Energy Choice Matters

October 14, 2009

MXenergy Customer Count Falls 20% in Fiscal 2009, Posts Net Loss of $100 Million

MXenergy posted a net loss of $100 million for the fiscal year ending June 30, 2009, compared with net income of $25 million for the prior fiscal year, MXenegy reported in a 10-K. Adjusted EBITDA, which excludes unrealized hedging impacts and net interest expense, was $43.5 million for fiscal 2009, versus $44.9 million for fiscal 2008.

Unrealized losses from risk management activities were $87.6 million for fiscal 2009, compared with unrealized gains of $67.2 million in year-ago period. Net interest expense was also higher at $45.3 million for fiscal 2009, up from $34.1 million a year ago, as MXenergy entered into several amendments to various credit and hedging agreements, ultimately resulting in its restructuring plan and exclusive supply agreement with Sempra Energy Trading.

MXenergy posted an operating loss of $82.1 million for fiscal 2009, compared with an operating profit of $76.1 million a year ago. Gross profit was down at $32.6 million for fiscal 2009 from $182.7 million a year ago. Excluding unrealized hedging impacts, gross profit was higher at $120.2 million versus $115.5 million a year ago. For fiscal 2009, adjusted gross profit was $98.0 million for natural gas and $22.2 million for electricity.

As previously reported, MXenergy saw considerable attrition as amendments to extend its prior credit facilities limited its customer acquisition and product offerings.

As a result, Residential Customer Equivalents (RCEs) at the end of fiscal 2009 were 562,000, down from 699,000 at the end of fiscal 2008 (see chart for geographic breakdown). Natural gas RCEs fell to 487,000, down from 602,000, and electric RCEs fell to 75,000 from 98,000.

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Duquesne Light Applies to Offer 29-Month Fixed Residential Product

Duquesne Light proposed to serve default service residential customers on a 29-month fixed priced product with supplies obtained through a managed portfolio process, in submitting a default service plan for the period January 1, 2011 through May 31, 2013 (POLR V plan).

Duquesne said that the managed portfolio would produce price stability and the least cost over the term of the default service plan. Under the portfolio, Duquesne said that it could supply Rate RS customers at a fixed rate representing a 5.1% increase over current residential rates. Duquesne would be allowed to pass-through increased or new taxes as well as "regulatory/RTO" charges. Duquesne's opening statement concerning the plan did not define "regulatory/RTO" charges, and supporting testimony was not available yesterday. While ostensibly RTO charges relate to administration fees or possibly network transmission service, strained interpretations of that definition could include Reliability Pricing Model charges or ancillary services charges.

The residential class portfolio would also include the lighting customer class, who would see a slight decrease in rates under the managed portfolio due to their load profiles, Duquesne said.

As part of the residential/lighting portfolio, Duquesne is seeking to conduct an RFP for the development of up to 5 MW solar power. Additionally, Duquesne is seeking authorization to conduct

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Mich. PSC Expands Small C&I Gas Customer Definition, Limits Exit Fees

Natural gas customers using up to 500 Mcf annually will receive additional protections under approved pro forma tariff changes from the Michigan PSC that expand the definition of small commercial customer, and cap the termination fees applicable to residential and small commercial customers. The changes come in an order on a settlement, first reported in *Matters*, among PSC Staff, the LDCs, and several retail suppliers concerning the gas choice tariffs (U-15929, Only in Matters, 10/13/09).

Under the new tariffs to be filed by Michigan Consolidated Gas Company, Consumers Energy, Michigan Gas Utilities, and SEMCO Energy Gas Company, the customer protection section formerly applicable to only residential customers has been expanded so that certain protections apply to all customers.

The new tariffs define a small commercial customer as a non-residential customer with aggregate usage of 500 Mcf of natural gas or less per year. Additionally, a residential customer is defined as, "a purchaser (account holder) of natural gas that is supplied or distributed by a utility for residential purposes," ostensibly suggesting that meters owned by apartment owners are considered residential.

Among several significant changes is that the maximum early termination fee for residential contracts of one year or less shall not exceed $50. The maximum early termination fee for residential contracts of longer than one year shall not exceed $100.

Limits are also placed on small commercial termination fees. The maximum early termination fee for small commercial contracts of one year or less shall not exceed $150. The maximum early termination fee for small commercial contracts of longer than one year shall not exceed $250.

The 30-day rescission period, starting when the customer signs a contract, that currently exists for residential customers has been expanded to include small commercial customers. Additionally, all large commercial customers (those with annual usage in excess of 500 Mcf for non-residential purposes) are entitled to a 14-day unconditional right to cancel a contract without termination fees following the date the customer signs the contract. However, large commercial customers may waive the right of rescission, but only by affirmatively agreeing to waive the right on the contract. "This customer protection waiver should be prominent in the contract language," the new tariffs state.

Suppliers must execute cancellations during the rescission period within three business days of receiving a cancellation notice from the customer. The prior language in the tariff only required that such cancellations be executed "promptly."

The new tariffs also clarify that the customer may return to bundled service at any time, through verbal or written notification to the supplier. This right was disputed under the old tariff, because it included language stating that, "[a] customer has the right to terminate participation with a Supplier at any time if the initial contract period has ended," which at least one supplier said prevented any drops to bundled service prior to the end of the initial term.

Additionally, if the customer drops to bundled service from competitive supply, the customer is subject to a minimum 12-month stay on LDC supply service.

As first reported by *Matters* yesterday, suppliers may not restrict a customer's desire to return to bundled service under any circumstance, and suppliers cannot prevent any such drop pending the payment of a termination fee.

The new tariffs clarify that for suppliers using independent third party verification for enrollments, the "entire verification call" must be recorded.

Only the customer account holder or a "legally authorized person" may enroll an account with a competitive supplier, defined as, "a person that has legal documentation or legal authority to enroll a residential or commercial customer into a binding contract." A legally authorized person includes, but is not limited to, an individual with power of attorney or a corporate agent authorized to enter into contracts on a corporation's behalf

Suppliers shall maintain verification records for as long as the customer's contract is valid, plus an additional three more years. The former tariff only required records to be maintained for three years.

Among new solicitation rules is that the supplier and its agents cannot remove the original of the customer's bill from the residence or small commercial office. Suppliers and their agents must comply with truth in advertising in all verbal, written, or electronic statements to the customer.

Suppliers must comply with all local ordinances before their sales representatives, agents, or employees begin door-to-door marketing. Door-to-door marketing and telephone marketing must be performed between 9:00 a.m. and 8:00 p.m.

Contracting Rules

Among a host of new contracting requirements is that all contracts, regardless of customer size, offered by a supplier and signed by the customer must be clearly labeled at the top of the contract as "Gas Customer Choice Contract" with the supplier's name, the type of contract being offered, and in a font size of at least 16 point and bold.

A supplier must use a font size of at least 12 point for its contracts with residential and small commercial customers. The old tariff only applied the font requirement to residential customers.

The new tariffs hold that all terms and conditions of the contract are considered part of the contract and must be included in the contract document and provided to the customer as one document at the time of signing the contract. The signature can appear on a separate or easily separable document from the terms and conditions as long as the signature page also includes an identifier that is the same as that which appears on the terms and conditions and also includes the customer's name, account number and a required authorization statement.

All customers enrolling through verbal means or electronic means shall have the entire contract, including the rate, terms, and conditions, provided to them in writing via U.S. mail or verifiable electronic mail. This correspondence shall be postmarked within seven days of the customer's verbal enrollment.

All non-fixed price contracts, regardless of customer type, must now contain a clear explanation of the pricing factors used to determine the price and an example of how the pricing factors would be implemented. This provision formerly only applied to marketing materials, not the contract itself. The provision also remains applicable to all marketing materials for non-fixed price contracts.

Suppliers must provide all types of customers with 60-days advance notice of any price change at the expiration of a fixed price contract. The former deadline was 30 days.

All contracts require a lengthy authorization/affirmation statement directly above the customer's signature, which includes an acknowledgement that the customer is legally able to enroll the account, the supplier's name, and a statement regarding the applicable rescission period. For large commercial customers, the statement must also include an estimate of any applicable termination fee that would be imposed if the customer terminated the contract that day if the rescission period did not apply.

Under the new tariffs, suppliers must submit for Staff review any marketing and contracting materials for both residential and small commercial customers at least five business days before use, not just residential materials as before. Additionally, the required materials now explicitly include scripts used for solicitations or authorizations.

The new tariffs clarify that the supplier must distribute a switch confirmation letter to residential customers by U.S. mail. The confirmation letter must be postmarked within seven days of the customer or legally authorized person signing a contract with the supplier.

The confirmation letter must include the date on which the letter was sent, the date on which the contract was signed, the term of the contract **with end date**, the fixed or variable rate charged, the unconditional cancellation period, any early termination fee, the supplier's toll-free number, the Commission's toll-free number, and any safety-related messages required by the LDC. The end date of a contract is not defined in the tariff.

All commercial customers must receive a similar confirmation notice; however, the notice may be sent by mail or verifiable facsimile or verifiable electronic mail, within seven days of the contract signing. The supplier shall be responsible for maintaining records that verify delivery and receipt of the confirmation letter, facsimile or email.

The new tariffs allow suppliers to continue serving customers after the expiration of an initial term on a month-to-month contract, which shall be cancelable at anytime without penalty.

The tariffs are to be monitored and enforced solely by the Commission or its Staff. LDCs play no role in tariff enforcement.

As reported yesterday, the settlement was signed by Staff, all four affected LDCs, and several suppliers. However, Constellation NewEnergy-Gas Division clarified that its signature on the settlement filed Monday was in error, and it instead filed a statement of non-objection.

DPUC Reports "Significant Increase" in Clearview Complaints

The Connecticut DPUC's Consumer Services Unit has, "noticed a significant increase in the number of complaints regarding either marketing issues or alleged slamming issues involving Clearview Electric, Inc," the DPUC said in a letter to Clearview directing Clearview to respond to the complaints.

Among other things, Clearview was directed to, "Provide the Company's policy on company employees or subcontracted employees identifying themselves either verbally, in writing, or by Caller ID manipulation (e.g., spoofing) as being a representative of a Connecticut EDC (e.g., CL&P or UI)."

The DPUC also directed Clearview to identify the steps it has taken since an August 17, 2009 technical meeting on supplier marketing to reduce customer complaints regarding its marketing or solicitation practices. Clearview must also explain the delay in providing timely responses to customer inquiries and complaints forwarded by the Department (Only in Matters, 8/13/09).

Clearview only started enrolling an appreciable number of customers during this past spring.

Munis Press for Disclosure of Three N.Y. Generators Potentially Subject to Unit-Specific Mitigation

The New York Association of Public Power and American Public Power Association urged FERC to disclose the identities of three generators on whom the New York ISO has sought to impose unit-specific mitigation measures as a result of the generators' behavior to include fixed costs in their offers when committed for reliability purposes (ER09-1682, Matters, 9/7/09).

As first reported by *Matters*, NYISO alleged that the inclusion of fixed costs in such offers was contrary to competitive behavior and amounted to an exercise of market power, and sought extra-tariff mitigation of the behavior, since the behavior did not trigger tariff conduct and impact mitigation thresholds.

In confidential protests to the NYISO's petition, the generators sought to redact their entire protests, including their identities and even arguments supporting their claims of commercially sensitive information.

NYAPP, however, argued that 18 C.F.R. § 388.112 requires justification to be provided for claims of privileged treatment. "The Three Generators cannot merely state two words - 'commercially sensitive' - and expect the Commission to honor their request," NYAPP said.

"Moreover, non-disclosure runs counter to the hallmarks of competitive markets, which require trust and transparency," NYAPP added.

In similar comments, APPA contended that, "Granting this [confidentiality] request would only reinforce the conviction now prevalent among load-side interests that generators are indeed free under the current RTO market regimes to exercise market power in RTO markets, and will not be adequately disciplined if they succeed in doing so, but are unlucky enough to get caught."

NYAPP said that FERC should release the identities of the three generators, the timeframe in which they allegedly exercised market power, and the total amount of excess guarantee payments received by each of the three generators.

APPA said that FERC should order restitution of any fixed costs included in the generators' offers when committed for reliability. APPA also agreed with NYISO that under a competitive market, a generator would only be expected to include marginal costs in such offers, not fixed costs.

Briefly:

DPUC Draft Would Grant License to Taylor Consulting and Contracting

The Connecticut DPUC would grant Taylor Consulting and Contracting an electric aggregator certificate to serve commercial, industrial, municipal and governmental customers under a draft decision issued yesterday (Matters, 7/30/09).

Dominion Retail Adds Pa. Trade Name

Dominion Retail notified the Pennsylvania PUC that it has registered the trade name "Dominion Energy Solutions" with the Pennsylvania Department of State and may use the new trade name in marketing electric and natural gas supply.

Tradition Seeks Expedited Ruling on Pa. Broker Application

Tradition Energy (TFS Energy Solutions) petitioned the Pennsylvania PUC to address its pending electric broker/marketer/aggregator application on or before November 1, 2009. Though it filed its license application on September 14, 2009, Tradition said that it, "expected when it filed its Application that it would have a Commission ruling well in advance of the removal of certain pricing caps that are set to take effect as of January 1, 2010." A secretarial letter issued October 1 extended the PUC's review of the application beyond the 45-day deadline contained in the Pennsylvania code, an extension that is routine in most supply application reviews. The PUC recently granted a similar request for expedited treatment from the Employers' Energy Alliance of Pennsylvania (Only in Matters, 8/25/09).

Reliant Expands Small Commercial Electronic Payment to Include MasterCard

Reliant Energy is now accepting MasterCard cards for bill payments from its small and mid-size commercial customers as part of its existing electronic payment card program, MasterCard Worldwide and Reliant said yesterday. "We've offered other electronic payment card options to our customers for some time now, but more and more of our small and mid-size commercial customers have expressed an interest in using a MasterCard, so we have responded by adding it as an additional payment card option," said Elizabeth Killinger, vice president, Retail Operations, Reliant Energy. Reliant has offered electronic payment options, including fee-free card-based payments, to its residential customer base since 2001.

Mich. PSC Approves Six Renewable PPAs at Consumers

The Michigan PSC approved six renewable electricity contracts between Consumers Energy and Wm Renewable Energy LLC; North American Natural Resources, Inc.; Elk Rapids Hydroelectric Power LLC; Zeeland Farm Services, Inc.; Fremont Community Digester, LLC.; and Scenic View Dairy, LLC.

MXenergy ... *from 1*

MXenergy said the reduction in RCEs resulted primarily from liquidity-related limitations placed on its ability to obtain new customers and to retain existing customers, and from high credit-related attrition in certain markets. Additionally, MXenergy signed a large number of customers in 2008 prior to the fall in energy prices. MXenergy saw higher in-contract attrition as liquidity limits prevented it from offering these customers lower prices to prevent them from switching to a competitor.

In order to conserve cash, MXenergy also reduced direct mail marketing and advertising expenditures and scaled back the use of certain sales channels during fiscal 2009, which had a negative impact on brand awareness and the ability to acquire new customers. Advertising and marketing expenses were reduced by $2.4 million for fiscal 2009, at $2.1 million. MXenergy said that it expects to return to its customary sales and marketing practices and channels as its overall liquidity position improves as a result of the restructuring.

Deteriorating economic conditions during fiscal year 2009 resulted in credit-related attrition that was higher than historic levels, MXenergy added, particularly in several large

MXenergy RCEs By Region, as of June 30

	2009		2008	
	No.	% of Total	No.	% of Total
Southern U.S. (1):				
Natural gas	197,000		241,000	
Electricity	25,000		25,000	
	222,000	40%	266,000	38%
Northeastern U.S., Mid-Atlantic U.S. and Canada (2):				
Natural gas	138,000		156,000	
Electricity	50,000		73,000	
	188,000	33%	229,000	33%
Midwestern U.S. (3):				
Natural gas	152,000		205,000	
Electricity	—		—	
	152,000	27%	205,000	29%

(1) Includes markets in Georgia, Texas and Florida

(2) Includes markets in New York, New Jersey, Connecticut, Massachusetts, Pennsylvania, Maryland, Ontario and British Columbia

(3) Includes markets in Ohio, Michigan, Indiana, Illinois and Kentucky

markets for the retailer where LDCs do not purchase receivables, notably Georgia and Texas. Higher credit-related attrition was also seen in the Ohio, Michigan and Indiana natural gas markets. During fiscal year 2009, MXenergy also initiated "aggressive" actions to disconnect service to delinquent customers and to enhance credit standards for all existing and prospective customers, which resulted in an increase in the number of potential new customers that were disqualified due to credit concerns.

For fiscal 2009, MXenergy's in-contract attrition percentage was 34.0%, significantly above the prior-year's level of 19.7%. The customer renewal percentage was also lower at 84.1% versus (on an adjusted basis) 87.9% for fiscal 2008. The adjusted metric for 2008 excludes the impact of the loss of an Ohio municipal aggregation; if it were included, the 2008 renewal rate would be 84.9%.

On a geographic basis, MXenergy said that the 17% decrease in RCEs for its southern markets was mainly due to Georgia attrition. For its Northeast and Mid-Atlantic markets, the 18% decrease in RCEs was mainly driven by lower New York and Connecticut electric customer count. "A sizeable increase in the number of new retail marketers in New York, New Jersey and Connecticut offering higher commissions to contracted direct marketing personnel adversely impacted direct sales recruitment efforts," MXenergy added.

The 26% decrease in Midwestern RCEs can be attributed to competitive pressure, and sales and marketing budgetary constraints. "Recent retail auction activity in Ohio resulted in extremely favorable LDC pricing, limiting growth potential and increasing attrition for retail marketers," MXenergy reported.

Excluding unrealized hedging impacts, gross profit per MMBtu was down at $1.79 for fiscal 2009, from $1.94 a year ago. Sales per MMBtu were $12.24 for fiscal 2009 versus $12.32 for fiscal 2008.

Excluding unrealized hedging impacts, gross profit per MWh for fiscal 2009 was $26.14, up from $16.08 a year ago. Sales per MWh were $140.07 in fiscal 2009, versus $130.13 a year ago.

Though down on a year-over-year basis, MXenergy's average electric customer count for fiscal 2009 was higher than the average in 2008, and drove the aforementioned $5 million increase in adjusted gross profit. The higher average electric customer count was due to "significant" organic customer growth in Texas, Connecticut and New York earlier in the year, which was largely due to targeted direct sales marketing activities during fiscal year 2008 and the first three months of fiscal year 2009.

MXenergy reported that as of June 30, 2009 approximately 45% of its natural gas customer portfolio had fixed rate contracts, versus 60% a year ago. As of June 30, 2009, fixed price natural gas customer contracts have an average remaining life of approximately nine months.

MXenergy's electric customer portfolio was 36% fixed price as of June 30, 2009, on par with the year-ago total. As of June 30, 2009, fixed price electric customer contracts have an average remaining life of approximately 11 months.

Total sales for fiscal 2009 were $790 million, versus $752 million a year ago. For fiscal 2009, 55% of sales were within markets where LDCs do not guarantee customer accounts receivable, on par with the year-ago percentage. For the remaining sales in markets where LDCs guarantee customer accounts receivable, the weighted average discount rate was approximately 1% for fiscal 2009.

Although MXenegy said it continues to evaluate several potential new markets, California was the only market explicitly mentioned. MXenergy also noted positive developments (mainly related to POR) in Maryland, Massachusetts and Pennsylvania, markets where it is already active but with a relatively limited presence compared to its core markets.

In the customary listing of risk factors required in 10-Ks, MXenergy noted that its new exclusive supply agreement with Sempra could result in higher commodity costs and lower per-unit gross profit, as MXenergy had formerly relied on competitive pressures among suppliers to obtain favorable pricing.

Duquesne ... from 1

bilateral negotiations for 100 MW of Tier I renewable resources for the residential/lighting portfolio, procured on long-term contracts. Duquesne said that an RFP is inappropriate for Tier I resources due to their unique nature and the fact they can only be sited in certain locations. Forcing Tier I resources to subscribe to a one-size-fits-all RFP could eliminate potential bidders and reduce the competitive nature of the procurement, Duquesne said. Tier I includes wind, low-impact hydro, solar, biological methane, and other resources.

The renewable power procured from the solicitations would not exceed 15% of the residential/lighting portfolio, Duquesne said. Duquesne said that the cost of the renewable facilities would not increase the residential rate under the default service plan regardless of when the facilities entered service or began delivery under the contracts.

For small commercial and industrial customers (less than 25 kW), default service would be a 12-month fixed price. After an initial transition period of five-month and 17-month RFPs, Duquesne would use semi-annual laddered RFPs in May and November of each year to procure small commercial supplies on full requirements contracts, with 50% of load for the 12-month period procured in each solicitation. Currently, small commercial customers are served on a three-year fixed rate.

For medium commercial and industrial customers (above 25 kW but under 300 kW), default service would be a six-month fixed price. After an initial transition period of five-month and 11-month RFPs, Duquesne would use semi-annual laddered RFPs in May and November of each year to procure medium commercial supplies on full requirements contracts, with 50% of load for the 12-month period procured in each solicitation.

Wholesale suppliers would be capped at serving 50% of the total small and medium commercial load in any single procurement. Each solicitation will include six medium commercial tranches and two small commercial tranches, Duquesne said.

Large commercial customers (300 kW and above) would continue to be served on day-ahead, hourly spot prices from PJM. Duquesne said that it is not proposing a fixed price product for large commercial customers at this time.