

105 FERC ¶ 61,056
UNITED STATES OF AMERICA
FEDERAL ENERGY REGULATORY COMMISSION

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

DTE East China, LLC
and DTE Energy Trading, Inc.

Docket No. ER03-1206-000

ORDER ACCEPTING FOR FILING AND SUSPENDING PROPOSED RATES AND
ESTABLISHING HEARING AND SETTLEMENT JUDGE PROCEDURES

(Issued October 10, 2003)

1. On August 12, 2003, DTE East China, LLC (DTE East China) and DTE Energy Trading, Inc. (DTE Energy Trading) (collectively, Applicants) filed tariff sheets¹ revising the cost-based rate ceilings for hourly, daily and weekly sales in their respective rate schedules. As discussed below, the Commission accepts and suspends, for a nominal period, the revised tariff sheets, to become effective August 13, 2003, subject to refund, and sets them for hearing. In addition, the Commission initiates settlement judge proceedings and holds the hearing in abeyance pending the outcome of those proceedings. This order benefits customers by ensuring the justness and reasonableness of the proposed rate increases.

Background

2. DTE East China is a Delaware limited liability company and an indirect wholly-owned subsidiary of DTE Energy Company (DTE Energy), an exempt public utility holding company.² DTE Energy Trading is DTE East China's power marketing affiliate and is also an indirect wholly-owned subsidiary of DTE Energy. Applicants are also affiliates of The Detroit Edison Company (Detroit Edison).

¹ Proposed Second Revised Sheet No. 2 to DTE East China's FERC Electric Tariff, Original Volume No. 3; proposed First Revised Sheet No. 4 to DTE Energy Trading's Rate Schedule FERC No. 1.

² Pursuant to Section 3(a)(1) of the Public Utility Holding Company Act (PUHCA) of 1935, as amended by the Energy Policy Act of 1992. 15 U.S.C. § 79z-5a (1994).

3. On June 13, 2002, the Commission issued an order conditionally accepting DTE East China's proposal to sell energy and capacity from its electric generating facility (the Facility) exclusively to non-affiliates at negotiated rates up to cost-based rate caps.³ The Facility is a peaking electric generating station with an operational capacity of approximately 300 MW, consisting of four natural gas-fired turbines located in East China Township, Michigan. The Facility interconnects with the electric transmission system of International Transmission Company, which is under the operational control of the Midwest Independent Transmission System Operator, Inc. (Midwest ISO).

4. On May 30, 2003, an order was issued accepting Applicants' proposal for DTE East China to sell power to the affiliated power marketer, DTE Energy Trading. This order also accepted DTE Energy Trading's commitment: (1) not to re-sell any of the power purchased from DTE East China to another affiliate, and (2) that any sales to non-affiliates would be subject to the cost-based price ceiling.⁴

The Instant Filing

5. In the instant filing, Applicants propose to revise their wholesale electric tariffs by adjusting the cost-based rate ceiling for hourly, daily and weekly sales. Applicants contend that the proposed revisions would adjust the cost-based rate ceiling for capacity based on actual results of operation of the Facility.

6. The Applicants explain that, as required by the June 13, 2002 order, the existing rates are based on the AEP Method,⁵ developing on-peak rates (using 16-hour days and 5-day weeks) as modified to recover the annual revenue requirement over a 4 month period rather than a 12 month period. This modified version of the AEP Method calculates the rates based on the assumption that the peak facility will be used approximately 1,360 hours per year.

7. In contrast, the Applicants propose to revise their electric wholesale rates to reflect an assumption that the Facility will be used for 350 hours per year. The Applicants claim that their 350 hours per year estimate is more representative of actual operations. In support of this contention, the Applicants submitted confidential actual operating

³ DTE East China, LLC, 99 FERC ¶ 61,315 (2002).

⁴ See unpublished Letter Order issued May 30, 2003 in Docket No. ER03-470-001 to DTE East China, LLC and DTE Energy Trading, Inc.

⁵ See Appalachian Power Co., 39 FERC ¶ 61,296 (1987). In Appalachian Power Co., the Commission devised a method to design rates for facilities where hourly rates may be derived from the hours during which facilities will be used, rather than the total hours in the year. This method is referred to as the AEP method.

information. The Applicants state that this proposed change in the estimated hours of usage is necessary because DTE East China is suffering severe financial distress. The Applicants state that for the 14-month period since the facility became operational, DTE East China has only been able to collect a small fraction of its fixed cost revenue requirement because the Facility has operated far less than the number of operating hours currently used to calculate its cost-based rate cap. The Applicants contend that the 14-month period in which the Facility has been operational is a reasonable basis on which to adjust the rates. The Applicants also commit to file updated operating information no later than March 31, 2005, and update their respective rates accordingly.⁶

8. The Applicants request that the Commission grant waiver of the prior notice requirement pursuant to 18 C.F.R. § 35.3 to permit the revised tariff sheets submitted herein to become effective on August 13, 2003. The Applicants submit that good cause exists to grant the waiver because the Applicants are suffering severe financial distress under the existing rates.

Notice of Filing

9. Notice of the Applicants' filing was published in the Federal Register, (68 Fed. Reg. 52,193 (2003)), with comments, protests, and interventions due on or before September 3, 2003. No interventions or protests were filed.

Discussion

10. The Applicants' proposal presents issues that require further consideration. The proposal reflects a rate increase in each Applicant's respective rate schedule and tariff. Specifically, for both Applicants, the weekly per megawatt rate ceiling would increase from \$3,940 to \$15,280; the daily per megawatt rate ceiling would increase from \$788 to \$3,056; and the hourly per megawatt rate ceiling would increase from \$49 to \$191. The proposed rate changes represent up to a 390 percent increase over the existing rates. Moreover, the Applicants' filing does not provide any information as to whether the cost levels reflected in the capacity charges are accurate and support the level of the proposed increases. In addition, the Facility consists of quick start, peaking generators, which can come online quickly and operate in a variety of situations, as was the case during the August 14 blackout in the Northeast and Midwest United States.⁷ Given the Facility's

⁶ The Applicants state that they will update the proposed rates unless their cost-based rates have been withdrawn due to the start-up of the Midwest ISO market.

⁷ In a filing submitted by DTE East China on September 15, 2003 in Docket No. ER03-1346-000, DTE East China requests Commission approval of emergency sales made to Detroit Edison as a result of the blackout. This filing is pending before the Commission.

characteristics, the Applicants' estimate of 350 hours of operation may not be appropriate.

11. Accordingly, we find that the Applicants' filing indicates that the proposed rate changes have not been shown to be just and reasonable, and may be unjust, unreasonable, and unduly discriminatory or preferential, or otherwise unlawful. Accordingly, we will accept the Applicants' proposed rate changes for filing, suspend them for a nominal period, subject to refund, and set the matter for hearing and settlement judge procedures.

12. We will hold the hearing in abeyance and direct settlement judge procedures, pursuant to Rule 603 of the Commission's Rules of Practice and Procedure, in order to provide the Applicants an opportunity to work with Commission Trial Staff to resolve the Commission's concerns about the proposed rate increases.¹⁰ If the Applicants desire, they may request a specific judge as the settlement judge in this proceeding, otherwise, the Chief Administrative Law Judge will select a judge for this purpose.¹¹ The settlement judge shall report to the Chief Judge and the Commission within 60 days of the date of this order concerning the status of settlement discussions. Based on this report, the Chief Administrative Law Judge shall provide the Applicants with additional time to continue their settlement discussions or provide for commencement of a hearing by assigning the case to a presiding judge.

13. We will grant the Applicants' request for waiver of the 60-day prior notice requirement, for good cause shown, to allow the proposed rates to become effective on August 13, 2003.

¹⁰ 18 C.F.R. § 385.603 (2003).

¹¹ If the Applicants decide to request a specific judge, they must make their joint request to the Chief Administrative Law Judge by telephone at (202) 502-8500 within five days of the date of this order. The Commission's website contains a list of Commission judges and a summary of their background and experience. (www.ferc.gov, click on "Legal Matters" and then on "Office of Administrative Law Judges").

The Commission orders:

(A) The Applicants' filing is hereby accepted for filing, suspended for a nominal period, to become effective August 13, 2003, as requested, subject to refund and set for hearing as discussed in the body of this order.

(B) The Applicants' request for waiver for the 60-day prior notice requirement is hereby granted, as discussed in the body of this order.

(C) Pursuant to the authority contained in and subject to the jurisdiction conferred upon the Federal Energy Regulatory Commission by Section 402(a) of the Department of Energy Organization Act and the Federal Power Act, particularly Sections 205 and 206 thereof, and pursuant to the Commission Rules of Practice and Procedure and the regulations under the Federal Power Act (18 C.F.R. Chapter 1), a public hearing shall be held concerning the justness and reasonableness of the Applicants' proposed rate changes. As discussed in the body of this order, we will hold the hearing in abeyance to allow time for settlement judge negotiations.

(D) Pursuant to Rule 603 of the Commission's Rule of Practice and Procedure, 18 C.F.R. § 385.603 (2002), the Chief Administrative Law Judge is hereby authorized to appoint a settlement judge in this proceeding within fifteen (15) days of the date of this order. Such settlement judge shall have all powers and duties enumerated in Rule 603 and shall convene a settlement conference as soon as practicable after the Chief Administrative Law Judge designates the settlement judge. If the Applicants decide to request a specific judge, they must make their request to the Chief Administrative Law Judge in writing or by telephone within five (5) days of the date of this order.

(E) Within sixty (60) days of the date of this order, the settlement judge shall file a report with the Commission and the Chief Administrative Law Judge on the status of the settlement discussions. Based on this report, the Chief Administrative Law Judge shall provide additional time for the continuation of settlement discussions, if appropriate, or assign this case to a presiding judge for a trial type evidentiary hearing, if appropriate. If settlement discussions continue, the settlement judge shall file a report at least every sixty (60) days thereafter, informing the Commission and the Chief Administrative Law Judge of the Applicants' progress toward settlement.

(F) If the settlement judge procedures fail, and a trial-type evidentiary hearing is to be held, a presiding judge, to be designated by the Chief Administrative Law Judge, shall convene a conference in this proceeding to be held within approximately fifteen (15) days of the date the Chief Administrative Law Judge designates the presiding judge, in a hearing room of the Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, D.C. 20426. Such conference shall be held for the purpose of establishing a procedural schedule. The presiding judge is authorized to establish procedural dates, including a date for the Applicants' submission of a case-in-chief, and to rule on all motions (except motions to dismiss), as provided in the Commission's Rules of Practice and Procedure.

By the Commission.

(S E A L)

Magalie R. Salas,
Secretary.