Energy Choice Matters

February 23, 2010

Constellation Reports Higher Margins for New Electric Contracts

Constellation Energy reported that its ongoing customer supply business (retail and wholesale) saw earnings slide by about $38 million in fiscal 2009 (19¢/share), as higher margins could not completely offset lower volume resulting from the reduced scale of its supply business.

Constellation reported that average new business retail electric margins were in excess of $7.50/MWh in 2009. Gross margin on all contracts during the fourth quarter of 2009 was about $7/MWh. Constellation expects sustainable electric margins to be in the $5 -$7/MWh range.

Gross margin for all retail gas contracts in the fourth quarter of 2009 was about 26¢/Dth.

Constellation CEO Mayo Shattuck said that the strong margins reflect the previously reported shift in Constellation's pricing strategy (adding working capital costs), and improved management of collateral needs.

As it reduced the scale of its retail supply business due to collateral needs, Constellation served 55.8 TWh of retail electric load in 2009, down from 72 TWh in 2008. Constellation expects to serve 68.2 TWh in 2010. Constellation supplied 350 Bcf of retail gas in 2009, down from 407 Bcf in 2008. Constellation expects retail gas volumes to be 341 Bcf in 2010.

Constellation's wholesale electric supply segment saw new business margins average about $3/MWh in 2009. Sustainable wholesale supply power margins are projected at $2-$4/MWh. Shattuck said that Constellation won key load auctions in PJM and the Midwest ISO, and also added wholesale load in the southeast.

Wholesale customer supply electric volumes were 71 TWh in 2009, down from 122 TWh a year ago. Wholesale supply volumes are expected to be flat in 2010.

Combining both wholesale and retail customer supply contracts, Shattuck said that the average

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Maine PUC Issues RFP for Long-Term Capacity, Associated Energy

The Maine PUC has issued an RFP for additional capacity and associated energy to be procured via long-term contracts (2010-66). The RFP is a renewal of a 2009 RFP in which the Commission initially rejected all offers, but eventually ordered Central Maine Power and Bangor Hydro-Electric to enter into long-term contracts with First Wind Holding LLC's Rollins wind project.

"The objective of this solicitation is to acquire capacity and energy to reduce electricity costs for Maine consumers and/or to obtain a beneficial hedge against price volatility, including by: (1) contracts that provide capacity and energy at favorable prices; (2) contracts that provide a hedge against market costs and volatility; and/or (3) contracts that enable resources to offset transmission-related costs. Other factors, including environmental and reliability attributes, will also be considered," the PUC said.

The RFP does not seek a specified quantity of capacity or energy, nor does it prescribe a specific formula for determining how proposals will be selected. "As a general matter, proposals that fully meet the requirements of this RFP and that in the Commission's judgment are most likely to achieve

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EnergyMark Confirms Purchase of Constellation Gas Assets in Pa., N.Y.

EnergyMark, LLC formally announced its purchase of certain New York and Pennsylvania assets of Constellation NewEnergy - Gas Division, LLC, effective Feb. 1, 2010. The purchase was first reported by *Matters* last fall when EnergyMark applied for a Pennsylvania gas supply license.

EnergyMark is a partnership of South Jersey Energy Solutions and MW Energy of Amherst, New York. According to its Pennsylvania gas supplier application, MW Energy owns a 67% share, and South Jersey Industries owns a 33% share.

MW is owned by long-time energy entrepreneurs Gary Marchiori and Timothy Wright, both of whom have significant experience in providing natural gas service to the New York and Pennsylvania areas through previous stints with National Fuel, Texaco, and as co-owners of NOCO Energy Marketing. EnergyMark said that it will emphasize the use of local natural gas production for retail and business consumers.

"We intend to take advantage of the resources provided from the prolific Marcellus Shale play, which is positioned literally underneath a consuming region," said Ken DePriest, Vice President of South Jersey Energy Solutions.

In its still pending application for a Pennsylvania gas supply license, EnergyMark is seeking to serve all sizes of commercial, industrial and governmental customers in the western part of the state.

Producer and retail supplier Open Flow Energy, also owned by South Jersey Industries, will assume operations for the Pennsylvania assets purchased from Constellation NewEnergy - Gas Division.

MW Energy, Inc. was formed in 2002 by Gary Marchiori and has been involved in several power and natural gas ventures, including ownership of NOCO Energy Marketing, LLC which was sold by NOCO Inc. and MW to Constellation NewEnergy - Gas Division, LLC in 2006.

KeySpan to Pay $12 Million to Settle ICAP Withholding Complaint

KeySpan Corporation, a unit of National Grid, has entered into a $12 million settlement with the U.S. Department of Justice to resolve allegations that KeySpan violated antitrust laws by entering into an agreement restraining competition in the New York City capacity market, the Justice Department said.

According to a complaint filed by the Justice Department, KeySpan and an unnamed financial services company entered into a swap agreement in January 2006 (prior to National Grid's ownership) that gave KeySpan a financial interest in the electricity capacity sales of its largest competitor, Astoria Generating Co. National Grid closed its acquisition of KeySpan in August 2007. Though not named by the Justice Department, a FERC investigation concerning the agreement identified the counterparty as Morgan Stanley Capital Group.

At the time of the agreement, KeySpan, which owned the 2,400 MW Ravenswood facility, was the largest seller of capacity in the New York City market, the Justice Department reported. KeySpan has since sold the Ravenswood plant to TransCanada.

The Justice Department alleged that, facing declining capacity prices due to new entrants in 2006, KeySpan withheld capacity. The swap with Morgan Stanley offset the $90 million KeySpan would have otherwise foregone by withholding capacity, the complaint said.

"By providing KeySpan revenues from its competitor's capacity sales, as well as its own, the agreement with the financial services company had the anticompetitive effect of eliminating KeySpan's incentive to sell its electricity capacity at lower prices. As a result, retail electricity prices in New York City were likely higher than they would have been without this anticompetitive agreement," the Justice Department said.

"[T]he financial derivative agreement likely resulted in a price increase for retail electricity suppliers and, in turn, an increase in electricity prices for consumers," the Justice Department noted.

The anticompetitive effects of the agreement lasted until March 2008, when regulatory conditions eliminated KeySpan's ability to affect the market price of electricity capacity, the Justice Department added.

The settlement provides for disgorgement of profits for a violation of antitrust laws and requires KeySpan to pay $12 million to the United States.

KeySpan does not admit to any wrongdoing under the settlement.

FERC Investigation (IN08-2)

FERC addressed the same bidding behavior and swap contract in 2008 and found that the behavior of KeySpan-Ravenswood in the New York ISO ICAP market did not violate FERC or ISO prohibitions against market manipulation (Matters, 3/10/08).

Consumer groups and electric distribution companies had complained that the prices in the New York City ICAP market did not decline despite the addition of 1,000 MW of new capacity for 2006, and instead remained at KeySpan's bid cap.

Their argument was bolstered when the ISO's market monitor concluded that the in-city ICAP auctions were, "characterized by economic withholding of Capacity to exercise market power to the maximum extent allowed by the existing offer cap for the DGOs [Divested Generation Owners]." The market monitor noted that KeySpan lowered its sales by about the same amount as the added capacity because it continued to bid at its offer cap.

Consolidated Edison claimed that such economic withholding cost consumers $157 million for 2006.

A FERC Staff investigation said that, although KeySpan's strategy of offering its capacity at its offer cap predates its consideration of its swap with Morgan Stanley or any similar transactions, "KeySpan's swap appears, on its face, to give it an added incentive to continue that strategy, regardless of possible changes to circumstances in the physical market." In particular, under KeySpan's swap with Morgan Stanley, its revenues increase if UCAP prices in the in-city ICAP spot auction (the physical market) rise and decrease if they are lower, Staff said. However, FERC Staff stated that, "we have not found any evidence that KeySpan took any actions in the physical market that were any different from those that it would have taken in the absence of its swap."

This conclusion was largely based on Staff's acceptance of KeySpan's argument that, despite the 2006 capacity additions, it remained economically rational for KeySpan to offer at its caps. Staff said that KeySpan determined that, "even with those additions, it would still clear sufficient quantities at a high enough price to make bidding at its cap its optimal strategy, whereas, a discounting strategy risked lower clearing prices and, in turn, overall revenues."

"Since KeySpan was already fully incentivized in the physical market to offer at its cap (based on its estimate of its optimal offering strategy, even taking into account the 2006 capacity additions), the added incentive to maintain prices at the level of its bid cap to benefit its swap did not affect KeySpan's offering behavior. Thus, the swap did not provide KeySpan with an independent incentive to change its offering behavior in the physical market (i.e., artificially increase capacity prices) to benefit its derivative position," Staff said.

APPA, ELCON Say RTOs Authored Draft Performance Metrics

FERC's proposed RTO performance metrics were developed by the RTO themselves with input from FERC Staff, the American Public Power Association, Electricity Consumers Resource Council and other industrial and consumer groups said in a letter to FERC Chairman Jon Wellinghoff, asking Wellinghoff to keep an "open mind" regarding stakeholder comments on the metrics (AD10-5, Matters, 2/4/10).

The groups said that they learned of the RTOs' lead in drafting the metrics, "based on communications to certain of our organizations by the Commission staff."

"[O]ur organizations have remained hopeful that the Commission would fully consider consumer representatives' input into the development of the proposed metrics, based on our to-be-submitted comments. Our hopes on this score, however, have been severely undercut by the discussion of RTO metrics held at the February 4 Technical Conference that the Commission held in various Order No. 719 implementation dockets," the groups said.

The groups noted that ELCON President John Anderson addressed the need for generator-specific metrics in his remarks at the conference, which prompted Wellinghoff to state, "Now my colleagues may differ with me, but I will tell you today personally that I don't think that metric is one that I'm going to be advocating for unless you can somehow compellingly convince me that it is, and right now, today, I'm not convinced."

APPA, ELCON, and the other groups, "strongly believe that measurement of the revenues and production costs of the generators selling power into RTO markets is highly relevant," to the questions posted by the Government Accountability Office which prompted the RTO metric review; namely, whether RTOs have been good for consumers, how they have affected electricity prices, and whether they have produced the benefits FERC envisioned.

"The RTO metrics that our organizations seek to have the Commission require go to this very issue: whether the prices that the generators obtain in RTO-run centralized markets are close to their marginal costs, such that they make only a normal return on their investment. If RTO markets are not sufficiently disciplining prices, and generators are making supra-competitive profits from their sales into these markets or as a result of the existence of these markets, then this calls into serious question whether consumers are benefiting from them. In our view, this is the essence of the inquiry that the GAO report recommended the Commission undertake," the groups said.

"For these reasons, our organizations are extremely concerned that you do not believe that RTO metrics to assess generator costs and profits are relevant to the issue of RTO performance," APPA et. al. added.

Sharyland Says Cap Rock Acquisition Will Not Impede Competition

Sharyland Utilities has filed for approval of its previously announced acquisition of Cap Rock Energy at the PUCT, under docket 37990 (Matters, 12/18/09).

In testimony accompanying the application, Sharyland said that the transaction would not impede competition. Currently, none of Cap Rock's three distinct service territories is open to retail competition as contemplated by Chapter 39 of PURA. One of Cap Rock's service territories is in the Southwest Power Pool (which accounts for 75% of Cap Rock's load), which is not subject to competition at this time pursuant to PURA § 39.501(b).

Cap Rock's two service territories in ERCOT are not currently subject to retail competition, but may be opened to competition by the Commission at any time pursuant to PURA § 39.102 (d) and (e), which directs the Commission to consider several factors such as the presence of a qualified power region, whether the service area is split among power regions, and any impact on reliability

"Because Sharyland currently offers retail competition in its existing service area, should the Commission direct Cap Rock to develop a transition to competition plan, Sharyland would leverage its experience in implementing retail competition to the benefit of Cap Rock customers," Sharyland said.

Briefly:

Viridian Energy Seeks Md. Electric License

Viridian Energy has applied for a Maryland electric supplier license to serve all customer classes at Baltimore Gas & Electric. Viridian currently serves customers in Connecticut and has a pending Pennsylvania electric supplier license (Only in Matters, 1/4/10).

Constellation NewEnergy Seeks to Market to Ohio Residential Gas Customers

Constellation NewEnergy-Gas Division, LLC filed to amend its Ohio natural gas license to declare its "intent" to serve residential customers in all service territories.

Liberty Names Richard Rathvon Senior Vice President of Sales

Liberty Power named Richard Rathvon to the position of Senior Vice President, Sales. Rathvon most recently held several positions at Reliant Energy, including vice president of marketing and energy sales, Eastern division. At Reliant, Rathvon led the marketer's expansion outside of Texas, including its most recent growth into the New York market and expansion into Type II electric sales in Maryland prior to the sale of the Northeast book to Hess. Previously, Rathvon held positions at various PSEG subsidiaries, Enron Energy Services, and several energy services/efficiency companies (including PG&E affiliate Sycom Enterprises). Rathvon has also served as president of the Retail Energy Supply Association.

D.C. PSC Encourages Suppliers to Participate in AMI Rate Design Review, Notes Potential Impact on SOS

The District of Columbia PSC has written a letter to all wholesale and retail suppliers in D.C. informing them of its previously reported acceptance of Pepco's advanced metering plan. The PSC noted that it has directed Pepco to file a proposed rate design and dynamic pricing plan for use with advanced meters by April 1, 2010, and said, "[t]he Commission's decisions regarding AMI could have implications for the SOS procurement process, retail suppliers and wholesale providers." Among the issues that the PSC may consider are the installation schedule, ownership of data, customer privacy, meter functionality, billing issues for SOS and retail providers, and how to get best use of advanced meters in a retail shopping environment. The Commission encouraged suppliers to participate in Formal Cases 1056 and 1070 relating to advanced metering.

ALJ Certifies Questions in Gexa Variable Rate Complaint Case

A Texas ALJ has certified to the PUCT six questions regarding the complaint of three customers against Gexa over variable rate contracts, including Staff's questions and the complainants' question, "Is proper notice a condition precedent to a legitimate increase in the price charged to a customer under a variable rate contract?" (docket 37569, see Matters, 2/15/10).

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contract length for the new, higher-margin contracts is 18 months.

Aggregate gross margin for the fiscal year 2009 for retail and wholesale supply was $768 million, up from $688 million a year ago. Going forward, Constellation is serving about 30,000 customers across retail and wholesale supply.

Shattuck reiterated Constellation's previously reported goal of acquiring generation in footprints where it is short on power compared to its customer supply obligations, stating that Constellation sees, "attractive opportunities to grow our generation footprint in the current depressed asset and commodity price environment."

Constellation has approximately $1 billion in cash on hand to support any acquisitions, as Shattuck called better matching supply and load through additional generation Constellation's, "foremost strategic objective in 2010 and 2011."

Asked by analysts what type of generation Constellation will pursue, Shattuck declined to respond definitively and said Constellation has an "open mind." Shattuck did note that gas-fired generation is of interest because it would better match its load requirements compared with other assets. Constellation is also looking at smaller-scale renewable developments, particularly in Maryland. Additionally, customer-sited renewables, such as rooftop solar, is seen by Constellation as a way to increase customer "stickiness."

Shattuck also reported that, under its nuclear joint venture with EDF (Constellation Energy Nuclear Group), Constellation will purchase approximately 90% of the uncommitted output from the nuclear group's five nuclear units under a five-year PPA providing firm physical power to support Constellation's customer supply activities in the New York and Mid-Atlantic region. The PPA pricing is below market for the first two years, with the balance of the power sold thereafter priced monthly at prevailing market prices.

Constellation's merchant segment (customer supply and generation combined) reported adjusted earnings of $2.58 per share for fiscal 2009, or $516 million. Due to share dilution, the results are lower than the year-ago adjusted earnings per share of $2.69 for fiscal 2008, though on a dollar basis 2008 adjusted earnings were $482 million.

On a consolidated basis across all segments, GAAP earnings for fiscal 2009 were $4.5 billion, mostly related to one-time gains from Constellation's sale of nearly half of its nuclear business to EDF, reversing the year-ago loss of $1.3 billion.

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significant benefits for Maine electricity consumers will be evaluated most favorably," the Commission said.

A capacity resource can only be authorized for a long-term contract if the Commission finds: (1) that a long-term contract is the least cost means to address an identified local grid reliability need and is necessary for the capacity resource to be developed or for its operation to be maintained; (2) that a long-term contract is necessary for the capacity resource to be developed or for its operation to be maintained, that the existence of the capacity resource will significantly lower the cost of capacity requirements to Maine ratepayers, and that the price for the capacity resource is expected to be no higher than market prices over the term of the contract; and (3) that the price of the capacity resource under the long-term contract is significantly below the expected market value of the capacity over the term of the contract.

Associated energy can only be authorized for a long-term contract if the Commission finds: (1) that the existence of the capacity resource is necessary to fulfill the new renewable capacity resource policy specified in statute, that the long-term contract for associated energy is necessary for the capacity resource to be constructed or to prevent the capacity resource from being retired, and that the price of the of the associated energy under the long-term contract is expected to be no higher than market prices over the term of the contract; or (2) that the associated energy can be used to supply standard offer service, lower the cost of standard offer service, or lower the cost of electricity for ratepayers in Maine, and that the price for the associated energy under the long-term contract is significantly below the expected market value of energy over the term of the contract.

The Commission has automatic authority to approve contracts up to ten years in duration, and can approve longer term contracts so long as it can be shown that such contracts are prudent and in the best interest of Maine consumers.

Aside from cost benefits, environmental and reliability attributes, in accordance with the following statutory Resource Priority Order, will also be weighed:

(1) New interruptible, demand response or energy efficiency capacity resources located in Maine;

(2) New renewable capacity resources located in Maine;

(3) New capacity resources with no net emission of greenhouse gases;

(4) New nonrenewable capacity resources located in Maine, with preference given to resources with no net emission of greenhouse gases;

(5) Capacity resources that enhance the reliability of Maine's electric grid, with preference given to resources with no net emission of greenhouse gases;

(6) Other capacity resources.

Initial proposals are due April 16.