Energy Choice Matters

May 5, 2010

Conn. House, Senate Approve Energy Bill, Margins Not Veto Proof

The Connecticut Senate and House have both approved a far-reaching energy bill drastically changing how the utilities procure Standard Service power and imposing new limitations and costs on retail suppliers, though the Senate approval is not veto proof.

Late Tuesday night, the Senate approved SB 493 as amended by LCO #5273 by a vote of 20 to 14, with two senators absent and not voting. To override a veto in the Senate, 24 votes are needed.

Around 6 a.m. Wednesday morning, the House passed the same bill in concurrence with the Senate by a vote of 81-40, with 30 representatives not voting. In the House, 101 votes are needed to override a veto. With so many representatives absent, it's unclear whether, if needed to override a veto, an additional 20 votes are out there that were not present at the early morning session since the votes were not needed for passage.

In urging passage of the bill, Sen. John Fonfara, D, said that Connecticut cannot accept having the highest electric rates in the continental United States, then proceeded to lead senators in voting for a bill containing billions of new dollars in ratepayer-funded subsidies for solar and other renewable technologies.

Sen. Kevin Witkos, R, said that the bill would "astronomically" raise rates to pay for these subsidies.

Fonfara further conceded that there is "no question" that the bill's requirement for a managed portfolio approach to the procurement of Standard Service power will result in greater risk for

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TXU Residential Customer Churn Steady

TXU Energy reported steady customer churn versus the quarter ended December 31, 2009, while improved retail results lifted adjusted earnings at Energy Future Holdings.

As of Mach 31, 2010, TXU had 1.849 million residential customers, a net loss of 13,000 versus the 1.862 million reported as of December 31, 2009. The net loss of 13,000 residential customers since December 31, 2009 is essentially the same as the net loss of 14,000 residential customers TXU recorded from September 30, 2009 through December 31, 2009. As of March 31, 2009, residential customer count was 1.930 million.

The pace of churn among small business customers (< 1 MW) was also essentially flat versus the quarter ending December 31, 2009. As of March 31, 2010, TXU reported 250,000 small business customers, versus 262,000 as of December 31, 2009. The 12,000 net customer loss compares with a net customer loss of 11,000 small business customers from September 30, 2009 to December 31, 2009. As of March 31, 2009, the small business customer count was 275,000.

TXU's large customer count as of March 31, 2010 was 22,000, versus 23,000 as of December 31, 2009 and 24,000 as of March 31, 2009.

Total customer count as of March 31, 2010 was 2.121 million, versus 2.147 million as of December 31, 2009 and 2.229 million as of March 31, 2009.

Residential retail sales volumes were up 14.3% versus the year-ago quarter on colder weather which offset customer churn, and total retail volumes were up 12.0% due to the weather as well as

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FirstEnergy Solutions Increases Share of Sales at Affiliated Ohio EDCs to 80%

Increased competitive retail sales at FirstEnergy Solutions increased earnings by $304 million for the first quarter of 2010, but the gains were more than offset by decreased results from lower wholesale and POLR sales.

The $304 million increase from competitive retail sales was driven by higher volumes and the sale of RECs, partially offset by lower prices.

A decline in POLR volumes, as well as weaker prices, lowered first quarter earnings by $294 million. Lower wholesale results also decreased first quarter earnings by $27 million, on strictly lower volume.

FirstEnergy Solutions, either through competitive or POLR sales, supplied about 80% of load in its affiliated Ohio territories in the first quarter of 2010 compared to 72% in the first quarter of 2009. POLR sales accounted for about 33% of FirstEnergy Solutions' Ohio sales, while competitive sales accounted for 45%.

FirstEnergy Solutions' competitive retail sales in Ohio for the first quarter were 6.0 million MWh versus none in the first quarter of 2010. At Penn Power, FirstEnergy Solutions' competitive retail sales increased to 479,000 MWh from 395,000 MWh a year ago. FirstEnergy Solutions' competitive retail sales in non-affiliated areas grew to 2.1 million MWh from 858,000 MWh a year ago.

FirstEnergy Solutions' POLR sales to its Ohio affiliates decreased to 4.4 million MWh from 9.5 million MWh a year ago.

During an earnings call, executives said that FirstEnergy Solutions has thus far achieved 98% of its planned sales for 2010 and 51% for 2011. FirstEnergy Solutions expects 2011 will be filled as future POLR auctions are completed in Pennsylvania and Ohio.

FirstEnergy also reported that it took a special charge of $6 million relating to the purchase of 2010 power supplies for the Northeast Ohio Public Energy Council from NOPEC's former supplier (Gexa) in connection with FirstEnergy Solutions' supply agreement with NOPEC.

FirstEnergy further said that FirstEnergy Solutions sold approximately 9,400 MW of capacity in the 2011/2012 American Transmission Systems Inc. integration auction at a clearing price of about $109 per megawatt-day, and sold about 9,200 megawatts in the 2012/2013 auction at just over $20 per megawatt-day.

Earnings from FirstEnergy's Competitive Energy Services unit were lower at $76 million, versus $155 million a year ago, on higher purchased power, fuel costs, and capacity expenses in addition to lower commodity margin from decreased wholesale sales.

Duke Commercial Power Earnings Lower on Migration

Duke Energy's Commercial Power unit reported first-quarter adjusted EBIT from continuing operations of $100 million, versus $103 million a year ago, due to lower retail sales volumes from competition in Ohio, the effects of which were partially offset by customer acquisition efforts by Duke's competitive retail subsidiary.

The negative impact from Ohio migration offset gains from favorable operation and maintenance costs due to the prior-year timing of plant outages, and favorable results from the Midwest gas assets.

Reported EBIT was higher at $129 million, compared to $114 million in the first quarter of 2009, due to mark-to-market gains on economic hedges.

By the end of 2009, the gross electric switching rate at Duke Energy Ohio was around 40%, while the net switching rate (net of customer load acquired by affiliate Duke Energy Retail Sales), was about 15%. The unfavorable financial impact for 2009 from such migration was approximately $26 million.

Net switching has grown to 20% in the first quarter. Duke had previously estimated the negative impact of migration on 2010 full-year earnings at $52 million to $92 million, which assumed an average gross switching rate of 45% for the year (Only in Matters, 2/17/10). Based on its experience in the first quarter, Duke now expect gross switching to average 50% to 55% (net switching of 25-30%), and for the negative earnings impact to be in the upper range of the forecast of $52 million to $92 million.

Switching continues to occur primarily in the commercial and industrial classes, Duke said. While residential switching to date has been moderate, Duke said that it is seeing increased competitor activity in the residential sector in both government aggregation efforts and in the targeting of individual residential customers (specifically by Dominion Retail and FirstEnergy Solutions). Duke Energy Retail Sales is active in the residential aggregation market.

Duke Energy Retail Sales continues to retain about 60% of switched load, Duke reported. Furthermore, Duke Energy Retail Sales, "will continue to pursue customer acquisitions aggressively, whether it is through a defensive strategy of acquiring customers in our service territory, or an offensive strategy in which we are selectively attracting customers outside of our service territory."

In response to a question, executives reported that Duke continues to evaluate the potential for removing generation assets from the Duke Energy Ohio ratebase, though at a minimum it is precluded from doing so under the term of its current electric security plan.

Calif. Draft Would Not Prohibit All CCA-Related Utility Marketing

A California PUC draft decision would deny the City and County of San Francisco's petition to prohibit utility marketing regarding a community choice aggregation (CCA) program, but would prohibit utilities from engaging in misrepresentations regarding CCA service (R. 03-10-003).

San Francisco, arguing that circumstances had changed since the PUC originally adjudicated the issue of CCA-related utility marketing because Pacific Gas & Electric has now shifted its position from not opposing CCAs to vigorously opposing them, had petitioned the PUC to prohibit any utility marketing or communications that discuss the rates or services of a CCA program or that have the purpose or effect of discouraging retail customers from taking service from a CCA program or encouraging them to remain customers of the utility (Only in Matters, 1/14/10).

However, the draft decision finds that prohibiting utilities from marketing against CCAs goes beyond the simple "cooperation" required of utilities regarding CCAs under statute. "[P]rohibiting utilities from marketing against CCAs would be more excessive than reasonably necessary," the proposed decision states.

The proposed decision would make clear that, if utilities engage in misrepresentations regarding CCAs and CCA programs, they may be liable for penalties and subject to a temporary restraining order or preliminary injunction in a complaint before the PUC.

Furthermore, the draft would prohibit the utilities from offering alternative opt-out mechanisms than those identified in the CCA-specific information provided by the CCA pursuant to Resolution E-4250. The draft would require tariff changes to ensure that utilities do not solicit or accept opt-out requests until the CCA-specific information about the terms and conditions of service becomes available to customers when the CCA provides this information in compliance with the timeline set forth in statute.

"Allowing the utility to offer customers an alternative opt-out mechanism other than the one presented by the CCA would create customer confusion," the draft concludes.

Sempra Expects North American Commodities Sale Announcement in 4-6 Weeks

Sempra expects to announce a buyer for its North American Power and Gas commodities business within the next four to six weeks, with the sale completed by August, Sempra CEO Donald Felsinger said during an earnings call.

Sempra Energy's commodity operations reported a loss of $5 million in the first quarter 2010, compared with earnings of $114 million last year. The loss mainly results from reduced margins in oil and European natural gas marketing, higher costs for employee retention, and a $12 million after-tax charge related to the energy-crisis litigation settlement. Aside from crude and European gas, the other product lines of the commodities business are performing "okay," executives said.

Sempra Generation recorded a first-quarter loss of $53 million in 2010, compared with earnings of $43 million in 2009, primarily due to an $84 million after-tax charge related to the energy-crisis litigation settlement. Lower earnings from operations, primarily from increased scheduled plant maintenance and associated down time in 2010, impacted results negatively by $12 million.

Briefly:

NiSource Winding Down Gas Marketing Unit

In the first quarter of 2010 NiSource made a decision to wind down its unregulated natural gas marketing activities, it reported in a 10-Q. A sale of the marketer was not consummated in 2009, and since that time the non-regulated supplier has been held as discontinued operations, but NiSource had not previously committed to winding down the business versus another sale attempt (Only in Matters, 2/2/10). The marketer had virtually no impact on the parent's earrings in the first quarter, NiSource said.

Sunoco Power Marketing Seeks Pa. Electric License

Sunoco Power Marketing LLC applied for a Pennsylvania electric generation supplier license as a generator and supplier of electric power in order to supply its own facilities within PECO with generation it owns within PSE&G that is sold into PJM.

ComEd Proposes Rate Freeze

ComEd has proposed to provide the state of Illinois with $500 million to fill a budget gap in exchange for freezing residential and small business rates for four years, apparently including retail generation rates. The proposal would freeze rates at 12.2¢/kWh, apparently combining generation and distribution. Consumer advocates quickly criticized the proposal since generation rates are expected to decrease is the in rate adjustments following the June 1, 2010 generation rate adjustment. In a statement, ComEd noted that in the event wholesale generation rates drop, customers could seek an alternative supplier. The offer also includes a long-term power agreement to keep rates stable through June 2017

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ratepayers, but said that the "hope" is that the employees hired to run such procurements are able to produce benefits exceeding these risks.

Fonfara agreed that retail competition is working, but said that Connecticut does not need to maintain an artificially high Standard Service price in order to sustain retail competition.

Under the amended and adopted version of the bill, the DPUC shall conduct a proceeding to determine the cost of billing, collection, and other services provided by the electric distribution companies or the Department solely for the benefit of electric suppliers and aggregators serving residential and small commercial customers. The Department shall order an equitable allocation of such costs among electric suppliers and aggregators. As part of this same proceeding, the Department shall also determine the costs that the electric distribution companies incur solely for the benefit of Standard Service and Last Resort Service customers, and shall allocate and provide for the equitable recovery of such costs from Standard Service or Last Resort Service customers.

The amended bill is explicit that, "[a]ny customer of an electric supplier, which is choosing to provide direct billing, who paid for the cost of billing and other services to an electric distribution company shall receive a credit on their monthly bill."

For customers with demands less than or equal to 100 kW, each contract shall include, "a statement that provides specific directions to the customer as to how to compare the price term in the contract to the customer's existing electric generation service charge on the electric bill and how long those rates are guaranteed." This modifies the previously drafted requirement for the supplier to provide the actual rate comparison in the contract.

The amended bill retains the current provision that the rescission period only applies to customers under 500 kW.

The bill still requires electric suppliers to provide customers with a demand less than 100 kW with a written contract; however, it does not appear that such written contract must be produced prior to enrollment (note that the bill is inconsistent in that this requirement does not apply to customers with demands equal to 100 kW, while most of the other mass market protections do apply to such customers).

Residential customer termination fees will be capped at the lower of $100 or twice the estimated bill for energy services for an average month.

Any third-party agent who contracts with or is otherwise compensated by an electric supplier to sell electric generation services shall be a legal agent of the electric supplier. "No third-party agent may sell electric generation services on behalf of an electric supplier unless (i) the third-party agent is an employee or independent contractor of such electric supplier, and (ii) the third-party agent has received appropriate training directly from such electric supplier," the bill provides.

On or after July 1, 2010, all sales and solicitations of electric customers with demands of 100 kW or less shall include a statement that the solicitor does not represent an electric distribution company. For the same size of customers, the bill further prohibits door-to-door marketing between the hours of 10 a.m. and 6 p.m.

Again, for the same size of customers, supplier representatives or agents must prominently display or wear a photo identification badge stating the name of the representative's employer or the electric supplier that the person represents. Each supplier, aggregator, or agent shall conduct a criminal background check on each person such entity employs to conduct such door-to-door sales and no one who has been convicted of a felony or a misdemeanor involving robbery, theft, misrepresentation or any other similar crime shall be employed to conduct such sales.

When advertising or disclosing the price for electricity, the electric supplier, aggregator, or agent of an electric supplier or aggregator shall also disclose the electric distribution company's current charges, including the competitive transition assessment and the systems benefits charge, for that customer class. Regarding renewable content, electric suppliers may only advertise renewable energy credits purchased beyond those required pursuant to the RPS.

The bill provides that automatic renewals are permitted if the supplier clearly informs the customer in writing, not less than thirty days nor more than sixty days before the renewal date, of the renewal terms and of the option not to accept the renewal offer. Furthermore, for automatic renewals, no fee shall be charged to a customer who terminates or cancels such renewal not later than seven business days after receiving the first billing statement for the renewed contract.

The bill requires electric suppliers to offer a time-of-use rate option to customers that provides for a peak period use rate of at least a five hundred per cent increase in the standard non-peak use rate. The peak period shall be not more than four hours in any twenty-four-hour period. Furthermore, the amended bill provides that the standard non-peak use rate under this option shall be less than the standard use rate offered by the supplier to the customer.

The bill allows the procurement of Standard Service supplies on a managed portfolio with a mix of product types and lengths. Furthermore, in attempts to reduce electric prices 15% by July 2012, the bill permits the procurement of generation via long-term contracts or "other interventions [that] are needed to achieve the goal."

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a change in business customer mix and economic recovery (see chart p. 6).

Average volume per residential customer for the quarter was up 18% at 3,621 kWh.

Retail operating revenues from residential customers were up 10%, while total retail revenues were up 3.6% versus the year-ago period (see chart p. 6).

SG&A expenses for EFH's competitive units increased $11 million, or 6%, to $183 million in the first quarter of 2010. The increase reflected $15 million in increased bad debt expense from retail operations primarily associated with residential customers, reflecting higher delinquencies due to delays in final bills and disconnects resulting from a system conversion, customer losses, and general economic conditions. Partially offsetting the bad debt were lower costs related to TXU's outsourcing transition and new retail customer care system.

Adjusted EBITDA at Texas Competitive

Electric Holdings, which includes TXU and Luminant, was $891 million for the first quarter of 2010, versus $823 million a year ago. Key after-tax drivers for the change in non-GAAP operating results include a $25 million improvement versus the year-ago quarter from the higher retail volumes primarily driven by colder winter weather and improvement in the economy, and a $23 million improvement due to higher margin from asset management and the retail business.

Net income at TCEH was lower at $450 million for the quarter, versus $576 million a year ago, on higher interest expense.

TXU Sales Data

	Three Months Ended March 31,		
	2010	**2009**	**% Change**
Retail Sales Volumes (GWh):			
Residential	6,719	5,880	14.3
Small business	1,982	1,722	15.1
Large business	3,519	3,305	6.5
Total retail electricity	12,220	10,907	12.0

	Three Months Ended March 31,		
	2010	**2009**	**% Change**
Retail Electricity Revenues (millions):			
Residential	$870	$793	9.7
Small business	267	264	1.1
Large business	284	314	(9.6)
Total retail revenues	1,421	1,371	3.6