Energy Choice Matters
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Duke Energy Retail Sales Retains 60% of Migrated Load in Affiliate Territory

Jim Rogers Says Deregulation to Hinder Rebuilding of Middle Class

Though Duke Energy Ohio saw 40% of its electric customer load switch to alternative suppliers by the end of 2009, the Duke corporate family only lost 15% of the total load as competitive retailer Duke Energy Retail Sales captured 60% of migrated load in its affiliate service territory, executives reported during an analyst conference yesterday.

While Duke provided its competitive retail outlook for 2010, and likely strategy for setting default service rates for the post-2011 period, the most noteworthy sound bite from the conference came from Duke CEO James Rogers, who said that competitive electric markets place deregulated states at a disadvantage at everything from tax base to school funding and ultimately, rebuilding their middle class.

In response to a question on the value of merchant assets (but not particularly anything related to re-regulation), Rogers said, "In all deregulated markets, you don't see anybody proposing in a serious way to build nuclear. You don't see them proposing to build coal plants, and quite frankly, I look in Ohio which is a deregulated state, they're not even proposing to build gas plants. So at some point there's going to be a need, as we modernize our fleet, to build. And actually, I believe that states that are deregulated are going to be at a disadvantage to get the jobs that come from the construction of new power plants, and get the tax base to fund schools and get the ongoing jobs to rebuild the middle class in their state, and are going to be beginning to reconsider re-regulating. And if they do consider that, I would recommend Virginia to them, as a state that's done a pretty good job of re-regulating in a sensible way. So I think you're going to see, as we saw the deregulation trend, I think at some point you're going to see this re-regulation thing from state to state depending on

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MXenergy Earnings Higher on Gas Gross Profit, Lower Expenses

MXenergy reported higher adjusted EBITDA of $20.8 million for the quarter ending December 31, 2009, versus $15.8 million a year ago, due to higher natural gas gross profit and lower operating expenses, partially offset by lower electricity gross profit.

Net income on a GAAP basis for the second quarter of fiscal 2010 was $18.2 million, versus a net loss of $20.2 million a year ago

Total gross profit for the quarter was $52.3 million, up from $11.6 million a year ago. When excluding unrealized hedging impacts, gross profit for the second quarter was $35.6 million, versus $34.8 million a year ago.

Natural gas gross profit (excluding unrealized hedging impacts) was up at $30.6 million versus $28.4 million a year ago, while electric gross profit (excluding unrealized hedging impacts) was lower at $5.0 million versus $6.5 million a year ago.

Lower electricity gross profit (excluding unrealized hedging impacts) for the three months ended December 31, 2009 was primarily driven by a 23% reduction in the volume of megawatt-hours sold

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Pa. OCA Says Summary Judgment Not Available for POR Termination Question

Interstate Gas Supply, Shipley Energy Company and Dominion Retail are not entitled to summary judgment regarding the ability of a natural gas LDC to disconnect customers participating in a POR program, because the *PPL* order cited by the suppliers is non-precedential, the Pennsylvania Office of Consumer Advocate said in an answer filed with the Pennsylvania PUC (P-2009-2099333, Only in Matters, 2/3/10).

OCA did offer, however, that if the suppliers agree to stipulate to certain material facts in OCA's answer and testimony, then the sole issue of termination could be briefed without the need for hearings.

As only reported in *Matters*, the three suppliers sought summary judgment finding that Columbia Gas, which has a pending POR program before the PUC, may terminate a customer for purchased supplier receivables, regardless of whether the supply costs are in excess of default service, because the Commission approved such terminations at PPL under PPL's POR program. The suppliers argued that the question is purely a matter of law and not material fact, and thus appropriate for summary judgment.

OCA countered that in the *PPL* order, the Commission stated that the order, "shall have no precedential effect in the context of the Commission's collaborative to be held in 2010 to develop a permanent Purchase of Receivables Program."

Furthermore, the facts in *PPL* were distinct, OCA said, since the *PPL* order only instituted a temporary, one-year POR program which automatically terminates December 31, 2009. The Columbia program would not have a sunset date.

Additionally, OCA stressed the difference between the governing statutes regarding electric and gas procurements. Rates for default electric supply, OCA said citing the *PPL* order, are not Commission approved, although the process utilities use to solicit and accept wholesale bids is approved and monitored by the Commission. Given that neither default service rates, nor the rates of electric suppliers, are subject to Commission approval, the PUC permitted terminations for non-payment of supplier charges in excess of shadow default service charges, since both the utility and supplier procure supply from the same wholesale market.

In contrast, natural gas must be procured using a least cost procurement meeting "strict" just and reasonable standards, OCA contended.

Among the statements which OCA asked the suppliers to stipulate to as fact are:

- Since January 2008, "almost all" suppliers in Columbia's service territory have offered a price in excess of the Price to Compare
- Per the Illinois Citizens' Utility Board, 92% of marketers' natural gas plans in Illinois from 2003 through January 2010 would have lost or are losing money compared to sales service
- Of the 14 marketers offering supply to Illinois customers during the above timeframe, "12 of the marketers offered *no* plans which would have yielded savings to customers." (Emphasis added. The cited metric actually looks at the *average* savings when combining all of a supplier's plans. Some eight suppliers, or six more than OCA asserted, offered at least one plan which beat the regulated rate, using CUB's criteria).
- Under the CUB data, the largest average savings amount was $12.54, while the largest loss amount was $1,263.89
- Citing Public Utility Commission of Ohio data, Columbia Gas of Ohio's regulated rate has been the least expensive option for "most of the time" in the past 10 years.
- Of 18 offers listed for the Columbia Ohio territory on an August 18, 2009, PUCO apples-to-apples chart, only two offers were lower than the GCR rate.

Start-Up Reliable Power Seeks Conn. Supply License

Start-up Reliable Power, LLC submitted an electric supplier application at the Connecticut DPUC to serve all customer classes in all service areas. Reliable Power said that it will primarily target residential customers in its first 12 months.

Reliable Power intends to offer a monthly variable rate at least 5% off the utility generation rate.

Susan Fleming, who has a background in direct response and direct marketing advertising, serves as Reliable Power COO and is also a director. Denise Larkin serves as a director and Chief Administrative Officer, and also comes from a marketing and customer service background. Serving as co-chairmen and directors are Timothy Larkin and David Fleming, both of whom are senior executives at Warren Resources, a domestic oil and gas exploration and development firm.

EC Infosystems will perform EDI and billing functions for Reliable Power.

Briefly:

Direct Energy Business Begins West Penn Power C&I Marketing

Direct Energy Business has begun marketing to commercial and industrial customers at West Penn Power (Allegheny) in advance of the expiration of rate caps on January 1, 2010. As is customary in serving commercial and industrial customers, Direct Energy Business is offering a suite of products including fixed, indexed, portfolio-based, and renewable.

Dominion Retail Seeks Registration as Pa. Conservation Service Provider

Dominion Retail has filed an application for registration as a Pennsylvania conservation service provider.

ERCOT Board Approves NPRR 206 (DAM Collateral)

The ERCOT Board of Directors approved Nodal Protocol Revision Request (NPRR) 206, which directs ERCOT to implement changes to allow for a new framework governing collateral requirements for the Day-Ahead Market, but does not at this time prescribe values to determine the collateral requirements (Only in Matters, 1/19/10). Such values will be determined by the Board at a later date. Texas Industrial Energy Consumers cautioned that, under certain circumstances, the new framework under NPRR 206 could result in a market participant with exposure in the Day-Ahead Market not being required to post Day-Ahead Market collateral. Proponents of NPRR 206, such as generators, argued that the revised framework will reduce the current over-collateralization, which otherwise may keep potential market participants from participating in the Day-Ahead Market, which would increase prices. The Technical Advisory Committee is to bring the Board values for the new Day-Ahead Market collateral framework at the April Board meeting.

Sempra in Talks with J.P. Morgan, RBS to Provide Credit Support if it Elects to Buy RBS Share of North American Energy Business

Sempra Energy said that it is working with J.P. Morgan and RBS to determine if either can provide credit support to Sempra should it elect to buy RBS' share of the remaining businesses under RBS-Sempra joint venture -- namely, the North American power and gas businesses. Sempra continues to evaluate all options for the businesses (a self-purchase, a new partner, or sale of its interest). Sempra said that it is only willing to purchase RBS' share in the joint venture if it does not require an equity issuance by the parent, which is why it is discussing possible credit arrangements with RBS and J.P. Morgan. As reported yesterday, J.P. Morgan is purchasing the joint venture's metal, oil and European power and gas businesses.

Oncor Surpasses 700,000 Advanced Meters

Oncor reported that as of January 31, 2010, it has installed 709,435 advanced meters. AEP Texas also reported no delays in its advanced metering deployment schedule. At AEP Texas, deployment is still in a pilot and testing stage, and the deployment plan did not call for any deployments in January.

Constellation Makes $90 Million Solar Capital Commitment

Constellation Energy said that it has made a $90 million solar capital commitment to support the development of commercial photovoltaic power systems. The capital commitment enables Constellation Energy to finance, design, construct and own solar installations for customers, and supply the power generated

on-site to the customer, removing up-front investment from the customer. Approximately $18 million of the capital commitment has already been committed to projects soon to begin development in Maryland and New Jersey. To maximize the value of government renewable incentives, the capital commitment will be available for customer-sited solar installations of 500 kilowatts or larger which begin construction before mid-year 2010, Constellation said. Constellation currently has approximately 25 megawatts of solar power systems installed or in development in the U.S.

Blue & Silver Energy Consulting Granted New Trade Name

The PUCT approved Blue & Silver Energy Consulting's request to add the trade name Pro-Star Energy Services to its aggregator certificate (Only in Matters, 2/3/10).

Pa. PUC Issues RFP for AEC Administrator

The Pennsylvania PUC issued an RFP for the services of an Alternative Energy Credits administrator, to, among other things, verify electric distribution company and electric generation supplier compliance with the minimum portfolio requirements of the Alternative Energy Portfolio Standards Act, perform the calculation of Tier I requirements on a quarterly basis, review applications for alternative energy system status, and respond to inquiries about alternative energy credits.

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prices."

The "sensible" Virginia model, while attractive to franchised utilities as it allows interim rate increases and construction work in progress for certain assets and sets strict parameters for how the State Corporation Commission is to determine a rate of return, has been harshly criticized by consumers this legislative session, particularly customers at Appalachian Power (AEP) who have been subject to rate increases of 60% over the past three years. Proposals to return Virginia to a traditional cost-of-service model, in place prior to restructuring, are unlikely to be adopted, however.

Returning to Duke Energy Ohio, Keith Trent, President of Duke's Commercial Businesses, reported that, while electric migration outside of the Duke corporate family was limited to 15%, Duke still experienced a negative impact of $26 million in 2009, as competitive sales have lower margins than electric security plan sales by incumbent Duke Energy Ohio.

At this time, Duke Energy Retail Sales is limiting its marketing to its affiliate service area and other territories in Ohio. Trent said that Duke Energy Retail Sales is currently evaluating areas outside of Ohio for expansion, but has no immediate expansion plans.

In addition to competitive retail sales, Duke offset migration by winning 5% of the FirstEnergy Ohio utilities' Standard Service Offer supplies in the utilities' load auction.

For 2010, Duke expects electric migration in its service territory to reach 45% (an incremental 5% increase versus 2009). Of that amount, Duke expects a net loss of 25% of load (i.e. the load not retained by the utility or captured by Duke Energy Retail Sales). The increase in net migration (from 15% to 25%) differs from the 5% change in total migration due to the annualization of the 2009 data, as migration only occurred entering the second half of the year.

The net 25% migration in 2010 is expected to negatively impact earnings by $52 million to $91 million versus 2009 results.

The vast majority of electric migration at Duke to date has been by commercial and industrial customers, but Trent said that governmental aggregations are expected to ramp up in 2010, which will expand the residential load migrating to competitive supply.

Trent reported that Duke will "likely" enter into a new electric security plan upon the expiration of its current plan on December 31, 2011. However, unlike the current electric security plan, Trent said that the new plan would include "market-based" rates, with appropriate adders for shaping, credit risk, and providing customers the option to switch (migration/POLR risk).

While calling the expected electric security plan rates "market based," Trent also said that one of the benefits of the electric security plan is that, "it can also provide a vehicle for the nonbypassable recovery of costs associated with new generation."

Executives also reported that Duke is

considering whether to follow the lead of the American Transmission Systems, Inc. utilities (FirstEnergy) by exiting the Midwest ISO in favor of PJM. A decision is likely in the not-too-distant future, executives said. While not signaling a decision one way or the other, executives noted that, should ATSI's integration into PJM be completed, Duke will be the only utility in Ohio to be in MISO.

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during the period, as compared with the same period in the prior fiscal year. Average electricity Residential Customer Equivalents (RCEs) served decreased 11% during the three months ended December 31, 2009.

Gross profit per MMBtu sold during the quarter improved to $2.22/MMBtu versus $1.54/MMBtu a year ago. Gross profit per MWh sold during the quarter was $29.96/MWh versus $29.89/MWh a year ago.

As of December 31, 2009, MXenergy reported 527,000 Residential Customer Equivalents, down from 547,000 as of September 30, 2009 and 668,000 as of December 31, 2008. A breakdown of RCEs and sales can be found in the chart below.

MXenergy improved both its in-contract attrition and renewal percentages versus September 30, 2009. For the 12 months ending December 31, 2009, in-contract attrition was 29%, versus 33% for the 12 months ending September 30, 2009 (but up from 24% versus December 31, 2008). The renewal rate improved to 92% from 90% as of September 30, 2009.

The higher attrition rate versus the year-ago period was due to the same factors reported for the quarter ending September 30, 2009 -- namely, credit-related attrition due to the economy, aggressive terminations, and enhanced credit standards; MXenergy's prior inability to offer fixed-price customers lower rates under a blend and extend program under its former credit agreement; and the conservation of cash which MXenergy had undertaken during its restructuring.

Improvement in attrition versus September 30, 2009 reflects MXenergy's ability, under its new credit agreement with RBS Sempra, to offer long-term fixed price products that were limited during the previous 15 months under its prior credit facility. The three months ended December 31, 2009 was the first full fiscal quarter under the new RBS Sempra agreement.

MXenergy cited the Georgia natural gas and Texas electricity markets, and certain LDC-guaranteed markets, such as the Ohio, Michigan and Indiana natural gas markets, as particularly problematic for credit-related attrition.

With its credit restructuring completed last year, MXenergy said that it has developed a growth and marketing plan for the remainder of

MXenergy Sales, Customer Data

	Three Months Ended December 31,		Six Months Ended December 31,	
	2009	**2008**	**2009**	**2008**
Natural Gas:				
RCEs at period end	**446,000**	582,000	**446,000**	582,000
Average RCEs during the period	**458,000**	585,000	**467,000**	577,000
MMBtus sold during the period	**13,808,000**	18,390,000	**18,153,000**	23,518,000
Sales per MMBtus sold during the period	**$ 9.71**	$ 12.52	**$ 10.22**	$ 13.20
Gross profit per MMBtus sold during the period	**$ 2.22**	$ 1.54	**$ 2.11**	$ 1.23
Heating degree days	**1,607**	1,664	**1,646**	1,687
Electricity:				
RCEs at period end	**81,000**	86,000	**81,000**	86,000
Average RCEs during the period	**78,000**	88,000	**77,000**	87,000
MWhrs sold during the period	**166,000**	216,000	**381,000**	474,000
Sales per MWhrs sold during the period	**$ 112.65**	$ 136.25	**$ 113.33**	$ 151.55
Gross profit per MWhrs sold during the period	**$ 29.96**	$ 29.89	**$ 27.61**	$ 22.30
Cooling degree days	**68**	82	**858**	854

fiscal 2010 that includes strategic initiatives within its current markets using its traditional marketing channels and new approaches to build brand awareness. In addition, MXenergy is identifying potential new markets to enter (it recently entered the PPL electricity mass market). MXenergy also said that it will evaluate acquisition opportunities for customer portfolios that are consistent with its overall growth strategy, operating and information system environments, risk management policy, and its supply, hedging and financing capabilities.

General and administrative expenses were lower in the second quarter at $12.4 million, down from $15.4 million a year ago. Advertising and marketing expenses were also lower at $390,000 versus $456,000 a year ago. In December 2009, MXenergy initiated a marketing campaign in PPL, which it anticipates will result in incremental marketing expenses for the remainder of the fiscal year 2010.