Energy Choice Matters

September 8, 2009

Ohio Electric Suppliers Seeing Same Challenges as in Past Newly Opened Markets

Despite the legal existence of retail choice for about a decade, including commercial migration rates of 50% at several utilities at the turn of the century, competitive retail suppliers entering or re-activating their Ohio operations are essentially dealing with a new market, with all the teething problems associated with any new territory.

According to a 2003 PUCO report, Ohio led the nation in the percent of residential load switched at the year-end of 2002, at 13.5% (nearly 750,000 accounts), versus 7.3% for Texas, 5.6% for New York, and 4.8% for Pennsylvania. Over 90% was due to governmental aggregations, and nearly all residential migration was limited to the FirstEnergy utility territories (with some limited shopping at Cincinnati Gas & Electric, now Duke Energy). Commercial (not including industrial) switch rates were 51% at Toledo Edison, 50% at Cleveland Electric Illuminating, 38% at Ohio Edison, and 32% percent at CG&E, with Dayton Power and Light and Columbus Southern Power also seeing limited commercial migration.

With a rise in natural gas and wholesale prices, coupled with rate stabilization and certainty plans, migration levels ebbed to near zero. However, depressed wholesale prices and new Standard Service Offer rates in several territories are providing the first headroom for suppliers in years, and up to half a dozen suppliers are competing for customers.

According to Duke Energy Ohio's customer choice webpage, Constellation NewEnergy, Direct Energy Business, Duke Energy Retail Sales, FirstEnergy Solutions, and Integrys Energy Services

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"Contract Model" Should be Required for all N.Y. ESCO Referral Programs, NEM Says

All New York utilities should be required to use the "contract model" for their ESCO referral programs, the National Energy Marketers Association said in comments to the New York PSC.

NEM was commenting on ESCO referral plan cost and implementation compliance filings submitted by Central Hudson Gas & Electric, National Fuel Gas Distribution, NYSEG, Rochester Gas and Electric, and the two KeySpan LDCs (Matters, 12/16/08, 12/12/08).

NYSEG are RG&E are among the utilities proposing to use the "service model" in their referral program. Under the service model, ESCOs would be required to send customers a contract for service beyond the introductory referral plan period within five days of receiving notice of the referral enrollment. If the customer does not affirmatively agree to the contract for the post-introductory period using the methods prescribed in the Uniform Business Practices, the customer automatically reverts back to utility supply service at the end of the introductory period, with the ESCO executing the transaction via a drop.

In contrast, under the contract model, the customer remains with the ESCO at the end of the referral period unless the customer affirmatively rescinds a contract sent by the ESCO five days after the referral enrollment.

NEM said that based on stakeholder experience with referral programs using the contract model,

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United Illuminating Reports August Migration Statistics

Supplier Accounts	Aug '09 Residential	Aug '09 Business	Aug '09 Total	Aug '09 % of Migrated Customers	Change vs. July '09
Clearview Electric, Inc.	326	62	388	0.70%	137
Consolidated Edison Solutions	4,270	1,143	5,413	9.90%	415
Constellation NewEnergy	320	3,122	3,442	6.30%	14
Direct Energy Business	9	747	756	1.40%	5
Direct Energy Services	13,744	1,891	15,635	28.60%	3,597
Dominion Retail, Inc.	15,859	1,290	17,149	31.40%	-248
Gexa Energy	3	183	186	0.30%	24
Glacial Energy	22	336	358	0.70%	1
Hess Corporation	53	482	535	1.00%	0
Integrys Energy Services	3	1,729	1,732	3.20%	-1
Liberty Power Holdings	0	5	5	0.00%	0
MX Energy	1,124	643	1,767	3.20%	-96
Public Power & Utility	4,562	1,179	5,741	10.50%	411
Sempra Energy Solutions	33	689	722	1.30%	25
Suez Energy Resources NA	2	202	204	0.40%	3
TransCanada	8	455	463	0.80%	0
Energy Plus	142	9	151	0.30%	45
Viridian Energy	39	0	39	0.10%	39
Total All Suppliers	40,519	14,167	54,686	100.00%	4,371

Aggregate Data

Customer Load - Suppliers and UI (MWh)

	Residential - SS		Business - SS		Business - LRS		Total UI Territory	
	MWh	% of Class	MWh	% of Class	MWh	% of Class	MWh	% of Total
Suppliers	37,084	15.3%	135,116	63.7%	123,854	92.4%	296,054	50.3%
UI	204,820	84.7%	77,067	36.3%	10,255	7.6%	292,142	49.7%
Total	241,904		212,183		134,109		588,196	

Customer Count - Suppliers and UI

	Residential - SS		Business - SS		Business - LRS		Total UI Territory	
	Customers	% of Class	Customers	% of Class	Customers	% of Class	Customers	% of Total
Suppliers	40,519	14.1%	13,916	37%	251	88.7%	54,686	16.8%
UI	247,805	85.9%	23,808	63%	32	11.3%	271,645	83.2%
Total	288,324		37,724		283		326,331	

SS = Standard Service
LRS = Last Resort Service

Data as reported by UI

Competitive Suppliers Say ComEd Smart Grid Pilots Contain Barriers to Choice

Commonwealth Edison's June 1 proposal for advanced metering and related pilots, "is flawed and contains potentially anti-competitive elements," the Illinois Competitive Energy Association (ICEA) said in a recent answer filed at the Illinois Commerce Commission (Matters, 6/2/09).

Among other things, ICEA said that proposed bill credit compensation to customers who participate in pilot evaluations (including up to $50 for completion of an initial and final survey) presents a barrier to switching, and serves as a disincentive for customers participating in the pilot to switch to a competitive supplier while the pilot is in progress, because the bill credits are not available to shopping customers, and will cease upon migrating to competitive supply.

Additionally, the pilots would use an "opt-out" customer acquisition process which is not available to alternative retail electric suppliers (ARES) seeking to serve residential customers, ICEA noted.

Furthermore, the pilot includes "[s]ignificant cost subsidies for in-home, behind-the-meter equipment (which could be provided by various non-utility competitors) that is not available to all residential customers or ARES or ARES customers," ICEA added. Rider AMP-CA also provides for removal of any in-home equipment of a pilot customer that switches to an alternative electric supplier during the pilot, which ICEA noted would act as a barrier against switching.

The pilots also contain various hold harmless provisions for certain customers that are subsidized by non-participating customers which are not available to alternative retail suppliers or their customers, "and [are] therefore not sustainable and anticompetitive," ICEA argued.

ICEA agreed with ICC Staff that the increasing block rate design under one of the pilots is not likely to provide information that is useful. Among other things, Staff said that applying the rate outside of a pilot would be unworkable, because under ComEd's proposal a customer's blocks would be set based on their average usage over a single season. Staff said that weather normalization over a longer period is required (noting for LDC forecasts the minimum is 10 years), and noted that even with a five-year normalization, the rate would be difficult to apply market-wide, as some customers may not have been in their residence for five years to allow for the weather normalization.

ICEA further argued that ComEd's failure to timely implement Purchase of Receivables and utility consolidated billing as required by Section 16-118 of the Illinois Public Utilities Act is a further barrier to the proper design and testing of smart grid customer applications in a competitive retail market. "ComEd should be required to implement UCB/POR prior to the testing of any customer applications that include behind-the-meter energy efficiency/demand response equipment, alternative energy rate designs and customer marketing for the adoption of those rate designs," ICEA said.

Any waivers of the Integrated Distribution Company rules, which normally prevent ComEd from offering options other than basic service or marketing its supply service, must be strictly limited to apply only to the pilot programs as approved by the Commission in the advanced metering case, ICEA added.

Calif. PUC Says Nonbypassable Charges, RPS Already Determined for AB 80 Aggregators

The California PUC's review of the provisions of Assembly Bill 80 will not address the RPS and cost responsibility surcharge obligations of "community aggregators" since both issues have been previously determined by the Commission, PUC President Michael Peevey said in an assigned commissioner's ruling and scoping memo. Community aggregators are a distinct form of aggregators established under AB 80, versus community choice aggregators under AB 117.

As only reported by *Matters*, the City of Cerritos has petitioned the PUC to rule whether AB 80 permits Cerritos to conduct an opt-in, direct access aggregation of customers (as Cerritos believes), or requires the use of an opt-out process similar to community choice aggregation under AB 117 (Only in Matters, 6/16/09).

Southern California Edison, whose service area includes the City of Cerritos, has said that the case should also examine whether the load Cerritos wishes to aggregate, above the initial load limit, is subject to the community choice aggregator cost responsibility surcharge vintages, and whether Cerritos should be subject to the same RPS program requirements as community choice aggregators and electric service providers.

The PUC said that both issues have already been resolved under the AB 80 Agreement between SCE and Cerritos which permitted Cerritos to serve an initial amount of load while the case has been litigated. The Commission noted that, unless expressly exempted by statute, the Agreement requires Cerritos to be subject to any procurement rules and requirements that the PUC or the legislature establishes relating to Community Choice Aggregators or load serving entities, including, but not limited to, reserve and resource adequacy requirements and renewable portfolio standard requirements. Since Pub. Util. Code § 399.11 states that all load-serving entities are subject to the RPS, and since nothing in that code or AB 80 exempts community aggregators from participating in the RPS, Cerritos shall follow the RPS rules for community choice aggregators and electric service providers as set in D.05-11-025 and D.06-10-019, the PUC held.

Similarly, Cerritos is subject to new generation nonbypassable charges under the cost responsibility surcharge as community choice aggregators are under D.08-09-012, the Commission said.

FERC Denies Rehearing of ISO-NE Reservation Flexibility Changes

FERC denied clarification and rehearing requests from Nstar and United Illuminating regarding the Commission's 2008 order approving ISO New England's proposed Reservation Flexibility Changes, rejecting the transmission owners' arguments that external resources should be required demonstrate that they have firm transmission over non-Pool Transmission Facilities to the ISO-NE Pool Transmission Facilities (PTF) in order to participate in the ISO-NE capacity markets (ER08-697).

The Commission affirmed that the Reservation Flexibility Changes are just and reasonable since they will allow offers from external resources to be more consistent, or competitive, with those from internal resources. Prior to the introduction of the Reservation Flexibility Changes, ISO business practices required external resources to submit a transmission reservation in support of a capacity obligation at the time of the energy offer, which required transmission reservations for each hour of an operating day to be submitted by noon on the prior day. FERC reiterated that such a practice did not consider whether a resource actually would be called upon to provide energy in any given hour, and thus likely increased the price of energy offers to account for the "excess" transmission reservations.

"[W]hile it is clear that, all other things being equal, the Reservation Flexibility Changes will impact revenues NSTAR currently is receiving, NSTAR has failed to demonstrate that the Reservation Flexibility Changes will adversely affect reliability," FERC said.

Furthermore, the Commission rejected Nstar's argument that, as summarized by FERC, "external resources with capacity obligations should continue to purchase a service that they will not use as this practice provides an incentive for transmission investment."

While Nstar and United Illuminating cite Order Nos. 888 and 890 as evidence that a firm transmission requirement should be in place for external resources participating in New England capacity markets, the Commission affirmed that the Reservation Flexibility Changes to ISO-NE's OATT do not (and cannot) address the terms of other, non-Pool Transmission Facilities tariffs.

Although United Illuminating cited a passage from FERC's May 2008 order which UI argues shows the Commission's intent that external resources should be required to demonstrate that they have firm transmission service to the border of the ISO-NE Pool Transmission Facilities system in order to participate in the capacity market, FERC said UI reads more into the statement than was intended.

"We did not intend to require that external resources demonstrate that they have firm transmission service to the border of the ISO-NE PTF system in order to participate in the capacity market. Such a requirement did not exist prior to the issuance of the May 20, 2008 Order, nor did we establish such a requirement therein," FERC said.

Briefly:

SCE Executes Mountain View Novation

South California Edison recently executed a novation and replacement agreement for the Mountain View Power Partners-Department of Water Resources contract, SCE said in comments on a California PUC proceeding reviewing DWR's annual revenue requirement. A formal application has not been filed with the PUC yet. SCE reported on the novation (and also noted that one other contract expired in 2009 and many are due to expire in 2011) in support of its view that the instant revenue requirement proceeding should address the allocation of refunded DWR operating reserves back to customers.

Liberty Filling 32 Positions to Support Market Expansion

Liberty Power has been hiring to fill 32 open positions, including sales, to support its expansion into additional markets. Liberty refused to discuss any expansion plans substantively. Although Liberty received licenses in 2006-07 to serve electric customers in every state with active competitive load except New Hampshire and Oregon, Liberty has confined its activity in many of its new markets to national accounts or other large clients procured through RFPs or indirect sales channels. Broader marketing efforts to mid-merit or smaller customers have been limited to New York, Texas, Maryland and Illinois, with recent additional activity in New Jersey, Massachusetts, and Pennsylvania. As of 2008, Liberty had 105 employees.

Publication Note:

For readers out of the office, Energy Choice Matters published an issue on Sept. 7. Stories included:

- NYISO Requests Authority to Impose Generator-Specific Mitigation on Three Market Parties
- RESA Says Mix of Six-Month Contracts, Spot Purchases Would Lower Maryland SOS Rates
- Pactiv Says Nonbypassable Charge Complaint Permissible Under PSL
- NOPEC Calls EDC Switch Letter Confusing
- Dominion, SteelRiver, OCA, OSBA File Settlement on Peoples Sale
- ComEd Asks for Billing Glossary Waiver to Accommodate UCB
- ERCOT Identifies Issue with NSRS Resources in RPRS Clearing
- PUCO Accepting Comments on FirstEnergy RTO Realignment
- MXenergy Holdings Extends Exchange Offer
- Ameren Offers Buyouts to 350

Ohio ... *from 1*

are active and currently accepting new non-residential customers. Per Duke Ohio, Dominion Retail is the only active residential supplier in its territory (and as exclusively reported by *Matters*, has the only non-aggregation residential offer in the state, see Matters 8/19/09). While there may be other suppliers licensed by PUCO to serve the Duke territory, they ostensibly have not completed EDI testing or met other obligations (such as utility bonding) to serve load yet, as Duke reports there are no eligible, but inactive, suppliers in its territory.

Gexa Energy is also competing in the FirstEnergy territories, including as the NOPEC aggregation supplier. The FirstEnergy distribution companies only list certified suppliers online, and do not indicate whether they are active.

For Constellation NewEnergy, the Ohio market is essentially a new open market, even though Constellation has served some load behind Duke prior to the recent market opportunity, reported David Fein, Vice President and Director, Retail Energy Policy, for Constellation.

Despite a robust gas market and 10 years of retail electric choice, shopping for electricity is still a "new thing" to Ohioans, and Constellation is having to undertake the same education efforts when soliciting customers similar to other new markets. That includes assuring customers that their power will be reliable and that their utility will still handle delivery. Constellation, which is most active in the FirstEnergy territories but is marketing to load at Duke as well, is also challenged with building brand awareness in a new market, Fein added. Fein, who said half a dozen suppliers, at most, are active in the market, called FirstEnergy Solutions the most aggressive competitor Constellation has seen.

As with any new market, Fein noted Ohio has the same hurdles encountered elsewhere, such as customer data quality not being as robust as suppliers would prefer, or not as easily accessible. Though not a problem for Constellation, which is versed in serving load in the Midwest ISO from marketing in Ameren and Michigan, Fein did say some aspects of the MISO market may make it hard for new entrants to hit the ground running. The Module E Resource Adequacy construct is also different from what suppliers are accustomed to in eastern RTOs.

Fein said most contracts that Constellation is executing are shorter term, one year or through May 2011, which is the FirstEnergy utilities' next Standard Service Offer price change. The uncertainty regarding the FirstEnergy utilities' move to PJM also discourages longer-term contracting, Fein said, as suppliers don't know how the move will affect pricing.

Constellation is in discussions with several trade associations and chambers of commerce concerning supply arrangements, Fein said.

As mentioned, Dominion Retail is concentrating on residential sales in the Duke territory, consistent with its approach in other markets of focusing on the mass market first. Dominion Retail's Dan Donovan said that the retailer has seen "good response" to its direct mail offer which went out to 400,000 customers, which offers a fixed price 20% lower than Duke's Standard Service Offer through the December 2010 billing cycle. The mailer has received attention in the local print and television media, which Donovan said has driven responses to the mailer.

Dominion Retail came into the year with 9,000 customers in the Duke territory, from prior marketing efforts. Dominion Retail is also supplying aggregations in Green Township and Springfield Township in Hamilton County (Duke Energy territory), covering about 25,000 to 30,000 customers.

Though Dominion Retail remains the only active (non-aggregation) residential supplier, Donovan called the increased commercial activity a positive step for the Ohio market, and said more people are beginning to believe that shopping is a good way to get electricity.

Competitive LSE Duke Energy Retail Sales also reported that it is seeing the size of migrating non-residential customers decrease on a continuing basis, as choice expands to smaller volume customers. Duke Energy Retail Sales said it is marketing to non-residential customers throughout the state, primarily through business-to-business efforts. Duke Energy Retail Sales says it is not currently supplying any municipal aggregation pools but is monitoring developments.

Fein is cautiously optimistic about the prospects of the competitive retail market, and believes PUCO is very pleased with how competition benefited FirstEnergy Standard Service Offer customers due to a favorable price in the supply auctions. Fein noted that the FirstEnergy utilities have been in discussions with stakeholders regarding their post-May 2011 Standard Service Offer, with the potential for a Market Rate Offer filing to procure such supplies.

ESCO Referral ... *from 1*

it should be a required element for all the referral programs. "The Contract model accomplishes the goals of ensuring consumer protection and informed acceptance of the product while also achieving administrative efficiencies and controlling costs for marketers," NEM said.

Furthermore, NEM supported implementing referral programs in a manner that includes new service customers as, "a logical progression in the presentment of energy choice options to consumers." NEM noted that expanding the referral program to new service customers is being evaluated on a pilot basis at Consolidated Edison, and requested that the Commission consider incorporating the feature into other referral programs.

The Commission should also ensure that single commodity ESCOs derive a similar value from their participation in the referral programs as dual fuel ESCOs, NEM said. NEM noted that in the recent ConEd referral program order, the Commission held that single commodity service customers shall be provided access to the dual-service ESCO list, and that dual commodity customers shall be provided access to the electricity-only and natural gas-only ESCO lists, as well as the dual-fuel list. If referral programs at other utilities do not adopt the same approach, NEM asked that an accommodation be made for single-fuel ESCOs in terms of cost recovery, given that they will receive different benefits from the program.

NEM also said that ESCOs, which will be bearing much of the costs of ongoing referral programs, must be permitted an opportunity to have input into program implementation details.