Energy Choice Matters

September 4, 2009

Fulcrum Power Services, Tara Energy to Merge Through Share Exchange

Fulcrum Power Services and Tara Energy announced that they are combining through the exchange of Tara's outstanding shares for Fulcrum shares, at an undisclosed ratio (neither shares are publicly traded). The merger brings Tara Energy under Fulcrum's umbrella; Fulcrum already owns REP Amigo Energy.

Fulcrum and Tara declined to disclose the number of customers at Tara or Amigo. Fulcrum Power Services also holds its own REP certificate aside from Amigo, but said in its June 2009 annual report that Fulcrum has not served customers since receiving certification in 2006.

Tara Energy, however, was preliminarily named as an eligible non-volunteer POLR by PUCT Staff for small commercial customers at Oncor, CenterPoint, and Texas-New Mexico Power, indicating that Tara is among the dozen or so largest REPs serving small commercial customers in those areas (see Matters, 9/1/09). Tara was not named an eligible non-volunteer POLR for any other class or service area, and neither Fulcrum nor Amigo were named eligible non-volunteer POLRs. For a REP to be eligible as a non-volunteer POLR, the sum of the numeric portion of the REP's percentage of ESI IDs served and percentage of retail sales by MWhs in the POLR area, for the particular class, must be equal to or greater than 1.0 (among other requirements).

Tara characterized itself as, "one of the largest independent REPs in Texas." It primarily serves a variety of niche affinity customers in both commercial and residential markets. Amigo primarily serves residential customers.

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NOPEC Cites "Serious Concerns" over FirstEnergy Solutions' Marketing, Corporate Separation

The Northeast Ohio Public Energy Council has "serious concerns" about FirstEnergy Solutions' marketing practices to solicit prospective customers in the NOPEC aggregation territory, including FirstEnergy Solutions' relationship with the three FirstEnergy distribution utilities, as NOPEC alleged that the practices are, "in violation of the Commission's rules." NOPEC's allegations came in requesting a hearing regarding the corporation separation plan of Ohio Edison, Cleveland Electric Illuminating, and Toledo Edison.

"Unfair and legally problematic marketing solicitations to prospective NOPEC customers are not only injurious to NOPEC's interests but, importantly, are injurious to the prospect of a functioning retail competitive market in Ohio," NOPEC said.

NOPEC did not elaborate or cite specific examples of any marketing solicitations or violations of PUCO rules in its initial pleading. NOPEC did say that it is also concerned about other practices by the distribution companies and FirstEnergy Solutions (FES) that should be addressed by the Commission in the corporate separation case, "including, for example, the transfer of numerous employees of the [distribution] Companies to FES in 2009, providing FES with competitive advantages that other CRES [competitive retail electric service] providers can not duplicate."

Additionally, NOPEC called the utilities' corporate separation plan application materially deficient

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Nelson Says Market Must Determine Termination Fee Levels

The competitive market must be allowed to set the appropriate amount of early termination fees, PUCT Commissioner Donna Nelson told *Matters* yesterday in discussing the drastically lower prices in the ERCOT market compared to a year ago.

The PUCT issued a news release yesterday noting that the continuing drop in fuel prices has triggered the lowest residential price offers seen in several years. Nelson noted some customers will save more than $50 per month by switching to a lower priced plan. In Oncor, for example, there are numerous six and 12-month plans under 10¢/kWh, and StarTex is even offering a four-month fixed plan at 8.9¢/kWh, lower than any variable plan on Power to Choose.

Consumer advocates have cited early termination fees as a "barrier" to customers' ability to switch to a cheaper rate as a means of lowering their monthly bills. A cursory review of Power to Choose shows fees of $100-$175 for three month products, $100-$200 for six-month products, and $100-$250 for 12-month products.

Nelson, however, noted that REPs prudently purchase forward power when enrolling customers onto a fixed rate product, and thus are left with excess power if the customer switches before the end of the term. If the Commission dictated a specific termination fee, the market would cease to be competitive, Nelson noted.

Some REPs, Nelson added, offer blend and extend options to lower the rate of their customers on high fixed-price plans, which lets the customer receive a lower rate while avoiding a termination fee. Nelson encouraged customers facing termination fees to inquire about blend and extend options, which benefit the customer as well as the REP, since the REP avoids the acquisition costs of replacing customers lost through churn, and avoids the risk of non-payment of the termination fee if the customer had left. Savings in the market right now may also make it economic for customers to pay a termination fee if savings under their lower rate are greater than their exit fee.

Ultimately, Nelson expects the market to take care of the termination fee issue, as customers dissatisfied with the level of their termination fee will not renew with that same REP at the end of their term, forcing the REP to offer less onerous termination fees, or face continued attrition.

Customers shopping for a lower rate now will benefit from changes in disclosure rules which went into effect in August. These include a more robust Electricity Facts Label which explicitly states any termination fees, non-recurring charges, and whether and how the price may change. All recurring charges for fixed price products must be listed in the EFL quoted price.

However, there may still be an ambiguity which prevents an apples-to-apples comparison of rates due to monthly service or usage charges imposed by some REPs. Typically, these fees are waived if the customer's usage in a particular month exceeds a stated threshold, such as 500 kWh or 1,000 kWh. Fees can range from $4.99 to $10 per month. The fees are not unique to the competitive market, as regulated distribution service in vertically integrated and restructured states typically includes a flat monthly customer charge to recover certain fixed costs equally from all customers regardless of usage.

Several REPs have ostensibly interpreted these service fees as non-recurring, based on their placement in the "other fees" category on the EFL, and presumably they are not included in the average price quoted on the EFL.

New Subst. R. §25.475 defines a recurring charge as a, "charge for a retail electric product that is *expected* to appear on a customer's bill in every billing period or appear in three or more billing periods in a twelve month period. A charge is not considered recurring if it will be billed by the TDU and passed on to the customer and will either not be applied to all customers of that class within the TDU territory, or cannot be known until the customer enrolls or requests a specific service."

The provision excluding charges that "cannot be known until the customer enrolls" ostensibly only applies TDU-imposed charges due to the use of "and" and "either."

Though its precedential value may be limited, it is worth noting that in the preamble adopting new §25.475, the Commission saw fit to describe recurring charges as, "all charges *that* appear on a customer's bill in every billing period or appear in three or more billing periods in a twelve-month period," omitting the "is expected to" qualifier, though ultimately the preamble referred to the adopted language cited above as well.

No regulated process governs how a REP is to determine whether it "expects" a monthly service fee to appear on three or more bills in a 12-month period, which would make it a recurring charge. However, as mass market offers listed on Power to Choose are available to all customers, it is likely some small usage residential customers who typically use less than 1,000 kWh three times in a year will be reviewing EFLs which do not contain the service charges as a recurring charge incorporated in the quoted price, even though for those customers it could reasonably be expected that the customer will fail to meet the threshold and incur the monthly fee on a recurring basis.

Although the monthly fees are clearly disclosed on the EFLs, the lack of potential monthly service charges in the quoted price may still frustrate an apples-to-apples comparison for shoppers. For example, assume an EFL quotes a fixed price of 9¢/kWh, with the disclosure that customers failing to meet the 1,000 kWh threshold will be subject to a $10 monthly charge. For a customer who uses less than 1,000 kWh in three months during a year, the quoted rate may outwardly appear attractive. However, if the monthly fee were considered a recurring charge, the per kilowatt-hour rate (for the months in which the fee is invoked) paid by the customer could increase by one cent or more, depending on usage (divide the $10 fee by the actual consumption which is less than 1,000 kWh). When expressed as a recurring charge, the monthly fee could make one of the cheapest offers in the market one that falls in the middle of the pack.

In a market where rate differentials are measured in mills, a 1+¢/kWh differential would likely influence a customer's purchasing decision, and makes a product with a low rate but monthly service charge less attractive than a rate that's perhaps a mill or two higher but does not have a service charge. Absent estimating their future usage and performing the above calculation to express the monthly charge on a kilowatt-hour basis, however, customers have no simple means to evaluate products on an apples-to-apples basis, though the EFL does disclose the flat fee of any service charge.

The same logic could apply to any non-recurring charge (e.g. late payment fee, return check charge, etc.), but the monthly fee is ostensibly the most likely that would both recur and be most out-of-the-control-of the customer (though the customer can control usage, specific actions are difficult to track without an advanced meter).

This exercise is not meant pejoratively as to whether monthly service fees should be defined as recurring, but rather illustrates that a reasonable interpretation of the Substantive Rules' current language could lead to the charges being either, or both, recurring or non-recurring, depending on the REP's expectation of the frequency of the charge. That could lead to some REPs including it in the EFL-quoted price, and others omitting it and only listing it as a flat fee in the “other fees” section, arguably creating distorted comparisons for customers. Additional clarity would benefit the market, regardless of whether the clarification defines a monthly service fee as recurring or non-recurring.

ComEd Files for Additional Smart Meters, Load Response Aggregation Pilot

Commonwealth Edison petitioned the Illinois Commerce Commission for approval of an expanded smart grid pilot contingent on the receipt of federal stimulus funds.

Among other things, ComEd would deploy advanced meters to an additional 180,000 customers under the expanded plan. ComEd's original and pending smart metering application would include 141,000 meters (Matters, 6/2/09).

The expanded plan would also include additional dynamic pricing options for customers in two areas of Chicago, in concert with the city's efficiency and sustainability initiatives. The two neighborhoods, which have not been determined yet, would receive 59,000 advanced meters coupled with 50,000 in-home devices to study the extent to which the devices, when coupled with dynamic pricing, can increase the conservation of customers relative to just receiving basic energy efficiency services.

ComEd also proposed to install 2,000 advanced meters at 260 Chicago office buildings to test, jointly with the Building Owners and Managers Association, the ability of large office buildings to automatically aggregate demand response through a sophisticated metering and control system. ComEd and BOMA would evaluate whether the smart meters could achieve the kinds of measurements and control functions necessary to facilitate customers' working with curtailment service providers to aggregate their usage and utilize their ability to provide demand response in order to participate in the PJM ancillary services markets.

All of the office buildings would be customers who have been "competitively declared" and only eligible for ComEd electric supply at hourly prices.

Duke Ohio Requests Gas Uncollectible Rider

Duke Energy Ohio requested approval to establish the rate for its gas uncollectible rider, Rider UE-G, which is currently set at $0 per CCF, and to remove uncollectibles from base gas rates. Due to the current economic environment, Duke said it anticipates that uncollectible expenses will significantly exceed the amount for uncollectible expenses currently included in base rates.

Duke proposed removing a charge of $0.00810 per CCF from base rates, and setting Rider UE-G at $0.015690 per CCF. The rider would be applicable to all sales service and transportation customers.

Duke proposed that the uncollectible expenses eligible for recovery through Rider UE-G shall be those expenses generated by the class of customers paying the uncollectible expenses rider. As Duke is required to purchase receivables of competitive natural gas suppliers without a discount, Duke asked to include uncollectibles associated with the provision of competitive retail natural gas service in the rider.

The rider would be adjusted annually.

FERC Denies NRG Astoria Class Year Complaint

FERC denied a complaint from NRG Energy concerning the New York ISO's exclusion of the Astoria Repowering Project from the Class Year 2009 interconnection study process, finding that NRG did not meet the requirements of the Open Access Transmission Tariff for inclusion in the 2009 class year. The Commission, however, directed NYISO to file clarifying tariff revisions governing qualification into a class year interconnection study process.

NRG had argued that NYISO's denial, prompted by the lack of a New York Department of Environmental Conservation (DEC) notice of completion regarding an air permit, is inconsistent with the OATT. The OATT bases qualification into a class year on milestones in the now defunct Article X process, or the determination that a "comparable permitting application for the project is complete" before a March 1 deadline. Specifically, NRG argued that the OATT does not require a formal "notice of completion" (which in the DEC process equates to a lengthy substantive review) prior to the March 1 deadline. Rather, the OATT only requires that the application is administratively complete, which NRG said its application was.

FERC disagreed, first finding that under the OATT, the question that must be answered is whether a project has filed a completed DEC application, which is comparable to the Article X application. The Commission further ruled that NYISO shall not be required to engage in subjective judgment in determining the completeness of a DEC application, and that such a determination of completion must be shown through, "the issuance of some form of written statement by the DEC that the application is complete." The assertion by a developer that its DEC application is complete is not sufficient, FERC held.

FERC concluded that NRG did not show that its DEC application was complete as of March 1, and thus the project was properly excluded from the 2009 class year.

As the Commission ruled on NRG's complaint using language in the OATT, it did not need to address NRG's arguments that NYISO improperly relied on a technical bulletin, which is not incorporated in its tariff, in making its decision.

However, FERC did state that NYISO should not rely on a technical bulletin in lieu of filed tariff language and, to that end, directed NYISO to propose clarifying tariff language governing the class year qualification process. Specifically, FERC said that the OATT should be revised through a stakeholder process to: (1) delete reference to Article X; (2) clarify what constitutes a "comparable" permit application; (3) define the term "complete"; and (4) define what constitutes a state regulator's "determination" that an application is complete.

Munis Seeks FERC Ruling that Filed MISO Rate is Maximum Which Must be Paid

The Resale Power Group of Iowa, a group of municipals and other small LSEs, and WPPI Energy petitioned FERC for a declaratory order holding that the transmission rate that their members pay to the Midwest ISO under the MISO OATT and applicable service agreements is the only charge that their members can be required to pay for MISO's transmission of electricity to their systems.

The Resale Power Group and WPPI are seeking the declaratory order because Central Iowa Power Cooperative has sought relief from an Iowa state court to impose additional transmission fees on the groups' members, with CIPCO alleging that because of the integrated nature of the Integrated Transmission System (ITS) co-owned by CIPCO and ITC Midwest, MISO must cause electricity to flow across ITS transmission facilities that are owned by CIPCO in order to fulfill MISO's obligations under service agreements that require the transmission of electricity to the Resale Power Group and WPPI members.

However, the Resale Power Group and WPPI argued that transmission customers can not be forced to pay amounts in excess of the filed rate at FERC, which their members have paid. "Without the Commission's guidance, the integrity of transmission rates filed with the Commission may be undermined by CIPCO's state court claims: customers of jurisdictional utilities would no longer be certain that they will not be exposed to additional charges in the form of tort claims," WPPI and the Resale Power Group said.

The Resale Power Group and WPPI further argued that any dispute over compensation to CIPCO is between CIPCO and ITC Midwest, and cannot change the rate charged to customers under the filed rate. WPPI and the Resale Power Group did note, however, that an Operation and Transmission Agreement between CIPCO and ITC's predecessor (Iowa Electric) gave operational control over the ITS to Iowa Electric, including the facilities owned by CIPCO, an obligation since assumed by ITC Midwest.

Briefly:

Md. PSC Asks for Comments on LDC Hedging for Future Periods

The Maryland PSC asked LDCs to comment on costs and benefits of hedging supplies for summer 2010 storage injections and "other future periods" given current natural gas market conditions, as part of a Sept. 29 conference to review winter 2009-2010 gas supplies, hedging, and market expectations (PC20).

MXenergy Receives Credit, Hedging Extension

MXenergy Holdings reported that it has entered into additional amendments to its current credit and hedge agreements with Société Générale to extend both agreements until September 21, 2009 to allow for approval of replacement agreements with Sempra Energy Trading and RBS (Matters, 8/21/09, 7/2/09).

Glacial Reports No Michigan Customers to Date

Glacial Energy, which announced Michigan marketing efforts earlier this summer, said it has not served any customers at Detroit Edison or Consumers Energy to date, in a PSC filing requesting a waiver from the requirement to file a net metering plan. Glacial said it would file such a plan if any new customer enrolls with Glacial for whom the Commission net metering standards would apply.

Renewable Choice Energy Offering Carbon Accounting to Smaller Customers

REC supplier Renewable Choice Energy said it is now offering a "greenhouse gas" assessment program to address carbon accounting needs for medium-sized businesses tailored to "mid-size companies with moderate budgets and minimal internal resources to conduct emissions reporting."

Mirant Enters into PPA with PG&E for Marsh Landing Plant

Mirant said it has entered into a 10-year power purchase agreement with Pacific Gas and Electric for 760 MW of natural gas-fired peaking generation from its Marsh Landing facility to be constructed at Mirant's existing Contra Costa facility near Antioch, Calif. Completion of construction is expected by May 2013. Under the PPA for the plant's entire output, Marsh Landing will receive fixed monthly capacity payments and variable operating payments. Mirant has also extended its existing PPA with PG&E for its Contra Costa Units 6 and 7 from November 2011 through April 2013. Mirant has agreed to retire Contra Costa Units 6 and 7, which began operations in 1964, at the end of the extension in furtherance of state and federal policies to retire aging power plants that utilize once-through cooling technology. The agreements are subject to California PUC approval.

Fulcrum ... from 1

The amount of load served under the combined Tara and Amigo brands is half residential and half commercial, which Fulcrum said, "gives us a nice footprint in both markets for future growth."

Both Tara and Amigo have surpassed $250,000 in monthly TDU billings.

As subsidiaries of Fulcrum, Tara and Amigo will continue to be independent REPs, maintaining their separate brand names and existing office locations. Tara's senior leadership will remain at the REP, and will also become a part of Fulcrum's management.

Jesson Bradshaw, CEO of Fulcrum, said that the combination is a major step towards the company's goal to further expand its retail platform. The combination positions, "both Fulcrum and Tara to achieve their vision of becoming a premier end-to-end energy company with core competencies in the entire energy value chain including power generation, energy management services and retail electricity marketing," Fulcrum said.

Fulcrum offers a suite of services to manage physical, financial and commercial energy transactions and logistics for power generators, retail electricity providers, large consumers, and financial entities, including forecasting, hedging, scheduling, and dispatch. Fulcrum currently manages over 4,000 MW of power generation assets, including approximately 1,500 MW of renewable generation. It also provides supply to retail providers.

The combination is subject to requisite regulatory approvals.

NOPEC ... from 1

and insufficient to comply with the requirements of Ohio Rev. Code § 4928.17, and the Commission's Rules. NOPEC characterized the utilities' 23-page application (sans attachments) as merely reciting relevant provisions of the Ohio code, with no detailed description (as required) as to how such affiliate protections will be implemented. NOPEC said that the utilities' application starts from the premise that the companies have achieved structural separation from their competitive affiliate, but offers, "little more than a well organized mirage lacking much real substance at all."

NOPEC said that the companies' application fails to provide any information about what "reasonable efforts" they plan to use "to ensure retail electric service consumers protection against unreasonable sales practices, market deficiencies, and market power," and fails to provide any information about the process and controls that shared employees will comply with in order to "clearly disclose" whether their public representations are being made on behalf of the companies or on behalf of their competitive affiliate.