Energy Choice Matters

May 20, 2010

OCC Seeks Audit of Dominion East Ohio Due to Proposed Storage Lease to Affiliate

The Ohio Consumers Counsel has petitioned the Public Utilities Commission of Ohio to a perform special management performance audit of Dominion East Ohio, and require Dominion East Ohio to prepare a long-term forecast, in response to the application of Dominion East Ohio at FERC to lease approximately 3-5 Bcf of excess on-system storage to its affiliate Dominion Transmission (PUCO docket 07-1224-GA-EXM, FERC docket CP10-107).

OCC argued that PUCO must determine how the lease of 3-5 Bcf of on-system storage capacity from Dominion East Ohio to Dominion Transmission impacts: (1) the quality and quantity of storage service available to Ohio residential customers; (2) the operation and vitality of the Dominion Choice Program; (3) the operation and least cost ability of the Standard Choice Offer; and (4) customers' rates through impacts on the revenues generated from Off-System Sales, Capacity Release, and Park, Loan and Exchange transactions that can offset some of the rates collected from residential customers.

In answering an OCC protest at FERC, the Dominion affiliates jointly said that, "no existing or potential customer has protested the Joint Application [at FERC], despite the fact that the Ohio OCC raised its concerns about the Lease at an April 15, 2010 meeting of [Dominion East Ohio's] Energy Choice stakeholder meeting attended by 16 marketing companies that collectively serve over 99% of DEO's combined Energy Choice, SSO and SCO customers, as well as by the Ohio PUC Staff."

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Pa. OCA Suggests EDCs Be Allowed to Meet Supplier List Requirement Via Web

Pennsylvania's code of conduct for electric distribution companies (EDCs) should be modernized to allow utilities to provide customers with a list of electric generation suppliers (EGSs) via a website, rather than by phone, the Office of Consumer Advocate said in comments on a PUC rulemaking (L-2010-2160942).

Currently, 52 Pa. Code § 54.122(9) requires electric distribution companies to, "provide the latest list as compiled by the Commission over the telephone, or in written form or by equal and nondiscriminatory means," to customers requesting information about suppliers.

The OCA supports the continuation of this obligation for distribution companies, but noted that as the number of suppliers (including brokers) now exceeds 100, relaying the information by telephone would be unwieldy. OCA recommended that distribution companies be allowed to fulfill their obligation by providing customers with the PUC's Power Switch website link, and/or by providing a written or emailed list to the customer. The FirstEnergy distribution companies made a similar recommendation.

The Energy Association of Pennsylvania said that little change is needed to the affiliate rules given the lack of complaints from suppliers or requests for mediation since the rules were adopted a decade ago.

The Association did say, however, that 52 Pa. Code §54.122(10) should provide protection

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Connecticut Light & Power Reports April Migration Data

Supplier Accounts as of 4/30/10	April '10 Residential	April '10 Business	April '10 Total	% of Migrated Customers	Change vs. March '10 Total
Clearview Electric	13,293	313	13,606	4.7%	802
ConEdison Solutions	5,814	2,321	8,135	2.8%	402
Constellation NewEnergy	1,249	8,233	9,482	3.3%	34
Direct Energy Business	127	3,265	3,392	1.2%	(8)
Direct Energy Services	51,322	7,000	58,322	20.0%	(2,453)
Discount Power Inc	5,038	607	5,645	1.9%	2,570
Dominion Retail	54,179	9,840	64,019	22.0%	(1,407)
Energy Plus Holdings LLC	18,079	1,911	19,990	6.9%	4,713
Gexa Energy	321	1,676	1,997	0.7%	73
Glacial Energy	1,325	2,163	3,488	1.2%	(628)
Hess Corporation	262	1,683	1,945	0.7%	8
Integrys Energy Services	42	3,186	3,228	1.1%	20
Liberty Power Holdings	334	379	713	0.2%	(46)
Mxenergy	13,236	1,649	14,885	5.1%	4,883
North American Power and Gas	194	44	238	0.1%	238
Pepco Energy Services	0	8	8	0.0%	(2)
Public Power & Utility	28,573	4,157	32,730	11.2%	1,916
Rescom Energy, LLC	9,757	1,732	11,489	3.9%	6,525
Royal Bank of Scotland	0	0	0		0
Sempra Energy Solutions	5	1,087	1,092	0.4%	(11)
South Jersey Energy Company	0	3	3	0.0%	0
Starion Energy	1,098	221	1,319	0.5%	1,319
Suez Energy Resources NA	20	824	844	0.3%	135
TransCanada Power Marketing	28	2,544	2,572	0.9%	(3)
Verde Energy Savings	16,485	472	16,957	5.8%	5,432
Viridian Energy	13,892	1,485	15,377	5.3%	914
Whole Foods Market Group	0	2	2	0.0%	0
Total All Suppliers	**234,673**	**56,805**	**291,478**	100.0%	25,426

Aggregate Data

Customer Load - Suppliers and CL&P (MWh)

	Residential - SS		Business - SS		Business - LRS		Total CL&P Territory	
	MWh	% of Class	MWh	% of Class	MWh	% of Class	MWh	% of Total
Suppliers	172,454	24.5%	390,636	72.2%	374,250	87.3%	937,339	56.0%
CL&P	531,004	75.5%	150,161	27.8%	54,316	12.7%	735,481	44.0%
Total	703,458		540,797		428,566		1,672,820	

Customer Count - Suppliers and CL&P

	Residential - SS		Business - SS		Business - LRS		Total CL&P Territory	
	Customers	% of Class	Customers	% of Class	Customers	% of Class	Customers	% of Total
Suppliers	234,673	21.3%	55,983	47%	822	82.5%	291,478	23.8%
CL&P	867,987	78.7%	63,424	53%	174	17.5%	931,585	76.2%
Total	1,102,660		119,407		996		1,223,063	

SS: Standard Service LRS: Last Resort Service *Data as reported by CL&P*

Briefly:

Major Energy Services Receives Md. Gas Supply License

The Maryland PSC granted Major Energy Services, LLC a natural gas supplier license to serve residential and commercial customers at Baltimore Gas & Electric and Columbia Gas (Only in Matters, 10/29/09).

Oasis Energy Receives Md. Gas Supply License

The Maryland PSC granted Oasis Power, LLC d/b/a Oasis Energy a natural gas supplier license to serve residential and commercial customers at Baltimore Gas & Electric (Only in Matters, 4/9/10). Oasis recently received a Maryland electric supply license as well (Only in Matters, 5/12/10).

Direct Energy Services Seeks Authority to Serve Illinois Residential Customers

Direct Energy Services has sought to amend its Illinois alternative retail electric supplier license to serve all classes of customers, including residential customers, at Commonwealth Edison and the three Ameren utilities. Currently, Direct Energy Services is licensed to serve non-residential customers with annual consumption over 15,000 kWh at ComEd and AmerenIP.

Champion Energy Receives Authority to Serve Illinois Residential Customers

The Illinois Commerce Commission granted Champion Energy's request to amend its alternative retail electric supplier license to expand its authority to include service to all customer classes, including residential customers, at Commonwealth Edison, the three Ameren utilities, and MidAmerican Energy (Only in Matters, 3/4/10). Previously, Champion was only licensed to serve non-residential customers with annual consumption greater than 15,000 kWh at ComEd and AmerenIP. Champion has also received single-billing authority in all territories except MidAmerican Energy, where it did not seek such authority.

REPower Customers Apparently Sold, No POLR Transition Expected

REPower, which as reported yesterday intends to cease its Texas retail supply operations July 6, 2010, is not expected to transfer any customers to POLRs as a result of this cessation, as it apparently has entered an agreement, or soon will, to sell the customers to another REP. The identity of any purchasing REP or REPs is unknown due to confidentiality protection in its notice of cessation. REPower did not respond to a request for comment yesterday, though it indicated it will shortly.

Algonquin Energy Services Receives Authority to Serve Customers at CMP, BHE

The Maine PUC granted Algonquin Energy Services' request to amend its license as a competitive electric provider and Standard Offer provider to include service to all customers at Central Maine Power and Bangor Hydro-Electric in addition to customers at Maine Public Service, Eastern Maine Electric Cooperative, Houlton Water Company, and Van Buren Light & Power District.

KEMA Forecasts 2010 Competitive Electric Sales at 552 TWh

KEMA said yesterday that it estimates annual competitive retail electric sales will total 552 TWh in 2010 and 602 TWh in 2011, up from 483 TWh at the end of 2009. Ohio and Pennsylvania combined will account for 39 TWh, or more than half the forecasted growth of 69 TWh in 2010, KEMA said. The non-residential sector accounts for 52 TWh of the 2010 projected growth. KEMA estimates that the share of the market that is served competitively will move from 35 percent of choice-eligible electricity sales in 2008 to 46 percent in 2011.

Coastal Energy Company Receives Md. Broker License

The Maryland PSC granted Coastal Energy Company, LLC an electric broker license to serve commercial and industrial customers in all service areas (Only in Matters, 4/1/10).

Acclaim Energy Advisors Receives Maine Broker License

The Maine PUC granted Acclaim Energy Advisors an aggregator/broker license to serve medium and large non-residential customers in all service areas.

Standard Power of America Receives Maine Broker License

The Maine PUC granted Standard Power of America an electric aggregator/broker license to serve all sizes of non-residential customers in the service territories of Central Maine Power and Bangor Hydro-Electric.

Devonshire Energy Seeks Option 2 REP Certificate

Devonshire Energy LLC applied for a REP certificate at the PUCT as an Option 2 REP serving a registered list of customers. Devonshire is part of Fidelity Investments, and holds electric supply licenses in Massachusetts and Rhode Island.

DPUC Opens Review of Connecticut Clean Energy Options

The Connecticut DPUC has opened Docket 10-05-07 for a review of the entire Connecticut Clean Energy Options program, including Connecticut Clean Energy Options suppliers/customers and compliance. A portion of the program was last reviewed in early 2008. The Clean Energy Options program allows customers on default service to purchase RECs from certified, non-load-serving suppliers.

Green Mountain Energy Answers SECA Motion to Lodge

Green Mountain Energy filed an answer to Dayton Power & Light's motion to lodge at FERC information concerning the Midwest ISO's recent invoices to Green Mountain for $42 million in Seams Elimination Charge Adjustments, as Green Mountain reiterated it has never been a transmission customer of the Midwest ISO or a market participant in the Midwest ISO energy markets (Matters, 5/17/10). "The Midwest ISO, therefore, is knowingly demanding payment of almost $42 million in transmission charges from an entity with which it has never had contractual privity and to which it has never provided transmission or any other service. The Commission has no authority to authorize such a charge," Green Mountain said.

Ohio Environmental Council Concedes Opposition to Solar Force Majeure Declaration Moot

In amended comments on the request from several competitive suppliers for force majeure declarations regarding the 2009 solar RPS requirement (Matters, 5/19/10), the Ohio Environmental Council conceded that its request to deny the petitions is moot given that PUCO, as noted by *Matters*, has already granted a force majeure declaration to competitive suppliers in response to a request from the Retail Energy Supply Association. However, the Council said that it, "disagree[s] with the concept of a blanket finding unless the evidence is remarkably strong." In the future, the Council asked that force majeure applications be considered and reviewed on an individual basis, so that the evidence of a particular regulated entity's efforts to comply with SB 221 can be reviewed, and a proper evidentiary determination can be made.

DEO ... from 1

Stand Energy has since filed comments at PUCO in support of OCC's motion for an audit by the Ohio Commission, though Stand's position is thus far limited to agreeing an examination is necessary to answer the questions raised by OCC. While not taking a formal position on disposition, Stand said that, without further information, the Dominion companies' application, "would appear contrary to the best interests of customers, suppliers and potentially the integrity of the Dominion LDC system."

Dominion East Ohio has said that the capacity to be leased is excess capacity due to declining demand. The capacity would be leased for 15-20 years, and Dominion Transmission would use the leased on-system storage capacity to serve customers in the interstate market.

"Because of the length of the proposed lease (15-20 years) Dominion is essentially writing off the need for this on-system storage capacity to serve the needs of the residential customers in North-East Ohio for the foreseeable future," OCC charged.

"The OCC is concerned that a long-term decision is being made without the benefit of sufficient data to support this claim. The Joint Application fails to address the issue of how Dominion would serve in-state customers if any of the recently lost demand were to return," OCC said.

The Dominion affiliates replied that annual consumption at Dominion East Ohio has decreased 40 Bcf since 2005, and that from 2000-07, prior to the economic downturn, normalized residential usage had fallen 18%.

OCC added that, "[t]he operation and viability of both the Dominion Choice Program and the SCO are dependant on the availability of Dominion's on-system storage capacity which permits participating Marketers to physically hedge some gas supply so that they can offer residential customers a lower year-round price for service."

At FERC, the Dominion companies said that Dominion East Ohio's existing intrastate customers will receive the same amount and quality of storage service, and pay the same rates, after commencement of the lease as they do now. Dominion East Ohio allocates a portion of its on-system storage to suppliers operating in its Energy Choice, Standard Service Offer, and Standard Choice Offer programs. The allocation of on-system storage rights is based on each supplier's calculated design day load. Dominion East Ohio has made no changes to those storage allocations since April 2005, and no change in the allocation methodology since October 2000. "The Lease will not affect the allocation or allocation methodology in any way. Thus, the intrastate storage available to DEO's retail customers will continue to change automatically in the future as their needs change, subject of course to oversight by the Ohio PUC," the Dominion companies said.

OCC further said that, "[i]t is also unclear in the Joint Application whether Dominion ever made the allegedly excess capacity available to any other customers or potential customers, including independent Marketers servicing Dominion's Choice program, or to other Industrial or Commercial customers, before entering into an agreement with its affiliate interstate pipeline." OCC said that it has asked FERC to determine whether a transparent open season, where the rate and contractual terms and conditions were clearly defined and made available to all interested parties, was or should have been conducted.

The Dominion companies noted that Dominion East Ohio does have an annual open season for intrastate storage service, but said that Dominion East Ohio is currently unable to offer interstate storage service to the market generally. Dominion East Ohio is unable to deliver gas into the interstate pipeline grid, forcing the reliance on withdrawals by displacement of gas that otherwise would be delivered to its system -- until new compression is constructed, as Dominion Transmission has committed to do as part of the Lease Agreement. Dominion East Ohio also requires very specific limitations on the timing of deliverability with this incremental storage.

"For these reasons, DEO elected to proceed with a lease of its storage capacity. Open seasons are not required, or common, to select a counterparty for a lease, and there is no evidence of anything unduly discriminatory about DEO contracting here with DTI for a capacity payment based on Ohio PUC-approved rates. Notably, no alternative customer (or, more precisely, potential lessee) for DEO's storage has raised any issues in this [FERC] proceeding," the Dominion companies said in their answer at FERC.

The Dominion companies also stressed that in Dominion East Ohio's recent open season for intrastate storage, there was no reduction in the amount of storage service made available for the 2010-2011 storage season compared to the prior year or compared to the capacity included in Dominion East Ohio's last Ohio rate case as a result of the Lease Agreement. "And the amount of intrastate service offered in the annual open season in the future will not be reduced as a result of the Lease," the Dominion companies said.

OCC argued that the Dominion companies have presented contradictory information regarding total storage levels at Dominion East Ohio, as well as the impact of a recently constructed 20-inch pipeline, and questioned how the storage to be leased could be incremental when in prior analyses there was no excess storage. The Dominion companies responded that the storage numbers are not inconsistent, and rather reflect increased difficulty in turning working gas inventory each year. The Lease Agreement will help address the problem of turning storage gas, while making incremental storage available to the interstate market, the Dominion companies said.

OCC finally said that the FERC application, "raises the question of whether the proposed lease is just the first step in a gradual erosion and overall plan to sell off more significant portions of the on-system storage capacity or other Dominion assets - before [Dominion East Ohio] itself might become an asset for sale. This is a question that must be evaluated in light of the fact that Dominion's parent Company recently sold one of Dominion's affiliate distribution companies, Dominion People's to Peoples Hope Gas Companies, and attempted to sell another distribution company affiliate, Dominion Hope."

Pa. ... *from 1*

against improper use of distribution company or supplier logos for marketing purposes, including such use of logos in a deceptive manner. While current regulations prohibit deceptive advertising, the FirstEnergy distribution companies recommended stronger language holding that, "EGSs may not represent themselves as employees of the EDC through their attire or actions."

Furthermore the Association said that, "under no circumstances should suppliers be allowed to use the intellectual property of another company for any purpose without first entering into an appropriate license agreement specifying such rights."

The Pennsylvania Energy Marketers Coalition said that energy commodities supplied by utility affiliates must be offered fully independent of any other goods or services offered by the utility to its customers. "To that end, we believe affiliates must not be allowed to engage in false or deceptive advertising which can enable them to utilize their common ownership to unduly influence consumers," the marketers coalition said, representing Agway Energy Services, Energy Plus Holdings, Gateway Energy Services, Interstate Gas Supply, U.S. Gas & Electric, and Vectren Retail. The Pennsylvania marketers further suggested that the PUC review the New York Uniform Business Practices which require that, during face-to-face marketing efforts, sales agents of a supplier must produce identification which depicts the legitimate trade name and logo of the supplier they are representing.

While acknowledging that customer protection and marketing issues are being addressed in a separate rulemaking, the National Energy Marketers Association said that, "more robust consumer participation in the retail market must be met with more vigilant oversight of market participants," including in utility-affiliate relations. "It is imperative that competitive suppliers and their customers receive fair, unbiased treatment by the regulated utilities and that the services offered by the regulated utilities in the marketplace be provided in a non-discriminatory and competitively neutral fashion," NEM said

NEM noted that 52 Pa. Code § 54.121 currently includes the goal of preventing, "cross subsidization of service amongst customers, customer classes or between related electric distribution companies and electric generation suppliers." NEM suggested that this goal be expressly included in the utility code of conduct provisions. In other words, NEM said that § 54.122 should include language to the effect that:

- Subsidies of non-regulated activities by regulated entities should be prohibited. "No costs or overhead related to competitive, non-regulated activities should be included in the rates of regulated utility services," NEM said.
- Under no circumstances may a regulated entity sell, release or otherwise transfer assets, services or commodities that have been included in regulated rates at less than market value

"The corollary issue is the need to unbundle commodity-related costs from utility base rates and move those costs to the Price to Compare," NEM added. "Embedded cost-based rate unbundling ensures that consumers see and understand the full extent of the costs associated with utility default service and permit consumers to make accurate, informed comparisons with competitive offerings," NEM said.

West Penn Power (Allegheny) noted that in the 1998-2000 affiliate rulemaking, the Commission expressly considered but declined to require the physical separation of retail and generation functions; instead preferring the "functional separation" of the entities. "Given that the Commission's functional separation concept has been successful, the Company submits that it should be continued," West Penn Power said.

The Pennsylvania marketers urged the PUC to conduct a similar affiliate rulemaking with respect to natural gas distribution companies.