

STATE OF MICHIGAN

BEFORE THE MICHIGAN PUBLIC SERVICE COMMISSION

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In the matter of the application of)	
THE DETROIT EDISON COMPANY for)	
certain determinations pursuant to Section 32(k))	Case No. U-14138
of the Public Utility Holding Company Act of 1935.)	
_____)	

At the June 3, 2004 meeting of the Michigan Public Service Commission in Lansing, Michigan.

PRESENT: Hon. J. Peter Lark, Chair
Hon. Robert B. Nelson, Commissioner
Hon. Laura Chappelle, Commissioner

ORDER

On May 12, 2004, The Detroit Edison Company (Detroit Edison) filed an application requesting determinations pursuant to Section 32(k) of the Public Utility Holding Company Act of 1935 (PUHCA), 15 USC 79z-k2. This application requests authorization to engage in unrestricted transactions for the purchase of electric energy, capacity, and ancillary services from affiliated exempt wholesale generators (EWGs).

Detroit Edison, an electric utility located entirely in the state of Michigan, is a wholly owned subsidiary of DTE Energy Company (DTE), a Michigan corporation with offices at 2000 Second Avenue, Detroit, Michigan. DTE River Rouge No. 1, LLC (DTE River Rouge) is a subsidiary of DTE and an affiliate of Detroit Edison. Detroit Edison represents that DTE River Rouge is the owner of a natural gas-fired electric generating station with capacity of approximately 260

megawatts (MW) located in the applicant's electric service territory in River Rouge, Michigan. It further represents that DTE River Rouge is an EWG as that term is used in Section 32 of PUHCA.

According to the application, DTE East China, LLC (East China) is a subsidiary of DTE and an affiliate of Detroit Edison. East China is the owner of a natural gas-fired electric generating station with a capacity of approximately 284 MW located in the applicant's territory in East China Township, Michigan. East China is an EWG under PUHCA.

Detroit Edison's River Rouge Unit No. 1 Power Plant (Rouge No. 1) was originally built to operate on coal during the 1950s and was removed from active service in 1980.¹ The unit was transferred to DTE River Rouge in 2000 and converted to natural gas. The unit was restarted and operated² to produce approximately 260 MW of seasonal peaking generating capacity for competitive sale to electric retailers serving load in Michigan. In the February 3, 2000 order in Case No. U-12266, the Commission approved Detroit Edison's proposal to transfer Rouge No. 1 to DTE River Rouge.

Detroit Edison is now requesting an exemption under Section 32(k)(2) to purchase power from an affiliate, pursuant to Commission requirements in Case No. U-12266. In that case, the Commission stated that if Detroit Edison seeks to purchase electricity from DTE River Rouge, it must first obtain an exemption to do so pursuant to Section 32(k)(2) of PUHCA. An exemption granted pursuant to Section 32(k) does not exempt the utility from the prohibitions contained in Section 32(2).

Section 32 of PUHCA prohibits the sale of wholesale electric energy from an EWG to an affiliate electric utility. However, a State commission having jurisdiction over the retail rates of an

¹There are two other units on the site that are still in active service.

²Detroit Edison indicates that it may enter into an operation and maintenance agreement by which the utility will operate all or part of the unit on DTE River Rouge's behalf.

electric utility may permit such a purchase if it determines that, among other things, the proposal (1) will benefit consumers, (2) is in the public interest, (3) does not violate Michigan law, (4) would not provide the EWG with any unfair competitive advantage by virtue of its affiliation, and (5) is one over which the commission has sufficient regulatory authority, resources, and access to books and records of the electric utility and any relevant associate, affiliate, or subsidiary to exercise its duties under PUHCA.

Detroit Edison states that allowing it to engage in unrestricted purchases of electric energy, capacity, and ancillary services from these two EWGs under PUHCA is reasonable because it would adversely affect Detroit Edison's ability to meet its retail electric service requirements if it is not allowed to do so. Detroit Edison explained in its Capacity Plan Report filed in Case No. U-14005 that it is attempting to procure 1,271 MW of seasonal purchased power for the summer period to serve bundled retail customer load. At the time that the Capacity Plan Report was filed on January 22, 2004, Detroit Edison said it had procured 875 MW of seasonal merchant capacity from resources in western Michigan and 150 MW of non-affiliated seasonal capacity from within its service territory, leaving a shortfall of 196 (sic) MW.

At the time the Capacity Plan Report was filed, the company also requested 875 MW of firm seasonal transmission capacity from the Midwest Independent System Operator, Inc. (MISO), to deliver the merchant capacity procured from outside its service territory. Detroit Edison alleges that MISO subsequently notified it that only 624 MW of the transmission service request could be reserved as firm transmission service and that the remaining 251 MW could only be reserved as non-firm transmission service. According to Detroit Edison, the ability to purchase local affiliated generation output is a key remaining option. Detroit Edison further claims that the purchase of electricity from its affiliated EWG located within its service territory would avoid the use of

limited transmission facilities and would significantly improve its ability to provide reliable service to customers.

In support of its request, Detroit Edison points out that during the August 14, 2003 blackout, in order to return its electric resources to service and restore electric supply to its customers expeditiously, Detroit Edison sought and obtained emergency authorization from the Federal Energy Regulatory Commission (FERC) to temporarily purchase energy from both the East China and DTE River Rouge facilities. Detroit Edison believes that retaining the ability to purchase electricity from its DTE River Rouge and East China affiliates, which are located within its southeastern Michigan control area, is important both in the prevention of system conditions that might contribute to local or wide-area blackouts, and in the expeditious restoration of service should a wide-area blackout occur.

Detroit Edison submits that the Commission should grant its requests for the following reasons. First, Detroit Edison is subject to the affiliate transactions standards established in Cases Nos. U-13502 and U-12134, which provide the Commission with access to all the relevant information necessary for review. Second, making substantial in-state generation available to its customers is in the public interest. Third, the contemplated transactions will not provide Detroit Edison's affiliated EWGs with any unfair competitive advantage over other generators, because Detroit Edison will only purchase electricity from them if the power is competitively priced and authorized by the FERC. Fourth, Detroit Edison is not aware of any law or regulation that its request would violate.

Discussion

Detroit Edison's application is another last minute request for approval to implement arrangements it claims are needed to meet expected summer demands. On March 31, 1998,

Detroit Edison filed an application for a waiver of the capacity solicitation process to allow it to restart its Conners Creek generating plant to meet expected summer demands in 1998. The Commission granted the waiver, but stated that it did “not condone Detroit Edison’s unwarranted delay in requesting the waiver. The public interest demands that the threat of blackouts not be used as a bargaining piece to gain an advantage in the ongoing restructuring of the industry.” April 14, 1998 order, Case No. U-10840, p. 11. On January 11, 2000, Detroit Edison filed an application for determinations under PUHCA to transfer and operate the DTE River Rouge to meet expected demands in 2000 and 2001. The Commission approved the request, with conditions, and again addressed the timing of the application:

These findings should be viewed in light of the fact that the Commission is essentially presented with a Hobson’s choice. The start of Rouge No.1 has been offered as a means to help alleviate concerns and reliability this summer and as a source of supply for retail open access customers—both laudable objectives. However, the timing of the request has allowed little or no time for measured consideration of the issues raised in the petitions. The situation is remarkably similar to that presented by the Commission’s Conners Creek restart order in Case No. U-10840, dated April 14, 1998. Detroit Edison has apparently not heeded the Commission’s warning in that case that “the threat of blackouts not be used as a bargaining piece...in the ongoing restructuring of the industry.” In light of the potentially pressing need for additional capacity this summer, the Commission concludes that it is appropriate to grant the requested exemption at this time.

February 3, 2000 order, Case No. U-12266, pp. 10-11.

In this case, Detroit Edison waited until the onset of the summer cooling season to request this waiver. This again leaves the Commission with few options if electric reliability in Detroit Edison’s service territory is to be preserved. Detroit Edison states that it has procured 150 MW of capacity from nonaffiliated suppliers from within its service territory. It is not clear, however, that this represents all of the nonaffiliated capacity available from within its service territory. Nor is it clear how this capacity was solicited, whether through a transparent competitive solicitation or some other means.

The Commission is particularly concerned with this request because DTE River Rouge was previously in Detroit Edison's rate base. The Commission does not want to encourage the self-dealing that may result from allowing the company spinning-off its generating plant, then purchasing the power from the facility as a merchant operation. In its 2004 power supply cost recovery (PSCR) reconciliation case, Detroit Edison will bear the burden of demonstrating the need for the power and that the price paid was reasonable and in conformance with the code of conduct.

Despite Detroit Edison's late application, the Commission is vitally committed to ensuring Michigan's electric reliability. Maintaining reliability is vital to the public interest. Therefore, the Commission grants Detroit Edison limited authority to engage in certain transactions for the purchase of electricity, capacity, and ancillary services from East China and DTE River Rouge for the summer of 2004.³ The Commission grants this authority so that subsequent application may be made to the FERC for an order authorizing the contemplated sales of power to Detroit Edison, as needed, for the 2004 summer season. Any purchases beyond 300 MW made during the summer 2004 cooling season must be approved by the Commission. The Commission contemplates that a request for authority to purchase more than 300 MW will be made only in the event of an emergency.

Because of the very late request for this waiver, the Commission's grant is limited to this year's summer season. Future requests seeking a Section 32(k)(2) waiver must be filed no later than March 1 for the upcoming summer cooling season and will be set for a contested case

³In an order issued today in Case No. U-14109, the Commission found Detroit Edison's Summer 2004 capacity plan deficient and observed that the utility (1) failed to devote adequate efforts in its planning functions, (2) failed to show it used reasonable diligence to secure necessary transmission capabilities or reasonable cost-efficient alternatives, and (3) failed to address all issues related to the reliability of service expected during peak summer periods.

proceeding. This will ensure that Detroit Edison engages in the needed advance planning to meet the power supply needs of its customers.

In any future case involving power purchase from its affiliates, Detroit Edison will be required to demonstrate that it has undertaken a competitive solicitation for the power to ensure that the costs of electricity, capacity, and ancillary services are reasonable and that all potential suppliers have been provided an equal opportunity to provide the needed power. Detroit Edison is also reminded that it is subject to this Commission's code of conduct standards. Section III.C of the Commission's code adopts pricing standards for the purchase of electricity from an affiliated company and specifies that the price be the lower of market or book cost plus 10%.

The Commission also requires that the Commission Staff be provided with access to all books and records related to the purchase of electricity from these affiliated EWGs. This is in addition to the data to be supplied to the Commission in Case No. U-13502, which covers affiliated transaction guidelines. This requirement includes Detroit Edison, East China, and DTE River Rouge's books and records.

The Commission finds that it has the authority and resources under Michigan law to protect Michigan's utility ratepayers and that it intends to exercise that authority. The Commission reaches this conclusion based on its review of Michigan law and past practice. Ex parte approval is appropriate because no customer rates or charges will be increased at this time. The recoverability of Detroit Edison's power supply costs arising from any purchases from DTE River Rouge and East China will be the subject of the company's PSCR reconciliation case.

The Commission FINDS that:

a. Jurisdiction is pursuant to 1909 PA 106, as amended, MCL 460.551 et seq.; 1919 PA 419, as amended, MCL 460.51 et seq.; 1939 PA 3, as amended, MCL 460.1 et seq.; 1969 PA 306, as

amended, MCL 24.201 et seq.; and the Commission's Rules of Practice and Procedure, as amended, 1999 AC, R 460.17101 et seq.

b. Detroit Edison should notify the Commission within 10 days of this order's issuance if the conditions in this order are unacceptable.

c. With the conditions set forth in this order, allowing Detroit Edison to engage in certain transactions for the purchase of electricity, capacity, and ancillary services from affiliated EWGs will benefit its customers, is in the public interest, and does not violate any state law.

d. Ex parte approval is appropriate.

THEREFORE, IT IS ORDERED that the request of The Detroit Edison Company for determinations regarding Section 32(k) of the Public Utility Holding Company Act is granted, as discussed herein, unless The Detroit Edison Company notifies the Commission within 10 days of this order's issuance that the conditions required by this order are unacceptable.

The Commission reserves jurisdiction and may issue further orders as necessary.

Any party desiring to appeal this order must do so in the appropriate court within 30 days after issuance and notice of this order, pursuant to MCL 462.26.

MICHIGAN PUBLIC SERVICE COMMISSION

/s/ J. Peter Lark
Chair

(S E A L)

/s/ Robert B. Nelson
Commissioner

/s/ Laura Chappelle
Commissioner

By its action of June 3, 2004.

/s/ Mary Jo Kunkle
Its Executive Secretary

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MICHIGAN PUBLIC SERVICE COMMISSION

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By its action of June 3, 2004.

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