Energy Choice Matters

October 8, 2009

Columbia Files SSO Settlement With Commitment for SCO Auction in Third Year

Columbia Gas of Ohio would commit to introducing a Standard Choice Offer (SCO) auction for delivery beginning April 1, 2013, under a stipulation in its application to transition to a Standard Service Offer auction (SSO) to procure and price gas sold to sales customers, replacing the current Gas Cost Recovery (GCR) mechanism. The settlement, which came before any intervenor testimony, was first reported by *Matters* (Only in Matters, 8/31/09).

Settling parties include Columbia, PUCO Staff, the Ohio Consumers' Counsel, the Ohio Gas Marketers Group, National Energy Marketers Association, Ohio Partners for Affordable Energy, and various other suppliers and end-user interests.

The commitment to an SCO auction is a revision from Columbia's original application to conduct two SSO auctions for the 12-month periods starting April 1, 2010, and April 1, 2011 (Only in Matters, 2/17/09). Under the settlement, Columbia is to also hold an SCO auction for the 12-month period beginning April 1, 2012.

However, the stipulation holds that because the contemplated SCO auction is some three years away, any party may, prior to the SCO auction date, petition PUCO to suspend the SCO auction in favor of another SSO auction. Hess Corporation stated that while it supports the stipulation as a whole, it does not support the proposed SCO auction. DTE Energy Trading, OPAE and OCC stated that while they support the stipulation, that support should not be interpreted as support for SCO auctions in general, or in the stipulation.

The SSO auction procures wholesale gas allocated in tranches, pricing service at the NYMEX

Continued P. 5

ERCOT Generators Say Corrections Needed to Energy-Only Approach

The Gulf Coast Power Association fall conference, as typically occurs, provided generators with a forum to continue to argue against the PUCT's adoption of an energy-only approach to resource adequacy several years ago.

Unlike two years ago, when slimmer projected reserve margins perhaps emboldened capacity owners, no one specifically cited a capacity market or capacity payment as a solution to the lack of correct price signals to incent new, quick-start generation, believed to be needed to successfully integrate and mange the 18 GW of wind to be developed under the Competitive Renewable Energy Zones.

Marianne Carroll, partner at Brown McCarroll and counsel for several generators, called issues related to resource adequacy, resource mix, and price signals the biggest challenge facing the market.

Although the PUCT's rules permit small producers to bid freely at the cap of $2,250/MWh, (which no capacity owner said during the conference is an inadequate level to support new investment if it were consistently invoked), Carroll repeated concerns that any producer bidding at or even near the cap runs a huge risk in attracting allegations of manipulation from the media and opponents of competition, who Carroll said will run to the legislature whenever a supplier bids at the cap. Thus,

Continued P. 7

Dominion Retail Says Pa. Code Allows Sharing of Customer Phone Number with Suppliers

PPL should immediately release to electric suppliers non-controversial customer information while awaiting a clarification regarding what information customers can restrict, and how to administer the opt-out process, Dominion Retail said in comments on PPL's petition for clarification (Only in Matters, 7/24/09).

As only reported by *Matters*, PPL said that conflicts between the Pennsylvania code and a PUC order raise questions about what types of information customers can restrict from being shared with suppliers. PPL has been ordered to update its customer list to be shared with suppliers ahead of the expiration of rate caps on January 1, 2010.

Dominion Retail noted that sharing the following information does not appear to be objectionable to any party:

- Customer Name
- Account Number
- Rate Class and Sub-class
- Service Address
- Billing Address

Dominion Retail believes PPL can share this information immediately, while still maintaining compliance with current regulatory and tariff requirements.

"[C]ompetitive suppliers are the only real chance for customers in PPL's service territory to avoid the financial hardship that could otherwise be caused by the projected significant rate increases that will occur in 2010," Dominion Retail said. Any delay in allowing suppliers to reach customers will destroy customers' opportunity to save money immediately, and instead require customers to bear rate increases for several months before they can switch, Dominion Retail said.

Thus Dominion Retail said such information should be shared with suppliers immediately while PPL's clarification request is heard.

Though several issues are addressed, PPL's clarification request contains two main questions: (1) whether a customer's telephone number may be legally shared with suppliers, and (2) whether customers can restrict all of their information from being shared, as opposed to just certain data (such as telephone number and usage history).

PPL cites conflicts between the PUC's codified electric regulations, a subsequent Commission electric choice order, the PUC's codified gas regulations, and information provided to customers on the PUC's website.

However, Dominion Retail argued that the codified electric regulations clearly control customer information sharing. The gas regulations are specifically limited to retail gas service while the Commission's website has no force of law, Dominion Retail noted. That leaves only the conflict between the PUC's earlier electric code and later electric order. However, Dominion Retail said that, "it is black letter law that the Commission cannot modify its regulation except by going through the regulatory process." Hence, the electric code supersedes any contrary finding contained in a Commission order, Dominion Retail said.

The rules for the release of electric customer information in 52 Pa. Code § 54.8 speak for themselves, Dominion Retail argued. The regulations state that the customer may only restrict the sharing of two informational items: their phone number and historical billing data. Customers must affirmatively restrict such information, the code states.

A year after the rules were codified, the Commission issued an electric order in 1999 holding that a customer's telephone number could not be included in information lists to be provided to suppliers. Aside from the order's subservience to a promulgated rule, Dominion Retail said that the 1999 order was specifically addressing the transition to competition for customers who became fully eligible under choice in January 2000. The order was limited in scope to the 2000 transition, and does not appear to have been intended to apply thereafter, Dominion Retail argued.

Accordingly, Dominion Retail said that in refreshing its customer list, PPL should provide customers with the ability to opt-out of providing their telephone number, and/or their past billing data. The regulations do not permit customers to restrict any other information, Dominion Retail said. Absent a customer's affirmative election to restrict their phone number and billing data, the rules require such information to be provided to suppliers, Dominion Retail added.

The Office of Consumer Advocate, however, urged the Commission to adhere to its finding in its 1999 order; namely, that telephone numbers may not be shared under any circumstance, and that customers may elect to restrict the sharing of all their information, not just billing history.

ERCOT DNPs Nearly Double in September Versus Year-Ago

Disconnects for Non-Pay completed in ERCOT in September 2009 nearly doubled from the total from a year ago, but the number of disconnects for the entire summer of 2009 are on par with the year-ago levels, as 2009 saw lower disconnects in prior months. PUCT Staff filed the following information reflecting preliminary TDU data which is accurate but subject to further checks:

Completed Disconnects for Non-Pay

Summer 2009

June	57,604	
July	88,754	
Aug.	70,307	
Sept.	156,151	1 Residential Critical Care
Total	372,816	1 Residential Critical care

Summer 2008

June	92,337	
July	88,798	
Aug.	109,915	
Sept.	86,620	
Total	377,670	0 Residential Critical Care

Summer 2007

June	81,659	
July	92,399	
Aug.	73,408	
Sept.	100,160	
Total	347,626	0 Residential Critical Care

Conn. Retailers' 2007 Load, Market Share to be Made Public

The Connecticut DPUC will make public retail suppliers' individual load data and market share from 2007 as part of its review of RPS compliance for that year, in ruling on a motion for clarification from Connecticut Light and Power (Only in Matters, 10/7/09)

As only reported in *Matters*, CL&P had requested that the DPUC clarify whether a protective order previously granted to the electrical load that each retail supplier served in 2007, and each retail supplier's market share of such load in 2007, should remain in effect.

The Department said that it is not able to issue a complete and understandable decision in the RPS compliance docket unless the 2007 data is made public, as the competitive supplier load data provided by CL&P will be used to determine compliance with the RPS. "If this information is protected from public disclosure, the Department would not be able to discuss in the decision (1) how each company has complied with the RPS, including the company's number of deficient or surplus RECs, (2) the amount electric load based on which the Department calculated each company's ACP [alternative compliance payment], or (3) the ACP amount each company is required to pay."

If the data remains confidential, "[t]he decision's conclusions and analysis in other areas are also adversely affected for lack of transparency," the Department said.

"The 2007 Data is too historical and obsolete by now to be of any economic value," the DPUC found. Therefore, the Department rescinded the protective order granted to the data, and directed CL&P to file the data publicly with the Department. An affected company may file a written appeal to the Department no later than 4:00 p.m. on Wednesday, October 14, 2009. "Any such appeal must reference the specific statutory provisions prohibiting the disclosure of the information or a very compelling reason why the information should be protected from public disclosure," the DPUC said.

Briefly:

Starion Energy Seeks Conn. License

Start-up Starion Energy applied for an electric supplier certificate at the Connecticut DPUC to serve all classes of customers. President Jose Castaneda currently runs his own law practice and real estate title company. Dennis Frank, CEO of Synergy Energy Holdings and a principal at its affiliates, will serve as Starion Director of Operations. Synergy affiliate Fluent

Energy will provide various procurement, risk management, and related services. Starion's standard product will be a month-to-month variable rate. Starion plans to use utility consolidated billing for all of its customers, and will not collect deposits.

Acclaim Energy Seeks Pa. License

Acclaim Energy applied for a Pennsylvania electric broker/marketer and aggregator license, to serve commercial customers above 25 kW, industrial customers and governmental customers in all service areas.

Midwest Utility Consultants Clarifies Ohio License Application

Midwest Utility Consultants filed an amendment to its Ohio gas broker application, clarifying that it seeks to serve all sizes of customers at all four LDCs, not only Duke Energy Ohio as indicated on its original application (Only in Matters, 10/6/09).

ISO-NE FCA Clears at $2.95/kW-month

ISO New England's third Forward Capacity Auction reached the minimum price established for the auction at $2.95 per kW-month, with 4,487 MW of excess supply remaining, ISO-NE said in reporting preliminary results from the auction. More than 40,995 MW of capacity from new and existing resources competed to provide the 31,965 MW needed for reliability in the 2012 to 2013 timeframe. The auction consisted of seven rounds Monday and Tuesday, starting at a price of nearly $9.84 per kW-month. ISO-NE said all de-list requests were accepted, except for Dominion's Salem Harbor Units 3 and 4, the combined output of which totals over 580 MW. ISO-NE said that the two units will need to be retained to fulfill projected 2012/2013 capacity needs in northeast Massachusetts. Accordingly, the two Salem harbor units are now eligible for out-of-market reliability compensation.

Delaware PSC Approves Updated FSA, Delmarva Issues RFP

The Delaware PSC approved revisions to the Full Requirements Service Agreement used for SOS. Among the revisions is that the letter of credit required from suppliers under the FSA may now be transferable (but need not be), similar to a recent change in Maryland. The FSA was also revised to reflect the descending clock style procurement adopted by the PSC last year, and to reflect weekly settlement in PJM. With the FSA approved, Delmarva announced its RFP for Delaware SOS supplies for the period beginning June 1, 2010, seeking 530 MW. Peak load contributions by customer class include approximately 300 MW for the combined Residential, Small Commercial and Industrial customers; 180 MW for the Medium General Service-Secondary (MGS-S) customers; 20 MW for the Large General Service-Secondary (LGS-S) customers; and 30 MW for the General Service-Primary (GS-P) customers. A pre-bid conference for prospective bidders will be held on Oct. 29, 2009.

Detroit Edison, Consumers Report Weather Adjusted Sales

The final 2009 choice cap at Detroit Edison is 4,928,521 MWh, Edison reported in filing its final weather normalized retail sales for 2008 of 49,285,206. Consumers Energy reported that its 2008 weather normalized retail sales were 37,173,925 MWh, but did not provide a calculation of the cap based off of that number. The cap is set at 10% of weather-adjusted retail sales.

Deployed Oncor Advanced Meters Surpass 300,000

Oncor said that it has deployed more than 300,000 advanced meters in the Dallas metro area. By year-end, Oncor anticipates nearly 700,000 advanced meters will be in place.

Pepco Issues D.C. RFP

Pepco issued an RFP for its District of Columbia SOS needs for the period beginning June 1, 2010. Pepco is seeking approximately 360 MW. Peak load contributions by customer class include approximately 190 MW for residential customers, 20 MW for small commercial customers, and 150 MW for large commercial customers. The contracts awarded for the 190 MW in residential load and 20 MW in small commercial load are for three years, and those for 150 MW in large commercial load will be for two years.

MISO IMM Raises Economic Withholding Threshold

Consistent with the Midwest ISO tariff, MISO's Independent Market Monitor has increased the threshold for economic withholding under its Open Access Transmission, Energy and Operating Reserve Markets Tariff (Ancillary Service Markets or ASM) by $10 per MW, from the current $30 per MW to $40 per MW, effective on October 1st, 2009. The IMM said that there have been very low levels of conduct failure, noting that no impact and hence no mitigation of ASM has occurred.

FERC Postpones Demand Response Conferences

FERC said that scheduled demand response technical conferences on October 22 and October 27 have been postponed until further notice, with no new dates yet chosen.

New York Announces Solar Funding, RFP

New York Gov. David Paterson yesterday announced that $10 million in federal stimulus funding is now available through a competitive statewide solicitation for solar energy projects in New York State. The funding is available through NYSERDA's State Energy Program to fund the installation of solar photovoltaic (PV) systems. Additionally, Paterson said that the New York Power Authority (NYPA) is expected to make a formal request for proposals later this year for a 100-megawatt solar initiative, which would increase the state's current installed solar capacity five-fold.

PUCO Suspends FirstEnergy EDCs' CFL Program

The Public Utilities Commission of Ohio has asked the FirstEnergy Ohio utilities to postpone a compact fluorescent bulb program announced Monday, as PUCO said it has yet to approve the charges that FirstEnergy told customers would be imposed to fund the program.

In a statement, FirstEnergy said, "At the request of PUCO Chairman Alan Schriber, FirstEnergy has agreed to further discuss with the Commission its PUCO-approved program to provide compact fluorescent light bulbs to customers of its Ohio utilities -- Ohio Edison, The Cleveland Electric Illuminating Company and Toledo Edison. We will work with the PUCO to respond to its questions and determine how best to proceed."

Under the plan, the FirstEnergy companies were to provide 3.75 million mass market customers with two, 23-watt CFLs, and would charge customers $0.60 per month for the next three years ($21.60 total). Various media and consumers noted that two CFLs can be bought for around $10, with Gov. Ted Strickland asking PUCO for a stay of the program citing the "common knowledge" that CFLs could be purchased for much less than what FirstEnergy was to charge.

FirstEnergy said that the $21 amount includes lost delivery revenues.

PUCO approved the program mechanics but has yet to approve any cost recovery, with PUCO noting that FirstEnergy has yet to apply for any such recovery.

Rep. Dennis Kucinich has asked the Federal Trade Commission to investigate the CFL program and the FirstEnergy utilities' recovery of lost delivery revenues.

Aside from objecting to being forced to buy something consumers did not want, at a higher-than-market price, many customers objected to being compelled to buy the bulbs since those customers, "feared [the CFLs] because of the mercury they contain," according to the *Cleveland Plain Dealer*.

Columbia ... from 1

index plus an adder. In the SCO auction, specific customers (and associated requirements) are auctioned to retailers.

The settlement recognizes that, "Columbia has not expressed a present intent to, nor does this Agreement contemplate that Columbia seeks to, exit the merchant function."

The SSO auctions would be conducted in a manner consistent with Columbia's original proposal (see 2/17 story), similar to the descending clock auction used at Vectren and previously used at Dominion East Ohio.

Among other changes in the stipulation is that Columbia will not charge all SSO and choice suppliers a proposed fee of 5¢ per delivered Mcf to recover various incremental program costs and lost opportunity revenues.

The settlement also revises Columbia's plan such that a fixed fee of 32¢/Mcf would be charged to choice and SSO/SCO suppliers for non-temperature balancing and peaking services, with the rate fixed for the life of the stipulation. Firm balancing service provided by Columbia will be priced the same for SSO and choice customers, ending the current disparity in pricing that favors sales customers.

Under the settlement, only the initial SSO suppliers will be required to purchase the natural gas left in storage. Columbia will sell between 2% and 4% of SSO suppliers' April 1, 2010 assigned Columbia Gas Transmission (TCO) Firm Storage Service (FSS) Storage Contract Quantity (SCQ) on April 1, 2010. Columbia will notify the bidders for the SSO auction of the amount to be left in storage that they must purchase per tranche, with such notice coming at least three weeks before the auction.

The settling parties agree, "that it is important that the capacity match as closely as possible on a monthly basis each supplier's customer group." Therefore, all assignable storage and transportation capacity shall be allocated and assigned on a monthly basis consistent with changes in the SSO/SCO/choice supplier customer groups. The stipulation provides that commodity held by each supplier in storage will not be included in any reallocation, and that each supplier will make its own arrangements with respect to such commodity supply. In addition, Columbia will meet with SSO/SCO and choice suppliers to discuss ongoing problems with the TCO electronic bulletin board.

There would be no change in customer eligibility requirements for transportation through March 31, 2012 under the settlement. For the 12-months beginning April 1, 2012, customers eligible for the SCO or choice service will be:

(1) All customer accounts using less than 6,000 Mcf per year, and

(2) Human Needs customer accounts using 6,000 Mcf or more per year.

Transportation Service eligibility for 2012-2013 would be set as follows:

(1) Effective April 1, 2012, non-residential customer accounts using less than 6,000 Mcf/year must subscribe to 100% Standby Service.

(2) Non-residential Human Needs customer accounts with operable alternative fuel capability that consume 6,000 Mcf or more annually

(3) Other non-residential customer accounts that consume 6,000 Mcf or more annually

(4) Asphalt plants and grain dryers with annual usage less than 6,000 Mcf remain eligible for Transportation Service

(5) Public School Districts that are receiving Transportation Service as of the date of the stipulation, including any new or existing facility placed into service in any such Public School District during the term of the stipulation

After the initial SSO auction, Columbia will meet with the stakeholder group to discuss issues related to installation of daily metering for Transportation Service customers; provided, however, that Public School Districts receiving Transportation Service as of the date of the stipulation will not be required to install daily metering during the initial term of the stipulation or thereafter until modified by the Commission.

Per the settlement, a Transportation Service customer may elect a Banking and Balancing Service bank tolerance equal to 1% to 4%, in 1% increments, of its annual throughput. If a Transportation Service customer elects and pays for a 1% to 4% bank tolerance level, that customer should be able to move a like amount in or out of the system each month, on an interruptible basis, subject to the parameters applicable to month ending volume banks if negative or in excess of the customer-elected bank tolerance level. Accordingly, the stipulation would strike Columbia's original proposal to impose a limitation on monthly bank changes.

Each year, Columbia shall restrict the positive balance for any Transportation Service shipper to an amount equal to 50% of the elected tolerance at the conclusion of each November billing month. Transportation Service customers shall be permitted to return to 100% of the elected tolerance thereafter.

The settlement would maintain current Operational Flow Order and Operational Matching Order provisions of the existing tariff, eliminating proposals from Columbia to institute Balancing Service Restrictions. The Balancing Service Restrictions were to have been demands for specific action by the

Transportation Service customer (or its agent), such as directing the customer to adjust its consumption or its daily confirmed supply volumes such that the confirmed supply volumes delivered to Columbia's system would have, as closely as practicable, matched the customer's daily consumption.

Non-compliance charges under the retained OFO/OMO mechanism shall be the higher of:

(i) Ten dollars times the OFO/OMO shortfall or OFO/OMO overage; or

(ii) 110% of the TCO Daily Index adjusted for SST commodity and shrinkage, times the OFO/OMO Shortfall or OFO/OMO Overage; or

(iii) The payment of a pro-rata share of all other charges, including gas costs, penalty charges, or cash-outs, incurred by the Company as a result of noncompliance on file date of the OFO/OMO shortfall or OFO/OMO overage.

ERCOT ... *from 1*

even though scarcity pricing should be seen, it is not due to this inefficiency.

As first reported by *Matters*, the Independent Market Monitor found that, absent anomalous market-design related inefficiencies, the reference peaking generator has not earned the net revenue required to satisfy the annual fixed costs to support entry in the past several years (Matters, 8/13/09).

Mark Walker, director of regulatory affairs for NRG Energy, said that NRG does not see the required prices to support building the flexible gas capacity needed to back intermittent resources, though Walker did not endorse any particular mechanism to rectify the problem.

However, capacity markets and administrative scarcity pricing (which was debated for several months late last year and early this year at TAC and ERCOT subcommittees before the PUCT essentially claimed jurisdiction and brought the issue in-house) are the two most commonly cited mechanisms to produce the correct price signals.

But it is worth noting that in other jurisdictions which include capacity markets, some generators are similarly claiming that the market structure is not conducive to new generation, and that further administrative incursions are required. Such arguments are loudest in Maryland and to a lesser extent Connecticut, but in recent years New York, Delaware, Pennsylvania and Maine (all states with some form of supplemental capacity payment though in New York not a forward market) have all seen various interests (not always generators) push for regulated or ratepayer-backed long-term contracts due to the continued lack of new capacity, despite the existence of capacity markets.

NRG Energy itself has claimed that the market structure in some areas with capacity markets is not conducive to building new generation. For example, in Maryland, NRG said that SOS procurement, "does not provide an environment conducive to the development of new power generation." The comments were made Nov. 21, 2008, in Case 9117. Although the all-requirements SOS product makes wholesale suppliers responsible for capacity, and does not compel suppliers to procure capacity from the Reliability Pricing Model capacity market, RPM prices essentially govern the competitive SOS RFPs because any generator attempting to build new generation in response to the RFP is competing against financial marketers procuring capacity at the RPM clearing price, and will not win load if its price is not competitive with the RPM price. Accordingly, calling the SOS design inadequate to support new generation essentially equates to calling RPM insufficient to support new generation.

NRG said that, "a two-or three year contract [under SOS] is simply not sufficient to secure debt financing for the construction of new generation and, without this kind of financing, new construction will not be feasible. NRG submits that very little if any generation -- particularly alternative or renewable generation -- will be built in Maryland without the benefit of long-term contracts."

NRG affirmed this view in subsequent comments filed on August 11, 2009, in which NRG again urged the PSC to direct the incumbent utilities to enter into long-term, ratepayer-backed supply contracts with competitive generators, as new supply could not be produced without such contracts.

"Long-term contracts are critical to create the financial incentive to building new generation within the State of Maryland," NRG said. Discussing plans for a solar or biomass plant at an existing site, NRG said that "the existing energy and credit markets make a long-term contract a necessity for bringing these new, environmentally sustainable generating projections to fruition."

In comments filed on Sept. 12, 2008 in Case 9149, NRG did acknowledge the existence of the RPM capacity market and said that RPM would indeed ensure resource adequacy, "if permitted to perform efficiently, free from distortion or undue suppression."

NRG did not explicitly state that it believed any price suppression was occurring in RPM, but implied RPM was not producing the correct signals in stating that, "The establishment of a procurement process to acquire power through long-term contracts would provide generators the certainty they need to obtain capital at the most competitive rate and thus to competitively bid new generation projects, ensure the widest range of responses, and provide price stability for ratepayers."

NRG also claimed that the current market structure in Connecticut, which mainly relies on ISO New England's Forward Capacity Market for resource adequacy (in addition to several administratively procured cost of service contracts due to the lack of new capacity), is insufficient to support new generation.

In comments on an integrated resource plan, NRG noted that no medium- to large-scale renewable projects have been brought online in recent years. "While one or two projects have encountered siting difficulties, the primary obstacle for many projects has been obtaining long-term contracts that can support a successful project financing," NRG said.

In subsequent comments, NRG said that it has identified a 530 MW plant in Meriden in which it has an interest as an alternative to the Greater Springfield Reliability Project transmission line. However, NRG said that it could bring the fully permitted and partially constructed plant online in 2012 or 2013, "if it receives a contract with an EDC [electric distribution company] counterparty."

Despite the dubious record of capacity markets and the support from certain generators for non-market solutions even in environments where generators receive capacity payments (let alone the fierce opposition from load groups and state regulators), Carroll said that no potential solution to ERCOT's potential problem should be taken off the table.

The PUCT is currently examining various wind integration, quick-start generation, scarcity pricing, and related issues. As previously reported, the initial focus will be on correcting overly conservative ERCOT load forecasts which lead to suppressed prices. Correcting such price suppression may preclude the need for additional mechanisms, Commissioners have noted.

During a GCPA panel session, Brandon Whittle, who leads ISO Regulatory Affairs at Deutsche Bank, suggested a 10-minute non-spin product as another potential solution. Currently, only 30-minute non-spin is available.