UNITED STATES OF AMERICA
FEDERAL ENERGY REGULATORY COMMISSION

Before Commissioners: Pat Wood, III, Chairman;
Nora Mead Brownell, Joseph T. Kelliher,
and Suedeen G. Kelly.

Detroit Edison Company — Docket Nos. EL01-51-003
ER01-1649-003

ORDER CONDITIONALLY ACCEPTING COMPLIANCE FILING

(Issued December 22, 2004)

1. In this Order, we conditionally accept Detroit Edison Company's (Detroit Edison) filing submitted in compliance with the Commission's June 15, 2001 Order[1] modifying an unexecuted Interconnection Agreement (Agreement) between Detroit Edison and Dearborn Industrial Generation, L.L.C. (Dearborn), and direct Detroit Edison to make a further compliance filing. This order benefits customers because it assures that the Agreement between the parties contains just and reasonable terms.

Background

2. On June 15, 2001, the Commission issued an order accepting the Agreement, as modified, for filing, suspended it, to become effective March 14, 2001, subject to refund, and set the Agreement for hearing and settlement judge procedures.[2] The Commission modified the Agreement in two respects. First, the Commission indicated that it was making no findings as to any retail access charges that may be recoverable under Detroit Edison's Retail Access Service Tariff (Retail Tariff), and thus determined that on compliance Detroit Edison should delete from the Agreement the obligation for Dearborn to pay retail access charges.

3. Second, the Commission agreed with Detroit Edison that, for reliable operation of the transmission grid, Detroit Edison or International Transmission Company (ITC) should have the right to curtail the electric generating facility in Dearborn, Michigan run by Dearborn (Facility) if there are adverse effects to Detroit Edison's or ITC's system. However, the Commission agreed with Dearborn that Detroit Edison should treat

[1] *Detroit Edison Co.*, 95 FERC ¶ 61,415 (2001) (June 15 Order).

[2] *Id.*

Dearborn no worse than it treats its affiliates. Therefore, the Commission directed Detroit Edison to revise the Agreement by adding a curtailment provision similar to the one included in its agreements with its affiliates.

Compliance Filing

4. On June 29, 2001, Detroit Edison submitted its compliance filing that simply included a cover letter and an attached revised version of the Agreement that it indicated was modified in compliance with the Commission's June 15 Order. Detroit Edison provided no explanation for, or discussion of, the revised portions of its Agreement. A review of the attached Agreement shows that Detroit Edison provided revised language with respect to retail access charges in sections 3.1(c) and 8.3, and with respect to curtailment in section 7.8. The specific language revisions are set forth below.

Retail Access Charges

Section 3.1(c) Interconnection with Other Services

5. Detroit Edison added the following language to section 3.1(c) of its Agreement:

> that no obligation to pay Michigan-jurisdictional retail access charges shall arise under this Agreement (but provided that Customer and those end-use loads connected with Customer shall not be relieved by this Agreement of any obligation to pay retail access charges under other applicable contracts, tariffs, orders or rules), and provided further. . . .

Section 8.3 Revenue Metering

6. Detroit Edison added the following language to section 8.3 of its Agreement:

> The Customer shall have no obligation under this Agreement to install Michigan-jurisdictional retail load metering equipment, but Customer and those end-use loads connected with Customer shall not be relieved by this Agreement of any obligation to install retail load metering equipment under other applicable contracts, tariffs, orders, or rules.

Curtailment

7. Detroit Edison modified section 7.8 (Control Area Operations) such that it now provides:

> should adverse parallel flows occur that may be caused in whole or in part by the transactions scheduled under the OATT taking delivery of energy from the Facility, then upon notice by ITC or the Company, the Customer shall promptly undertake such action as is reasonably requested by ITC or the Company, up to and including curtailment of generation in accordance with the curtailment provisions of the OATT for the transactions scheduled under the OATT taking delivery of energy from the Facility. Should the Customer fail to comply for whatever reason with ITC's or Company's reasonable request, ITC and/or ITC may disconnect the Facility until such time as the Parties agree to a plan to correct adverse parallel flows.

Notice of Filing and Responsive Pleadings

8. Notice of Detroit Edison's filing was published in the *Federal Register*, 66 Fed. Reg. 36,273 (2001), with comments, protests, or interventions due on or before July 20, 2001. Dearborn filed a protest to Detroit Edison's June 29, 2001 compliance filing. Detroit Edison filed an answer to Dearborn's protest, and Dearborn filed an answer to Detroit Edison's answer.

Discussion

9. Rule 213(a)(2) of the Commission's Rules of Practice and Procedure, 18 C.F.R. § 385.213(a)(2) (2004), prohibits an answer to a protest and/or answer unless otherwise ordered by the decisional authority. We will accept the answers filed in this proceeding because they have provided information that assisted us in our decision-making process.

10. We will conditionally accept Detroit Edison's June 29 Compliance Filing, as discussed below, and direct Detroit Edison to submit a further compliance filing, within thirty days of the date of this order.

Retail Access Charges

Parties' Arguments

11. Dearborn states that in the June 15 Order the Commission found that any liability that Dearborn had to Detroit Edison for retail access charges was not enforceable under the Agreement and ordered Detroit Edison to delete from the Agreement the obligation for Dearborn to pay retail access charges. Dearborn claims that Detroit Edison has failed to do so.

12. With respect to section 3.1(c) of the Agreement, Dearborn asserts that the language that Detroit Edison proposes to add does nothing to eliminate Dearborn's obligation to pay retail access charges pursuant to the Agreement.[3] Dearborn concludes that only the part of the last sentence of section 3.1(c), which provides "nothing in this Agreement shall prevent the industrial loads connected to Customer's electric facilities from contesting the applicability to them of all or any portion of the Company's Retail Access Service Tariff before the MPSC or a court having jurisdiction, nor shall the provisions of this Agreement be used as precedent in any such proceeding" is consistent with the Commission's order and that the remainder of section 3.1(c) should be deleted.

13. Detroit Edison responds that the revised section 3.1(c) satisfies the June 15 Order because it removes any obligation for Dearborn to pay retail access charges while protecting Detroit Edison's right to collect retail charges under Michigan-jurisdictional mechanisms. Further, Detroit Edison argues that it did not need to remove any language even though it obligates Dearborn and other retail loads behind the points of interconnection to enroll and take service under the Michigan-jurisdictional Retail Access Service Tariff if they use Detroit Edison distribution facilities. Detroit Edison maintains that the June 15 Order prevents Detroit Edison from recovering retail charges under the Agreement, but it concludes, it does not hold or imply that Detroit Edison cannot recover those costs at all. Therefore, the language that obligates Dearborn to take service under the Retail Access Service Tariff is compliant.

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[3] Dearborn raises in particular the following language: "Customer agrees to enroll and take service under the Company's Retail Access Service Tariff for any of its loads that use the Company's Distribution/Interconnection Facilities and Customer shall require any and all other retail loads connecting to Customer's electric facilities to enroll and take service under the Company's Retail Access Service Tariff, and in the event any such load does not do so, Customer shall include such load in its obligations under the Company's Retail Access Service Tariff . . . ."

14. Dearborn responds that this language presumes a right (*i.e.*, the right to collect retail access charges from Dearborn) that may or may not exist, and which the Commission has left up to the Michigan Public Service Commission to decide. Further, Dearborn states that if the language imposes no obligations it should be removed since it serves no purpose.

15. With respect to section 8.3, Dearborn argues that the only appropriate addition is the statement that "the Customer shall have no obligation under this Agreement to install Michigan-jurisdictional retail load metering equipment." Additionally, Dearborn asserts that to comply with the Commission's order the statement that the provisions of the Agreement shall not limit or supersede metering requirements established in the Retail Tariff must be removed.

16. Lastly, Dearborn states that Detroit Edison has not proposed any amendment to section 1.5 (Distribution/Interconnection Facilities Definition). Dearborn notes, however, that the portion that states "provided, however, that in any case the Company shall own a portion of the Distribution/Interconnection Facilities between Customer and ITC in order for Company to assess applicable retail charges pursuant to the Michigan retail access program" serves no purpose other than to obligate Dearborn to pay retail access charges and should be deleted. Dearborn asserts that the Commission should direct Detroit Edison to amend sections 1.5, 3.1(c) and 8.3, as well as any other language in the Agreement that would obligate Dearborn to pay retail access charges.

17. Detroit Edison argues that its proposed language does not impose any obligation on Dearborn, but merely preserves Detroit Edison's right to enforce its rights under state law.

Commission Determination

18. In the June 15 Order, the Commission explicitly stated that, if Dearborn is responsible for any retail access charges, such charges are enforceable under state law, and not by means of an agreement subject to the jurisdiction of this Commission. Thus the Commission directed Detroit Edison to delete from the Agreement language that obligated Dearborn to pay retail access charges. We have reviewed Detroit Edison's compliance filing and agree with Dearborn that Detroit Edison has not complied with the Commission's June 15 Order. Our intent was that Detroit Edison would remove from its Agreement all references to retail matters that are subject to state law. There is simply no place in an agreement, under this Commission's jurisdiction, for references to a state-retail access service tariff or to charges under that tariff. Accordingly, we direct Detroit Edison to make all of the revisions requested by Dearborn. The end result must be that sections 1.5, 3.1(c) and 8.3 (as well as any other sections of the Agreement) do not contain any language that references a state retail access service tariff or charges under that tariff.

Curtailment

Parties' Arguments

19. Dearborn asserts that in the June 15 Order the Commission stated that Detroit Edison should treat Dearborn no worse than its affiliates concerning curtailment and that, accordingly, the Commission directed Detroit Edison to revise section 7.8 of the Agreement to conform to curtailment provisions in affiliate interconnection and operation agreements.

20. Dearborn states that the proposed revisions are still inconsistent with the curtailment provision governing the interconnection with Detroit Edison's affiliate in two material respects. Dearborn states that Detroit Edison proposes to add the phrase "or the Company" throughout section 7.8. Dearborn believes that this is intended to give Detroit Edison, along with ITC, the right to curtail generation from the Dearborn Facility. According to Dearborn, Detroit Edison's interconnection and operation agreement with Detroit Edison's affiliate, DTE River Rouge No. 1, L.L.C. (River Rouge), only gives ITC the power to bring about curtailment. Therefore, Dearborn proposes that the Commission require Detroit Edison to delete the phase "or the Company" from section 7.8.

21. In addition, Dearborn opposes the following language, which is the final sentence of section 7.8: "The Company [Detroit Edison] shall not be liable for damages or losses incurred by the Customer [Dearborn] due to the Company's or ITC's actions hereunder." Dearborn states that this language does not appear in the interconnection agreement between Detroit Edison and River Rouge. Therefore, Dearborn requests that Detroit Edison be required to delete this language from section 7.8 of the Agreement in order to be consistent with the curtailment provisions in Detroit Edison's interconnection agreement with River Rouge.

22. Detroit Edison maintains that section 7.8 contains the same approach as that taken in Detroit Edison's agreement with its affiliate River Rouge. Detroit Edison claims that in both agreements, the parties potentially adversely affected by parallel flows can take action when their systems are in jeopardy. River Rouge interconnects directly with ITC, so Detroit Edison has no curtailment rights in that agreement. However, Detroit Edison states that the principle of affected parties having curtailment rights still exists. Additionally, section 7.8 gives Detroit Edison the ability to disclaim liability for damages to Dearborn due to Detroit Edison's or ITC's actions under the provision. Detroit Edison argues that this is consistent with the River Rouge interconnection agreement, which includes a limitation-on-liability provision.

23. Dearborn responds that the Commission should direct Detroit Edison to delete the "or the Company" language and the limitation of liability provision. It asserts that there is no limitation of liability provision that is specific to curtailment in the River Rouge interconnection agreement and, accordingly, the provision should be deleted.

Commission Determination

24. In its June 15 Order the Commission directed Detroit Edison to treat Dearborn no worse than its affiliates and thus directed Detroit Edison to revise section 7.8 of the Interconnection Agreement by adding a curtailment provision similar to the one included in its agreements with its affiliates. We agree with Dearborn and conclude that Detroit Edison has not complied with the Commission's directive in the June 15 Order. First, we direct Detroit Edison to delete from section 7.8 of the Agreement the phrase "or the Company." The original section 7.8 gives only ITC the ability to curtail; however, it may only do so if there are adverse effects to its system or to Detroit Edison's system. In the June 15 Order, we did not intend that Detroit Edison would also be able to initiate curtailments. Our discussion in the June 15 Order was in response to an argument by Dearborn that the Facility may cause adverse flows only when the Facility output is scheduled to flow over ITC's system. We simply agreed with Detroit Edison that curtailment of the Facility would be appropriate if there were adverse effects to both ITC's system and Detroit Edison's system. We did not mean to imply that Detroit Edison could also initiate curtailments. Further, we direct Detroit Edison to delete the final sentence of section 7.8 so that the provision is consistent with the curtailment provision included in its agreement with River Rouge, as required by the Commission's June 15 Order.

The Commission orders:

(A) Detroit Edison's June 29 Compliance Filing is hereby conditionally accepted, effective March 14, 2001, as discussed in the body of this order.

(B) Detroit Edison is hereby directed to submit a compliance filing, as discussed in the body of this order, within thirty (30) days of the date of this order.

By the Commission.

(S E A L)

Linda Mitry,
Deputy Secretary.