitations, or any premium was masked by markedly lower wholesale prices. The RFPs also procured residential supply for the period starting October 1, but the blending of past procurements will prevent residential customers on SOS from receiving the full decrease in prices currently seen in the market.

ESIF *... from 1:*

it has been evaluating as well. However, Hartwick said that for the most part, shorter term offerings will be confined to the commercial market, where businesses may be reluctant to sign up for a length of time as long as five years.

After the acquisition is completed, Energy Savings will use a single brand, Hartwick said, mostly likely the Energy Savings moniker.

Referencing the tight credit markets, Hartwick said the market is conducive to further consolidation, with prices for customer books more favorable than they were a year ago. Energy Savings, with its unlevered balance sheet and critical mass from the Universal transaction, is in a "good position" to further pursue consolidation activities, Hartwick said.

Exelon *... from 1:*

versus the prior-year quarter.

Average margin for Market and Retail sales was $57.12/MWh in the quarter, essentially flat with the $57.19/MWh margin from a year ago.

Exelon Corp. CEO John Rowe highlighted the default service auctions in New Jersey (fixed price class) and at PPL in Pennsylvania as producing attractive prices of $104/MWh and $87/MWh, respectively, compared with spot market levels. Those auctions procure load following, full requirements service, which has been criticized by various consumer advocates for being more costly than block products.

Rowe does expect that upcoming auctions will likely produce prices that are a bit lower, and said he is glad Exelon is as hedged as much as it is for the rest of this year and through 2010. Still, Ian McLean, Exelon Executive Vice President for Finance and Markets, said that bidders are adding risk premiums reflecting their difficulty in obtaining funding in their bids to serve default service load, which should mitigate downward pressure on price to some extent.

Exelon reported seeing lower prices both in Texas and Western PJM due to wind, and Rowe stressed Exelon was taking wind into consideration in valuing NRG Energy's Texas assets as part of Exelon's hostile attempt to acquire NRG. Rowe, admitting it was a snide aside to make, said Exelon seems more concerned with wind's potential to depress ERCOT prices than NRG does.

Rowe noted that, politically, it's very clear large amounts of new wind facilities are supported, but added that the cost of adding such wind is between $50 and $80 per ton of avoided carbon dioxide. "This is not as cheap a way for our customers to deal with the CO2 problem as everybody wants to believe it is," Rowe said.

Rowe further noted that, "It's obviously very important to our hopes that gas prices get back in the $6 to $7 range."

Consolidated earnings across Exelon Corp. were $712 million for the quarter, up from $581 million a year ago.