Energy Choice Matters

May 8, 2009

TDUs Bear Burden in Justifying More Estimated Meter Reads, But PUCT Receptive if Accurate

TDUs wishing to utilize more estimated meter reads as part of an expedited retail switching process will have to overcome skepticism from two PUCT Commissioners, but TDUs showing robust estimation methodologies may be granted more flexibility, based on comments at yesterday's open meeting.

Staff's proposal for adoption to shorten the switching window to seven days would limit TDU estimates, beginning January 1, 2010, to 20% of meter reads for the purposes of a switch in a month, and 5% per year. Chairman Barry Smitherman, citing cost concerns of using actual meter reads, argued that the rule should allow for expanded use of estimates (Matters, 5/7/09).

However, Commissioner Kenneth Anderson said he initially is deeply skeptical of an increased use of estimates, because the process is hard to explain to customers, noting REPs will bear the headaches of inaccurate estimates.

Commissioner Donna Nelson also said she was initially leaning against estimates, and said TDUs have the burden to establish that increased use of estimates won't have a detrimental effect on REPs' ability to attract customers. In particular, although estimates for periods of normal consumption may be fairly accurate, many customers have a negative perception of estimates from their use after the impact of Hurricane Ike, when estimates were widely used as field representatives were engaged in restoration efforts. Due to the reduced load during that period, estimates were generally less accurate than typical.

Anderson was open to allowing TDUs which have invested in their estimating techniques, and

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Dominion Retail Says Ohio Postcard Not Misleading, Seeks Dismissal of Complaint

The Ohio Consumers' Counsel's complaint against Dominion Retail concerning a postcard sent to customers regarding the new Standard Choice Offer should be dismissed because the postcard was not misleading; the OCC has failed to show any customer harm; and the OCC lacks standing to make the complaint, Dominion Retail said in a motion to dismiss.

As previously reported (Matters, 3/25/09), the mailer, under Dominion Retail's Dominion East Ohio Energy trade name, informed customers that they, "will no longer receive gas supply from Dominion East Ohio beginning April 2009," referencing the fact that individual SCO suppliers will now serve specific customers. OCC alleged that the statement is prone to cause customers to think their utility gas service would be terminated.

Dominion Retail rebutted that claim by noting the following sentence on the postcard informed customers that they would still be supplied with gas, stating, "your gas supply will be assigned to another company under the new Standard Choice Offer, or SCO."

"This sentence should immediately lay to rest any concern the customer might have that he/she would be left without gas service," Dominion Retail said. Moreover, even if some customers may have mistaken the plain message which the two sentences conveyed, the, "unquestionably entirely accurate [sentences] cannot be reasonably interpreted as being misleading and deceptive,"

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ComEd Posts Retail Rates, ICC Approves Ameren RFP

Commonwealth Edison posted retail rates from its recent RFP for default service supplies. The rates below reflect "Purchased Electricity Charges" (PEC) starting June 1 and lasting through May 31, 2010, which are listed as the "Electricity Supply Charge" on bills, in ¢/kWh.

Customer Group or Subgroup	Summer PEC	Nonsummer PEC
Residential Non-Electric Space Heating	6.612	6.458
Residential Electric Space Heating	5.259	3.992
Watt-hour Non-Electric Space Heating	6.764	6.574
Demand Non-Electric Space Heating	6.669	6.530
Nonresidential Electric Space Heating	6.360	6.256
Dusk to Dawn Lighting	2.407	2.875
General Lighting	6.288	6.268

Additionally, the Illinois Commerce Commission approved results from the Ameren utilities' RFP for default service supplies conducted by the Illinois Power Agency. The load weighted average on-peak price of the winning bids ranged from $30/MWh to $58/MWh depending on month, (full results at http://www.icc.illinois.gov/downloads/public/en/PublicNotice090505AmerenEnergyRFP.doc).

The eight winning suppliers were Ameren Energy Marketing, American Electric Power Service Corp., Constellation Energy Commodities Group, Dynegy Marketing & Trade, Exelon Generation, Merrill Lynch Commodities, MidAmerican Energy, and Sempra Energy Trading.

PUCT Approves Final POLR Rule

The PUCT adopted as final new POLR rules, approving Staff's most recent proposal for adoption (Matters, 4/23/09) along with revisions suggested by Staff and Commissioner Donna Nelson (Matters, 5/7/09).

In short, the rule retains the existing volunteer/non-volunteer POLR split, but encourages more volunteer POLRs and increases the number of non-volunteer POLRs from five to 15 per service area and customer class.

To encourage volunteer POLRs, the rule holds that volunteer POLRs agreeing to assume customers up to 1% of their market share would be assigned customers last in the allocation of customers among Large Service Providers (the new term for non-volunteer POLRs).

Volunteer POLRs will also have priority in receiving distributions from a defaulting REP's letter of credit, to be used to pay the security deposit of low-income customers transitioned to the POLR.

Volunteer POLRs must serve residential customers on monthly market rates that are not tied to MCPE.

Large Service Providers may charge a default POLR rate based on MCPE, but the rule encourages Large Service Providers to charge a lower, market-based rate. The MCPE multiplier in the default rate is 120% for residential customers and 125% for other classes.

To encourage Large Service Providers to offer a monthly market rate instead of the MCPE rate, those charging monthly market rates will not have to notify customers of the availability of offers from competitors, as they must do under the old rule.

Large Service Providers will also only be allowed to charge the MCPE-based rate to residential and small non-residential customers for 60 days (or until the next billing date after 60 days). After 60 days, they must move such mass market customers onto a monthly market rate, unless the customer is delinquent in payment.

For residential customers, POLRs may require a deposit to be provided after 15 calendar days of service if the customer received 10 days' notice that a deposit is required. However, if the REP can obtain customer data to allow it to perform a credit check, it must first perform the credit check and waive the deposit if the customer would meet the REP's waiver requirement for its typical products.

For the large non-residential customer class, a POLR may require a deposit to be provided in three calendar days. All other classes will have 10 calendar days to pay deposits.

Dynegy Says Coal-to-Gas Switching Not a Concern Based on its Dispatch Prices

Dynegy reported lower adjusted EBITDA of $198 million for the first quarter, compared to $237 million a year ago, on weaker power prices, partially mitigated by increased volumes in the Midwest and Northeast. On a GAAP basis, Dynegy's net loss was $335 million, versus a net loss of $152 million a year ago, due to goodwill charges.

Production in the first quarter increased 10% year-over-year, with higher output from Dynegy's natural gas-fired facilities. The on-peak market heat rates increased in Dynegy's key regions as well, leading to higher utilization of its gas plants.

In the Midwest, overall production volumes increased by about 10% due to warmer winter temperatures, with most of the gains in gas-fired generation. The higher volumes helped mitigate lower prices to produce Adjusted EBITDA for the Midwest fleet of $168 million, versus $187 million a year ago.

Dynegy said its use of lower-cost Powder River Basin coal has insulated it from any coal to gas switching which may be occurring in the Midwest, compared with generators using Appalachian and Illinois coals. In fact, its gas-fired plants have benefited, though Dynegy eventually expects the market to balance as higher gas-fired generation places greater pressure on gas prices, making it again less competitive versus coal.

Furthermore, Dynegy said the Midwest simply does not have enough natural gas capacity to meet even average, much less peak, load requirements, dismissing investor concerns of coal to gas switching. Dynegy said its Midwest coal fleet has a cost of dispatch of approximately $20 per megawatt-hour compared to an approximate $24.50 per megawatt-hour dispatch cost from spot PRB and rail prices, and significantly below coal-fired units using Central Appalachian and Illinois coal.

Dynegy said its Midwest combined-cycle facilities are also advantaged in the low natural gas price environment, and the units are seeing increased utilization since their typical dispatch cost of about $27 per megawatt-hour makes them more economical than some competitors' non-PRB coal-fired units.

In the Northeast, cooler than normal weather and lower fuel prices drove a 60% increase in production volumes. Adjusted EBITDA was relatively flat at $40 million versus $42 million a year ago.

In the West, warmer temperatures led to a 40% decline in volumes year-over-year, though adjusted EBITDA increased from $19 million to $21 million due to increased toll revenues from Morro Bay.

FERC Seeks Higher Enforcement Budget

FERC requested to increase its annual budget for enforcement activities 11% to $36.3 million, in an annual budget filing to Congress. FERC is funded by industry fees and does not require appropriations.

The Commission requested an additional five full-time equivalents to support market oversight functions, bringing the total number in enforcement to 186. FERC is also in need of additional attorneys to handle, "an increased workload associated with enforcement related orders and proceedings resulting from increased investigations."

FERC also requested a 5% increase in its budget related to the prevention of market power, to $10.8 million.

FERC said it opened 12 investigations involving allegations of market manipulation in fiscal year (FY) 2007, and 20 in FY 2008. "The Commission expects the number of cases to continue to increase through FY 2010," it said in its budget request.

"Furthermore, based on the experience and judgment of Commission staff, there were a number of matters in FY 2008 that could lead to litigation in FYs 2009 and 2010. This trend is especially pronounced in the market manipulation cases which are expected to form a larger share of enforcement activity in FYs 2009 and 2010," FERC added.

FERC's total requested budget was $298 million.

World Energy Solutions Narrows Q1 Loss

Online broker World Energy Solutions narrowed its first quarter loss to $665,000, versus a loss of $2.2 million in the year-ago period, on record revenue and lower operating expenses.

Gross profit increased to $2.89 million from $1.88 million a year ago, and revenues increased to $4.0 million from $3.1 million.

World Energy said it saw record revenue from retail natural gas and solid performance from retail electric brokering. Retail revenue increased 20% year-over-year.

The softening of commodity prices has been a strong driver for retail customers to lock in long-term, World Energy said.

Its wholesale segment also saw growth with a 57% increase in revenues and a doubling of the customer base to 42.

World Energy said it continues to evaluate acquisitions in its base brokering business, and is also examining opportunities at acquiring green energy service companies to complement its carbon auctions.

PUCT Hears Kelson CCN Arguments

The PUCT heard oral arguments yesterday concerning Kelson Transmission's CCN application for a 345-kV transmission line to interconnect Kelson's generation affiliate, Cottonwood Energy, with ERCOT, with much of the discussion focusing on the business model for independent transcos, affiliate concerns, and whether Kelson was discouraged from seeking ERCOT Regional Planning Group review of the project.

A proposed order from two ALJs would deny the CCN for several reasons, including the lack of record support for claims of consumer benefits, and Kelson's opaque business strategy and financial plan which hinder a finding that Kelson can provide continuous and adequate service (Matters, 4/3/09). Most of the oral arguments reiterated material already covered in testimony which need not be repeated.

However, among the issues of interest to the Commissioners was Kelson's transco business model for a line which will mainly benefit an affiliate, by providing access to the more lucrative ERCOT market. Although a cogenerator would also interconnect with the line, and several other IPPs have expressed interest, the bulk of the line's capacity would be used to move generation from the Cottonwood plant, an affiliate of Kelson, into ERCOT.

By seeking a CCN for the line, its costs would be paid by ERCOT customers. Chairman Barry Smitherman asked why the line should not follow the so-called Tenaska model, where a generator builds and finances the line itself to serve its own needs.

Kelson noted that the Tenaska model makes the line a private line not subject to open access, since a private entity funded it. Kelson said its open access model was more complementary to ERCOT's competitive market, and that merchant transmission builders should be encouraged.

However, Smitherman said he would be more excited about an independent transco if the line was connecting something other than an affiliate plant.

Still, Commissioner Kenneth Anderson pressed opponents of the Kelson CCN, which include Staff, industrials and the public utility counsel, to cite a legal basis for their criticisms of Kelson's affiliate status with Cottonwood, noting that the ALJs found that Kelson's code of conduct met PURA's requirements.

The Commission will likely decide the case at its next open meeting.

Briefly:

DPUC Approves CL&P Last Resort Service Procurement

The Connecticut DPUC approved the results of Connecticut Light and Power's May 6 RFP for Last Resort Service supplies for the period beginning July 1. Retail rates must be posted by May 19.

FirstEnergy Solutions Signs 24 Municipal Aggregations

Expanding on comments made during a recent earnings call (Matters, 5/6/08), FirstEnergy Solutions said it has signed supply agreements with governmental aggregations in 24 Ohio communities. Aggregations may choose between two pricing arrangements, a graduated discount or flat discount. The graduated discount offers residential savings of 10% off the Standard Service Offer rate (to be set through an auction) in 2009, 6% in 2010, 5% in 2011 and 4% in 2012. The flat-rate arrangement offers a 6% residential discount off SSO rates through the end of the contract. Small commercial prices offer lower discounts, and may be graduated or flat. The aggregations cover 195,000 residential customers and 21,000 commercial customers and include Alliance, Aurora, Barberton, Boardman Township, Burton Township, Canal Fulton, Cortland, Defiance, Doylestown, Euclid, Green, Marion, Munroe Falls, Navarre, Ottawa Hills, Parma, Ravenna, Sandusky, Seven Hills, Silver Lake, Stow, Tallmadge, Troy Township and Trumbull County.

Direct Says SCO Slice Includes 60,000 Customers

Direct Energy said it will supply 60,000 additional customers at Dominion East Ohio as a winning supplier in the Standard Choice Offer auction. The winning SCO suppliers (Direct, Dominion Retail, Hess Corporation, and Interstate Gas Supply) were first reported in Matters (Matters, 4/15/09). Direct said it now serves more than 250,000 natural gas customers at Dominion East Ohio and Columbia Gas of Ohio.

Pepco Energy Services Net Income Down Slightly

Pepco Energy Services reported lower net income of $8 million for the first quarter of 2009, versus $9 million a year ago, after the market closed yesterday. Gross margin from retail energy supply was $30 million in the first quarter of 2009, compared to $24 million in the first quarter of 2008, resulting primarily from more favorable congestion costs and lower costs of electric supply. Pepco Energy Services had retail electric sales of 4,794 GWh in the first quarter of 2009, compared to 4,766 GWh in the first quarter of 2008.

EnerNOC Loss Widens

EnerNOC reported a wider first quarter loss of $12.5 million for the first quarter, versus $11.0 million a year ago, mainly on a $2 million increase in selling and marketing expenses. However, gross profit was up at $7.9 million, from $6.5 million a year ago. Revenues were essentially flat at $18.4 million, a decrease of $200,000 year-over-year. EnerNOC said it has grown its demand response megawatts under management to over 2,700 MW as of March 31, 2009, an increase of approximately 650 MW during the quarter, representing its highest quarterly sales performance ever. EnerNOC also reported that it grew megawatts under management by approximately 300 MW after the quarter's end, mostly from PJM sales. Sales from its "high margin" energy procurement and energy efficiency solutions were $1.6 million, compared to $1 million a year ago, mainly from the South River Consulting acquisition. EnerNOC said it is "optimistic" about the future of its energy brokering business, citing Pennsylvania as a growth market as rate caps expire.

Comverge Loss Grows

Comverge reported a larger net loss of $9.1 million for the first quarter, versus $8.8 million a year ago, on higher costs of revenue and R&D expenses. First quarter revenues for 2009 were $11.6 million compared to $10.5 million in the first quarter of 2008. Gross profit was flat at $4.4 million. Comverge said it increased its total megawatts under management by 450 MW during the first quarter of 2009, bringing its total to 2,602 MW, broken down by:

• MW under long-term contracts, with regulatory approval:	754
• MW under open market programs:	1,091
• MW under turnkey programs:	320
• MW managed for a fee:	437

Smitherman Says Texas Wind Accessible Through SPP

PUCT Chairman Barry Smitherman took the opportunity during yesterday's open meeting to remind industry officials that a large part of the Texas panhandle is in SPP, not ERCOT, and that wind resources in such areas are accessible to move eastward on the national grid. Earlier in the week FERC Chair Jon Wellinghoff had said ERCOT should "consider" interconnection with the Midwest so that it can export wind resources (Matters, 5/6/09).

Kelliher to FPL
FPL Group said it has hired former FERC Chair Joseph Kelliher to serve in the newly created position of Executive Vice President, Federal Regulatory Affairs.

Consumers Energy Issues Renewable RFP
Consumers Energy has issued an RFP for 250 MW of renewable capacity as contemplated under its renewable energy plan. Merchant generators have criticized the proposed RFP for lacking an independent monitor and Consumers' subjective discretion in the process (Matters, 3/25/09).

Direct Signs Undertaking with Service Alberta Regarding Sales Practices
Direct Energy Marketing Limited has submitted an action plan to strengthen the training and monitoring of its sales agents under an undertaking entered into with Service Alberta, a provincial department which handles consumer affairs. Service Alberta said in the undertaking it has reason to believe certain Direct Energy Marketing Limited sales agents did not clearly distinguish between Direct Energy Marketing Limited as a competitive retailer and default supplier Direct Energy Regulated Services. The action plan is confidential as it relates to internal operations, but it includes more robust agent training and monitoring, including knowledge of Alberta's Fair Trading Act requirements, and a more thorough escalation process for complaints and other customer concerns. Direct paid $5,000 (Canadian) related to the cost of Service Alberta's investigation.

Estimated Reads ... from 1

meet some Commission threshold, to use estimated reads on greater basis. For example, if the TDU can meet some minimum level of accuracy, perhaps 95%, then estimates may be appropriate, Anderson said.

Smitherman agreed that the preference is to minimize estimates. Smitherman also told REPs that if they remain opposed to increased use of estimates, they must accept the use of regulatory assets to record the higher meter reading costs associated with actual reads. Smitherman will take the lead on meeting with stakeholders in developing a final proposal for a final vote at the next open meeting.

Dominion Retail ... from 1

Dominion Retail argued.

"OCC offers up completely disingenuous interpretations of the plain language of the postcard in an attempt to suggest that customers 'could' be confused by certain aspects of the document. Not only are these interpretations an insult to the intelligence of the vast majority of residential customers who received the postcards, but OCC does not even attempt to explain what harm has befallen customers as a result of the postcards," Dominion Retail added.

Although OCC's complaint contained five specific customer inquiries prompted by the postcard, OCC's complaint contains no allegation that any customers, including the five whose inquiries are recounted in the complaint, were in any way actually harmed by the postcard, Dominion Retail said.

Of the five inquiries, Dominion Retail said two were questions concerning whether the customer was receiving the most advantageous rate on their current gas service, and another two were inquiries about the customers' inability to reach Dominion Retail via a phone number on the postcard. Thus, four of the five inquiries did not relate at all to customer confusion regarding the postcard, Dominion Retail said.

The fifth inquiry cited by OCC did result from customer confusion regarding the postcard and SCO, but, "it cannot be seriously argued that this is evidence that a factually accurate communication constituted a misleading or deceptive practice under the Commission's rules," Dominion Retail replied.

Moreover, Dominion Retail said it sent the postcard to over 165,000 customers, but OCC only received 20 calls regarding it.

OCC also alleged that the postcard failed to properly disclose Dominion Retail's affiliate status with Dominion East Ohio, because the affiliate disclaimer is on the opposite side of the postcard than the information relating to customers and the SCO.

However, Dominion Retail countered that the placement of the affiliate disclosure statement on the opposite side of the postcard was required by Dominion East Ohio's Standards of Conduct, which hold that the disclaimer is required, "on the first page or at the first point where East Ohio's name and logo appear." As the Dominion corporate logo appeared on the opposite side of the postcard as the SCO information, the affiliate disclosure had to be on that opposite side as well, Dominion Retail said.

OCC also alleged that customers' inability to reach Dominion Retail through the phone number provided on the postcard amounted to a violation of Commission rules requiring suppliers to provide customers with reasonable access to service representatives and prompt answer times during normal business hours. While regretting the inconvenience of customers placed on hold due to higher than anticipated call volumes, Dominion Retail said its record of serving over 400,000 Ohio gas customers with only 31 informal complaints does not support a claim that it fails to provide adequate customer service.

Ultimately, Dominion Retail said OCC, which brought the complaint on its own behalf, lacks standing to bring the complaint, as statute limits OCC to only bringing actions on the behalf of residential customers in a representative capacity.

"There is a sound reason for this limitation. Although OCC obviously has a valuable role to play as a consumer watchdog, the legislature recognized that, if OCC were empowered to bring complaints on its own behalf, it could quickly change from consumer watchdog to a regulatory gadfly, using its ratepayer-supplied resources and the Commission complaint process to advance its own agenda rather than to protect the interests of client residential customers," Dominion Retail said.