

UNITED STATES OF AMERICA
FEDERAL ENERGY REGULATORY COMMISSION
102 FERC ¶ 61,282

Before Commissioners: Pat Wood, III, Chairman;
William L. Massey, and Nora Mead Brownell.

Detroit Edison Company

Docket Nos. ER03-19-000
ER03-19-001

ORDER CONDITIONALLY ACCEPTING AGREEMENT

(Issued March 13, 2003)

1. On October 4, 2002, the Detroit Edison Company (Detroit Edison) submitted, pursuant to Section 205 of the Federal Power Act (FPA), an Agency Agreement between Detroit Edison and the Midwest Independent Transmission System Operator, Inc. (Midwest ISO). In this order, we will conditionally accept the Agency Agreement for filing, subject to the modifications directed herein. This order benefits customers in the Midwest because it enhances the reliable operation of the facilities under the control of the Midwest ISO.

Background

2. On October 4, 2002, the Detroit Edison Company filed an application requesting Commission approval of an Agency Agreement between Detroit Edison and Midwest ISO. The Agency Agreement was filed pursuant to a directive set forth in the Commission's order issued on May 22, 2002, in Docket Nos. ER01-3000-003/004, RT01-101-003/004 and EC01-146-003/004.¹ The May 22 Order conditionally accepted, subject to further filings, the transfer of functional control over the transmission system owned by the International Transmission Company (International Transmission) to the Midwest ISO. The May 22 Order also directed the parties to explain why functional

¹International Transmission Co. and DTE Energy Co., 99 FERC ¶ 61,211 (2002) (May 22 Order).

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control over certain facilities² owned by Detroit Edison and which interconnect the Dearborn Industrial Generation, LLC (DIG) generator with the International Transmission system should not be transferred to the functional control of the Midwest ISO.

3. The Commission noted in the May 22 Order that the Facilities "appear to perform a transmission function since they are part of the interconnection facilities that connect DIG to the transmission grid."³ The May 22 Order directed Detroit Edison to explain why these Facilities should not be transferred to the Midwest ISO and requested additional information supporting its position.

4. On July 16, 2002, International Transmission and DTE Energy Company jointly submitted a compliance filing to the May 22 Order. They asserted that any transfer of functional control to the Midwest ISO should be limited to instances in which the Facilities are used to reach the International Transmission system from the DIG facility to transmit wholesale electric sales.

5. On October 4, 2002, Detroit Edison filed an executed Agency Agreement between Detroit Edison and the Midwest ISO in Docket No. ER03-19-000. According to Detroit Edison, the Agency Agreement satisfies the Commission's concerns in the May 22 Order. Detroit Edison also states that the retail distribution functions performed by the Facilities are subject to the jurisdiction of the Michigan Public Service Commission (Michigan Commission).

6. Detroit Edison explains that the Agency Agreement would provide the Midwest ISO with limited functional control over the Facilities under the terms of the Midwest ISO's open access transmission tariff (OATT) solely to ensure that the DIG generator is provided with non-discriminatory service when using the Facilities for wholesale sales.

7. On November 27, 2002, Commission staff issued a deficiency letter to Detroit Edison requesting additional information from Detroit Edison concerning facility ownership and rate treatments regarding the facilities in question.

²The facilities in question include a disconnect switch on the 230 kV Baxter-DIG line connecting DIG to International Transmission's Baxter substation and the 230 kV Navarre-DIG line connect DIG to International Transmission (collectively, Facilities).

³See May 22 Order at 61,889.

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8. On January 24, 2003, Detroit Edison filed a response to the deficiency letter. In explaining that its Agency Agreement authorizes the Midwest ISO to provide only wholesale service over the Facilities, Detroit Edison maintains that retail load customers must obtain retail delivery service over the Facilities from Detroit Edison under its Retail Access Service Tariff (RAST). Detroit Edison argues that if it gives complete functional control of the Facilities to the Midwest ISO, it would be unable to charge for retail service and recover its costs under the RAST. Detroit Edison explains that the Baxter-DIG line is included in its retail rate base and, therefore, in its retail rates under the RAST. According to Detroit Edison, the Navarre-DIG line was newly built at DIG's request and these costs were directly assigned and are not included in Detroit Edison's rate base. According to Detroit Edison, DIG receives transmission credits pursuant to an interconnection agreement between DIG and Detroit Edison.⁴ Detroit Edison states that wholesale service customers will not incur any charges from Detroit Edison.

Notice of Filing, Intervention and Protest

9. Notice of the filing was published in the Federal Register, 67 Fed. Reg. 64,112 (2002), with comments, protests and interventions due on or before October 25, 2002. Notice of Applicant's response to Commission staff's deficiency letter was published in the Federal Register, 68 Fed. Reg. 6137 (2003), with comments, protests, and interventions due on or before February 14, 2003.

10. DIG and CMS Marketing, Services and Trading Company (CMS) (collectively, Protestors), jointly filed a timely and unopposed motion to intervene and protest to Detroit Edison's October 4 filing. On November 11, 2002, Detroit Edison filed an answer to Protestors' filing.

11. In their protest, DIG and CMS argue that the Facilities are an integral part of the International Transmission system. Protestors note that the points of interconnection

⁴On June 15, 2001, the Commission initially found the unexecuted interconnection agreement to be within its jurisdiction, accepted it for filing, as modified, suspended it subject to refund, and set charges under the agreement for hearing and settlement judge proceedings. Detroit Edison Co., 95 FERC ¶ 61,415 (2001); order denying reh'g and granting clarification, 96 FERC ¶ 61,309 (2001). Parties subsequently settled all issues set for hearing by Settlement Agreement, which the Commission approved by letter order issued on June 4, 2002. See Dearborn Industrial Generation, L.L.C., 99 FERC ¶ 61,268 (2002).

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form a 230 kV loop such that these two 230 kV lines are not radial, but are an integral part of the International Transmission system. Protestors believe that the Facilities should be subject to the jurisdiction of the Commission. DIG and CMS argue that if the Commission approves the Agency Agreement, it would require the Commission to waive jurisdiction over these Facilities. They request that the Commission reject the Agency Agreement and declare that the Facilities are jurisdictional transmission facilities.

12. In its answer, Detroit Edison states that the Protestors fail to establish any basis for rejection of the Agency Agreement. Detroit Edison claims it filed the Agency Agreement to ensure access to the International Transmission system. Detroit Edison also explains that since the Facilities are used to provide distribution service as well as generator interconnection service, the Commission should not require Detroit Edison to transfer control over the Facilities to the Midwest ISO. Detroit Edison argues that if the Commission requires Detroit Edison to transfer control over the Facilities it should be limited to permit only wholesale sales from the DIG generator.

13. Detroit Edison further explains that the Agency Agreement provides that the Midwest ISO would maintain administrative functional control over the Facilities. The Midwest ISO would provide open access wholesale distribution interconnection service over the Facilities so that wholesale customers have access to the International Transmission system. This includes DIG when it sells its output to customers other than its or its affiliate's retail customers at or near the DIG generator.

Discussion

Procedural Matters

14. Pursuant to Rule 214 of the Commission's Rules of Practice and Procedure, 18 C.F.R. § 385.214 (2002), the timely motion to intervene of Protestors serves to make them parties to this proceeding.

15. Rule 213 of the Commission's Rules of Practice and Procedure prohibits an answer to protests, unless otherwise ordered by the decisional authority. We will accept Applicants' answer as it aids us in our decision making process.

Agency Agreement

16. We are not persuaded by Detroit Edison's arguments that transfer of functional control to Midwest ISO should be limited. We continue to believe that the Facilities

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perform a transmission function and not a state-jurisdictional local distribution function because: (1) the Facilities are at a high voltage level; (2) the Navarre-DIG line and the Baxter-DIG line are both 230 kV lines, and along with the DIG ring bus, form a 230 kV loop configuration;⁵ and (3) power flows into and out of the loop configuration. Moreover, neither Detroit Edison nor any other entity has asserted that the Facilities should be considered local distribution facilities that are subject to state jurisdiction.⁶

17. In addition, the Commission has exclusive jurisdiction over unbundled retail transmission in interstate commerce.⁷ The state of Michigan has implemented retail access for all customers of Michigan's investor owned utilities.⁸ Accordingly, these customers are entitled to receive unbundled retail access pursuant to a Commission-approved tariff. We further note that DIG, which is interconnected by the Facilities to International Transmission, is selling all its output at wholesale. Therefore, pursuant to Section 201(b) of the FPA, the Facilities are subject to the Commission's jurisdiction.⁹

18. Finally, based on the facts in this proceeding, as discussed above, we conclude that the Facilities are high voltage, looped transmission facilities for which operational control should be transferred to Midwest ISO. Moreover, Detroit Edison is incorrect in arguing that service over these facilities is state jurisdictional. Transmission service, including unbundled retail transmission service pursuant to state action, is provided over the Facilities. Detroit Edison has offered no other convincing reason for opposing the transfer of operational control. Accordingly, we will direct Detroit Edison and Midwest

⁵See Exhibit B, Schematic Diagram of the DIG Generator Interconnection in International Transmission Company's Compliance Filing, Docket No. ER01-3000-006.

⁶While the Agency Agreement's characterizes the Facilities as "distribution/interconnection" facilities, the Agency Agreement offers no reason why these Facilities should be considered local distribution.

⁷The Commission has jurisdiction over the facilities used for the transmission component of a transaction involving the unbundled retail wheeling in interstate commerce. See Order No. 888 at 31,784.

⁸See http://www.cis.state.mi.us/mpsc/electric/restruct/faq/customer_faq.htm.

⁹See 16 U.S.C. § 824 (2001).

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ISO to revise Article Two of the Agency Agreement, and other provisions as necessary,¹⁰ to reflect that these Facilities are under the control of Midwest ISO. The level of Midwest ISO's control over the Facilities should be generally consistent with the level of control that Midwest ISO has over other transmission facilities, as provided in the Agreement of Transmission Facilities Owners to Organize the Midwest Independent Transmission System Operator, Inc.(Midwest ISO Agreement).¹¹

19. We agree with Detroit Edison that it should be able to collect its retail service charges. As we explained in Order No. 888, "while we believe in most cases there will be identifiable local distribution facilities subject to state jurisdiction, we also believe that even where there are no identifiable local distribution facilities, states nevertheless have jurisdiction in all circumstances over the service of delivering energy to end users."¹² Legitimate stranded costs caused by retail wheeling are primarily a matter of local or state concern and such costs can be appropriately recovered through a state-approved charge for delivering electric energy to end-users.¹³

20. Given our finding that these Facilities should be under the operational control of Midwest ISO, the Agency Agreement should provide for rate treatment related to these Facilities pursuant to the Midwest ISO OATT. That is, the costs of the Facilities should be reflected in rates charged by Midwest ISO pursuant to its OATT. Thus, Midwest ISO should determine the appropriate rate treatment for the costs of the Facilities and in order to charge such rates, make a filing pursuant to Section 205 of the FPA. We will also

¹⁰See supra note 9 and accompanying text.

¹¹See Midwest Independent Transmission System Operator, 84 FERC ¶ 61,231 at 62,159 and 62,161 (1998) (finding that "effective operational control by an ISO includes functions for which it is responsible (i.e., control area functions and necessary generation control functions) and the Transmission Owners will perform certain actions at the ISO's direction); see also Midwest Independent System Transmission Operator, Inc., 97 FERC ¶ 61,326 at 62,508 (2001) (finding that the Midwest ISO met the Commission's requirements for operational authority); see also Midwest ISO Agreement at Appendix E.

¹²See Order No. 888 at 31,783; see also Detroit Edison Co., 99 FERC ¶ 61,309 (2001).

¹³See Bangor Hydro-Electric Co., 90 FERC ¶ 61,172 at n.5 (2000) (citing New England Power Co., et al., 75 FERC ¶ 61,356 at 62,141 (1996)).

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require that Article Four, and any other rate-related provisions, of the Agency Agreement be revised accordingly.

The Commission orders:

(A) The proposed Agency Agreement between Detroit Edison and the Midwest ISO is hereby conditionally accepted for filing, as modified and discussed in the body of this order.

(B) Detroit Edison is hereby directed to file a revised Agency Agreement and appropriate rate treatment, as discussed in the body of this order, within 30 days of the date of this order.

By the Commission.

(S E A L)

Magalie R. Salas,
Secretary.