Energy Choice Matters

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Commerce Exiting ERCOT Market, Ambit Picks Up Customers

Troubled retailer Commerce Energy is exiting the ERCOT market and has sold its entire Texas customer book, about 60,000 customers, to Ambit Energy for an estimated $14.8 million.

The asset purchase agreement includes a non-compete clause that bars Commerce from competing in the retail electricity business in the State of Texas, or soliciting Ambit's employees, customers or clients in the State of Texas. Commerce said it will focus on the Ohio and California gas markets and other markets in the Northeast.

The deal follows a much smaller sale this summer under which MXenergy bought Commerce's residential book at Baltimore Gas & Electric (Matters, 9/30/08), as Commerce tries to turn things around. In shedding nearly 60,000 ERCOT customers, Commerce's book will shrink by about one-third, according to Commerce's last publicly reported customer count of 165,000 as of April 30, 2008. Commerce started the summer by shedding one-third of its workforce, and also sold its consulting business Skipping Stone.

Ambit will preserve the terms and conditions of the acquired customer contracts, which Commerce said featured residential, small C&I and large C&I customers. The bulk of Commerce's ERCOT business has traditionally been C&I.

The initial purchase price paid to Commerce is $11.2 million, with $8.5 million paid on October 24. The remaining $2.7 million, to be reduced by customer deposits and adjusted by positive or negative monetary adjustments if the number of active customers transferred deviates by more than 2.5% from 57,588 customers, is payable in cash on or before November 24, 2008. Additionally, Ambit will

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New Marketing, Disclosure Rules in New York Apply to All ESCO Sales

Expanded marketing and disclosure rules applicable to ESCOs in New York must be followed when marketing to all customers, not just residential or mass market customers, the New York PSC confirmed in a written Order on the new standards (Matters, 10/16/08). The revised Uniform Business Practices (UBPs) apply to new ESCO service agreements and to renewals of current ESCO service agreements (07-M-1514).

Although the Commission believed that the need for regulatory oversight of ESCOs would diminish as the competitive market grew, "the need for regulatory oversight has also grown as a result of legislative amendments to the Public Service Law and as questionable marketing practices by some ESCOs have developed," the Commission said in its Order.

Due to the administrative difficulty in determining where one class of customers ends and another begins, and because the existing UBPs are applicable to all customers, the new marketing and disclosure standards apply to all customers, the PSC said. Applicability to all customers is also appropriate, the Commission added, because the new standards are "reasonable" and ensure that any and all customer expectations of fair and accurate information are met.

The Customer Disclosure Statement, or Schumer Box, required for all sales agreements must be displayed on the first page of the agreement, and list:

- The price, terms and conditions of the ESCO agreement;
- The length of the agreement;

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Maryland SOS Solicitation Could Fuel Change in Procurement Mechanism

The "substantial" premiums seen in the Maryland IOUs' October 20 SOS procurement could "strike at the very core of the Maryland hedging strategy" and prompt "alternate procurement strategies" if premiums are sustained, bid monitor Liberty Consulting Group said in testimony.

Liberty Consulting blamed the premium on the current turmoil in financial markets (Matters, 10/27/08). The PSC is currently reviewing SOS structure and procurement in Case 9117, and utilities recently responded to Commission direction to prepare analyses of long-term procurement plans (Matters, 10/2/08).

Based on Staff analysis, residential SOS supply costs will rise 10% at Pepco and 13.4% at Allegheny Power (for customers on the rate transition plan). There were no acceptable bids for Baltimore Gas and Electric or Delmarva residential blocks. For Type I customers, SOS supply costs will increase 4% at BGE and 0.7% at Pepco. The Delmarva Type I block did not receive acceptable bids; Allegheny did not have any Type I load out for bid.

Type II SOS supply prices across all utilities are down 20% from the fall quarter, reflecting seasonality and lower commodity prices, but are up versus supply prices from a year ago, though Staff did not provide specific estimates. Instead, Staff reported that on a total bill basis (including delivery charges), Type II customer bills will rise 7-17% at BGE, 8% at Pepco, 5-12% at Delmarva and 1% at Allegheny.

"By any measure, prices were well beyond the typical levels seen in nearly every SOS procurement and well beyond the levels we had anticipated based on other market factors, such as the recent collapse of commodity prices," Liberty Consulting said.

One method Liberty used to measure the premium was to gauge the changes in oil, gas and PJM prices over the last six months and the last year. In all cases, bid prices far exceeded what would have been predicted by those commodities. Liberty also projected anticipated prices by comparing NYMEX prices at the time of the last auction, and found actual bids to be far higher than what would have been predicted. Additionally, prior bid prices were compiled as a function of NYMEX futures in the corresponding delivery periods. This ratio was far higher for the October 20 auction than past auctions, Liberty reported.

Liberty, however, said the premiums do not suggest a market failure or other breakdown in the marketplace, but rather a "natural" market response to the financial crisis, the perceived cost of doing business and heightened sensitivity to risk.

Still, if the premium is long-term, "Maryland would be forced to consider alternate procurement strategies and alternate hedging options," Liberty said.

While Liberty has found the Maryland procurement process to be efficient because its structure encourages a low risk premium on the part of competitive vendors, long-term higher premiums would suggest it makes economic sense to hedge less and take on more risk, Liberty said. "Given the enormous sums involved, and the impact on an economy already under siege, it would be prudent to start planning for such a contingency now," Liberty said, by designing a better procurement process.

N.Y. Generators Place 2002 Capacity Underprocurement Cost at $64 Million

Underprocurement of capacity by LSEs in the New York ISO during the Summer 2002 Capability Period cost Rest of State (ROS) capacity suppliers $21 million in lost revenue, while costing in-City suppliers over $43 million, generators said in testimony filed at FERC (EL05-17-003).

The economic harm was caused because NYISO failed to require LSEs to obtain sufficient quantities of unforced capacity (UCAP) due to an error in translating installed capacity (ICAP) requirements into UCAP requirements. While KeySpan-Ravenswood originally filed a complaint, FERC has ruled that other capacity suppliers make seek redress for the error from LSEs (Matters, 8/18/08).

Specifically, NYISO staff determined that, as a result of using inconsistent forced outage rates, a total of 1,690 MW of UCAP required to meet reliability standards was not obtained by LSEs during the Summer 2002 Capability Period.

According to Jonathan Lesser of Bates White, in testimony sponsored by Dynegy, NRG Energy, and Reliant Energy, estimates of lost revenues by

supplier are estimated to be:

- Dynegy: $6.23 million - $7.07 million (ROS)
- NRG: $5.63 million - $6.08 million (in-City and ROS)
- Reliant: $13.36 million (in-City).

Duke Ohio Reaches Settlement on Electric Security Plan

Duke Energy Ohio said yesterday it has reached a settlement with most intervenors, including PUCO Staff and the Ohio Consumers' Council, concerning its electric security plan. The settlement, which was not accessible via PUCO's docketing system at press time, would set generation rates through 2011.

Under the settlement, the base cost for generation service would increase by approximately 2% of the total bill annually in 2009 and in 2010 for residential customers, and each year from 2009 through 2011 for non-residential customers. Duke's original application requested an increase of 6% in 2009, 2% in 2010 and a decrease of 2% in 2011. The bill for generation service would continue to include cost-based trackers for fuel and purchased power, capacity purchases, and environmental compliance expenditures.

Duke previously withdrew its initial proposal to impose a nonbypassable surcharge on existing capacity because rules for ESPs adopted by PUCO only permit such charges for new generation (Matters, 10/17/08).

The stipulation includes plans to develop an Electronic Bulletin Board that will help consumers compare competitor pricing for electric generation supply (Matters, 8/1/08). Constellation NewEnergy and Integrys Energy Services were among the settling parties.

The agreement also includes funding for proposed smart grid initiatives (Matters, 7/30/08).

N.Y. PSC Defends Merchant Function Charge

The New York PSC rejected calls to alter or eliminate the merchant function charge (MFC) on bundled customers' bills as part of its written Order on retail access practices (07-M-0458, Matters, 10/16/08).

As previously reported, the PSC found EDI, utility consolidated billing, purchase of receivables and unbundled bill formats to be essential programs for maintaining a competitive market.

In its written Order, the Commission addressed critics of the MFC, including Central Hudson, who argued the MFC was confusing. The MFC is a charge on a bundled service customer's bill, which is based on the avoided costs the utility realizes when customers transfer to an ESCO.

Any confusion, the PSC said, can be ameliorated by designing bill formats in a manner that clearly and conspicuously identifies the amount of and the reason for the MFC.

As discussed at its last regular session, the Commission ordered utilities to maintain ESCO Referral Programs, with ongoing costs to be paid by ESCOs. Only those ESCOs that fund the program are eligible for participation.

Utilities without a current ESCO Referral Program -- National Fuel Gas, KeySpan, NYSEG, and Rochester Gas and Electric -- were ordered to develop an ESCO Referral Program.

"With the retail energy market maturing, however, it is no longer appropriate to spend ratepayer funds to promote retail access. The obligation for funding promotional programs shall be shifted to the ESCOs, who must assume the financial responsibility of promoting their competitive offerings," the Commission said in allowing, but not ordering, utilities to continue market match programs, market expos and energy fairs if ESCOs and not ratepayers bear the costs of the programs.

The Commission's Retail Access Policy Statement contemplated auctioning blocks of load to ESCOs, but the strategy has never been implemented. "With markets maturing, transferring load to ESCOs through auctions would undermine our efforts, and the efforts of ESCOs and utilities, to educate customers regarding retail choice and would, consequently, unduly interfere with the operation of those markets," the Commission found. Thus, until such time as a party can adequately demonstrate that both the market and ratepayers can benefit from the auctioning of blocks of load, the auctioning approach will not be pursued.

The Commission also ordered that utilities maintain the utility ombudsman function to liaison with ESCOs.

During the case, Constellation Energy had

argued that a Staff dedicated to retail competition should remain in place within the distribution utilities and the Department of Public Service, particularly to facilitate retail access data collection and reporting as well as billing complaint resolution. Constellation also urged greater uniformity among rate classifications across the utilities. Other ESCOs argued for improvements to the Power to Choose website, including easier access from the PSC's main webpage. The Commission directed Staff to review the above issues. The Commission's Office of Retail Market Development was dismantled at the start of the Spitzer administration.

The Commission declined to rule on several issues as beyond the scope of the retail access case (and better adjudicated in other proceedings), including criticism of the monthly ESCO price reporting rule; LDC pipeline capacity issues; issues relating to Fixed Price Option products offered by utilities; and issues relating to remote customer access of utility account numbers.

FPL Trimming Wind Construction due to Credit Market Turmoil

The current credit turmoil is prompting FPL Group to trim its wind investment by 400 MW in the near term, executives disclosed on an earnings call yesterday.

While FPL Energy, the conglomerate's merchant unit, previously targeted building more than 1,500 MW of wind projects in 2009, it has lowered the target to about 1,100 MW. FPL is not yet changing its target of adding between 7,000 MW to 9,000 MW of wind from 2008 to 2012.

Overall, FPL Group will cut capital expenditures $1.7 billion to $5.3 billion in 2009, with $1.3 billion of the reduction coming from new project deferrals at FPL Energy.

FPL Group's adjusted quarterly earnings, excluding hedging gains and other items, grew to $506 million from $494 million a year ago.

Contributions from new assets, NEPOOL generation and ERCOT fossil assets drove FPL Energy's adjusted quarterly earnings to $215 million, up from $181 million a year ago. GAAP earnings for the unit were $483 million versus $220 million in last year's quarter.

Executives reported that for the quarter Gexa Energy lost $0.01/share incrementally, or about $4 million.

CEO Lewis Hay expressed confidence in long-term growth prospects given tightening reserve margins, especially as the credit freeze grinds projects to a halt.

Still, in terms of financing FPL Energy projects, Hay expects that banks and other financial institutions may need some time to recover from the recent turmoil, noting it appears that the number of financial intermediaries with the appropriate risk appetite for project financing has declined in the short term. FPL Group reported credit facilities of $6.75 billion in aggregate.

Hay also said he would not be surprised at some interesting M&A opportunities coming down the pike, but said FPL would be most interested in asset purchases rather than mergers, though not ruling anything out.

WGES Launches New Offers at BGE, Delmarva

Washington Gas Energy Services has launched new products for mass market customers at Baltimore Gas and Electric in Maryland and Delmarva Power in Delaware.

In Delaware, WGES is offering a guaranteed 10% discount off Delmarva's winter electricity rates through May 2009 for residential customers on Schedule R. WGES said offers for Residential Heating customers (Schedule RH) may also produce savings depending on customer use.

In Maryland, WGES is guaranteeing a 2% discount off BGE SOS rates through May 2009 for residential customers. For both its Maryland and Delaware guaranteed savings products, WGES said 5% of the power will come from regional wind power facilities

WGES also announced natural gas rates for several classes at BGE:

Customer Type	Term	Price
Residential - RES	Variable	$1.09 per therm
Residential - RES	1 Year	$1.11 per therm
Residential - RES	2 Year	$1.11 per therm
Small Commercial *	Variable	$1.06 per therm
Small Commercial *	1 Year	$1.07 per therm
Small Commercial *	2 Year	$1.08 per therm

*SMC - Standard Class

Briefly:

Dominion East Ohio Names SSO Supply Winners

Dominion East Ohio reported that DTE Energy Trading, Hess Corporation, Interstate Gas Supply, Delta Energy and Integrys Energy Services won portions of its SSO supply via its July descending clock auction. Winning bidders were not previously identified so they could execute necessary arrangements without compromising their competitive positions (Matters, 7/24/08).

Commerce ... *from 1*

assume certain liabilities relating to the assets being sold, and has also agreed to make residual payments to Commerce during a period beginning on the closing date and continuing through December 31, 2010. The residual payments, which are calculated and paid monthly, generally consist of $3.50 for each electric service contract being transferred that has charges invoiced to Ambit that are not past due, and are estimated to be approximately $3.6 million.

For Ambit, the deal represents the marketer's continued growth, which has relied primarily on multi-level marketing to date and has focused on residential sales. Ambit's Chief Financial Officer Jim Timmer said Ambit had looked at previous asset purchases before deciding against them, but noted the Commerce deal represented a "great opportunity" for Ambit. Ambit has been able to manage growth because it invested in developing proprietary billing, customer care, forecasting and other backoffice systems at start-up that have proven to be scalable, Ambit Chief Marketing Officer Chris Chambless added. Ambit is currently marketing in ERCOT, New York and Illinois, and Chambless is excited about the prospects for deregulated markets in all three areas. Ambit also received an Ohio gas license just one month ago (Matters, 9/24/08).

"The Texas deregulated electricity markets remain attractive, which is further emphasized by the completion of deals on terms mutually beneficial to sellers and buyers despite unprecedented disruptions in the global financial and credit markets," noted Rob Potosky, executive vice president at AEG Affiliated Energy Group, which represented Commerce in the sale.

Potosky added that greater due diligence is being conducted by potential buyers in ERCOT, usually driven by the parties providing financing. Parties looking to sell their assets or raise money will likely encounter major obstacles if unwilling or incapable of complying with more thorough due diligence requests versus what may have been customary a couple of years ago, Potosky said. Potosky has also seen increased reliance on direct and indirect financing from overseas markets and multinational companies, the U.K. and northern Europe in transactions.

Commerce said the deal will help pay down debt, with Commerce CEO Gregory Craig stating, "this sale will better position Commerce operationally, financially, and strategically to achieve our future objectives."

In connection with the sale, Commerce also entered into amendments to its debt agreements, which, among other things, allow additional support of up to $6.0 million from AP Finance, LLC, remove the requirement to have a refinancing term sheet by October 30, 2008, and decrease the revolving loan limit and letter of credit limit under the credit facility.

N.Y. Marketing ... *from 1*

• The terms of renewal;

• Provisions governing the process for rescinding or terminating the agreement by the ESCO or the customer, including that a residential customer may rescind the agreement within three business days after its receipt;

• The amount of the termination fee, if any, and the method of calculating the termination fee, if applicable;

• The amount of late payment fees, if applicable; and

• A clear description of the conditions that must be present for savings to be provided (if savings are guaranteed), or under what circumstances savings are guaranteed.

Telephonic verification must include disclosure and customer affirmation of all items listed in the Customer Disclosure Statement.

ESCOs shall submit, for Staff review, updated sales agreements incorporating the Customer Disclosure Statement, and other aspects of the Commission's Order, within 30

days of October 27. ESCOs are also required to file samples of their official logo and identification badges required for door-to-door marketing with Staff within 30 days.

Termination, Language

Because the disclosure label should materially improve the disclosures ESCOs make to consumers, the PSC refrained from imposing limits or prohibitions on termination fees, aside from the requirement to disclose them in the statement. However, the Commission retains the power to release customers from sales agreements without imposition of early termination fees for non-compliance with the UBPs.

Additionally, if experiences in the future suggest that consumer complaints have not been significantly reduced, "we may revisit this issue to reassess the value of early termination fees to customers and ESCOs and the limitations, if any, which might be appropriately imposed on the use of such fees," the Commission said.

Termination fees are not a requirement to receive electric service, the Commission found, and therefore are not a "service charge" prohibited by Public Service Law §65(6), as asserted by the Public Utility Law Project.

The improved disclosure requirements also make Staff's proposal for a 30-day grace period under which customers could terminate without penalty unnecessary, the PSC said.

ESCO sales agreements must be written in plain language. While the Commission recognized General Obligations Law §5-702 already requires consumer contracts be written in a clear and coherent manner using words with common and everyday meanings, the Commission noted the law does not address energy industry terms, acronyms and abbreviations. Therefore, the UBPs define plain language as language written in clear and coherent manner using words with common and everyday meaning and avoiding legal or energy industry terms, acronyms and abbreviations that a person of ordinary intelligence would not be expected to understand. If use of a technical term is necessary, the term must be clearly defined in the portion of the text where it is used.

Pending and Re-enrollments

The Commission did not see the need to modify the UBPs to address a problem cited by distribution utilities, in which ESCOs re-enroll a customer switching to another ESCO or returning to utility service using the customer's initial authorization, against the customer's stated preference to change providers. "A new enrollment request for the same customer without a new authorization from that customer is not authorized by the UBP and may constitute slamming which is specifically prohibited by [the] UBP," the Commission flatly stated. The PSC also clarified that only the customer or the pending ESCO can cancel a pending enrollment.

The Commission also ordered that all customers be allowed to return to utility service by contacting the utility only, without having to contact their ESCO. "While a customer has a contractual relationship with the ESCO, the distribution utilities retain the statutory obligation to serve and, therefore must provide service to customers upon request," the Commission determined.

Although it would be best for the customer to speak to the ESCO before negating its ESCO sales agreement, a customer's request to return to full utility service must be honored by the distribution utility. ESCOs who are contacted by customers wishing to return to bundled service shall, within two days, notify the distribution utility that the customer requested a change of service.

The Commission also refrained from addressing whether ESCOs may only contract with the utility "customer of record," as it is already incumbent on ESCOs to obtain proper authorization for enrollments, with slamming prohibited.

Utility Powers

The Order clearly prohibits distribution utilities from imposing their own operating or marketing standards on ESCOs, as attempted by National Fuel Gas.

"[T]he objective of the UBP is to eliminate the need for ESCOs to understand and comply with different distribution utility requirements and procedures. Distribution utilities are not allowed, via their operating agreements with ESCOs, to impose their own limits and conditions that are different from the conditions set forth by the

Commission," the Order states.

"It is not our intent that the distribution utilities oversee ESCOs. Indeed, since the inception of the retail markets, the Commission has had oversight responsibility of the ESCOs. That responsibility should be extended to the Marketing Standards. The Commission is the only entity with oversight responsibility for the ESCOs and that should continue," the Commission stated.

As discussed at the PSC's regular session, the Order refrained from ruling on whether to assess ESCOs a portion of the costs and expenses of the Commission, currently paid by utilities and other regulated entities, as that determination rests solely with the PSC Chair. However, the Order does note that should an assessment be levied on ESCOs, it should be implemented in a competitively neutral manner to avoid subsidization of distribution companies or double assessment of shopping customers (once through their ESCO and once through their delivery utility).

The Order maintains the confidentiality information submitted to the PSC that describes the numbers of customers served by each ESCO. ESCOs must re-file complete license registrations every three years, in addition to the current annual updates of any changes.

The Commission saw no need to address the Retail Energy Supply Association's recommendation to prohibit distribution utilities from soliciting customers for their default supply service when responding to customer inquiries, as ESCOs have not provided any demonstration that a distribution utility is pursuing the practice described. However, the Commission, "has repeatedly expressed its interest in developing the retail marketplace." If a party identifies instances where a distribution utility is using its existing relationship with a customer to persuade that customer to either remain with the utility or to return to the utility, it should be reported to Staff, the Commission said.

RESA's suggestion for the provision of additional usage information by utilities (such as identification of master-metered accounts) was rejected because it would require EDI system changes.