114 FERC ¶61,138
UNITED STATES OF AMERICA
FEDERAL ENERGY REGULATORY COMMISSION

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

DTE East China, L.L.C. Docket No. ER06-348-000

ORDER ACCEPTING AND SUSPENDING FILING AND ESTABLISHING HEARING AND SETTLEMENT JUDGE PROCEDURES

(Issued February 16, 2006)

1. On December 20, 2005, DTE East China, L.L.C. (East China) filed a proposed rate schedule specifying its cost-based revenue requirement for providing Reactive Supply and Voltage Control from Generation Sources Service (reactive power) to the Midwest Independent Transmission System Operator, Inc. (Midwest ISO). As discussed below, we will accept the proposed rate schedule for filing and suspend it for a nominal period, to become effective December 21, 2005, as requested, subject to refund. We also establish hearing and settlement judge procedures.

Background

2. East China is a Delaware limited liability company that owns a peaking facility with a nameplate capacity of 320 MW, consisting of four 80-MW natural gas-fired turbines, located in East Township, Michigan (Facility).[1] The Facility is interconnected with the transmission system of International Transmission Company (ITC), which the Midwest ISO operates.[2]

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[1] East China – an affiliate of Detroit Edison, which is a wholly-owned subsidiary of DTE Energy Company – is an exempt wholesale generator under section 32 of the Public Utility Holding Company Act of 1935. *See DTE East China, L.L.C.*, 98 FERC ¶ 62,160 (2002). East China is also authorized to make wholesale sales of power at market-based rates. *See DTE East China, L.L.C.*, Docket No. ER05-1469-000 (October 25, 2005) (unpublished letter order).

[2] The Commission granted East China authorization to sell power from the Facility in Docket ER05-1469-000.

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3. East China seeks authorization of its proposed annual revenue requirement of $1,324,569 for reactive power to enable the Midwest ISO to implement a cost-based charge under Schedule 2 of Midwest ISO's Open Access Transmission and Energy Markets Tariff.

4. East China states that its proposed revenue requirement was developed consistent with the methodology in *American Electric Power Service Corp.*[3] Specifically, East China states that its proposed revenue requirement consists of fixed costs attributable to reactive power production capability (Fixed Capability Component). It explains that the fixed capability component was calculated by first determining that portion of the Facility's generator system and the generator step-up transformers used to produce reactive power. East China states that the annual revenue requirement was then determined by applying to that portion of plant a fixed charge rate and a levelized annual carrying charge.

5. East China adds that it used an overall cost of capital, *i.e.*, overall rate of return, based on a proxy derived from the capital structure of ITC, the owner of the transmission system with which East China is interconnected.

6. East China requests waiver of the Commission's 60-day prior notice requirement so that its proposed rate schedule becomes effective December 21, 2005.

Notice of Filing

7. Notice of East China's filing was published in the *Federal Register*, 71 Fed. Reg. 1421 (2006), with interventions and protests due on or before January 10, 2006. The Midwest ISO and the Midwest ISO Transmission Owners filed timely motions to intervene. ITC filed a timely motion to intervene and comments.

8. ITC raises concerns regarding East China's use of ITC's overall cost of capital (with adjustments) as a proxy for its own cost of capital and to derive its revenue requirement. ITC explains that its cost of capital is derived considering its status as an independent stand-alone transmission company, which East China is not, and questions the appropriateness of East China using it as a starting point for a proxy for East China's cost of capital.

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[3] Opinion No. 440, 88 FERC ¶ 61,141 (1999).

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Discussion

Procedural Matters

9. Pursuant to Rule 214 of the Commission's Rules of Practice and Procedure, 18 C.F. R. § 385.214 (2005), the timely, unopposed motions to intervene serve to make the entities that filed them parties to this proceeding.

Hearing and Settlement Judge Procedures

10. East China's proposed rate schedule raises issues of material fact that cannot be resolved based on the record before us, and are more appropriately addressed in the hearing and settlement judge procedures ordered below.

11. Our preliminary analysis indicates that East China's filing has not been shown to be just and reasonable and may be unjust, unreasonable, unduly discriminatory or preferential, or otherwise unlawful. Therefore, we will accept East China's proposed rate schedule for filing, suspend it for a nominal period, make it effective on December 21, 2005, as requested, subject to refund, and set it for hearing and settlement judge procedures.

12. While we are setting these matters for a trial-type evidentiary hearing, we encourage the parties to make every effort to settle their dispute before hearing procedures are commenced. To aid the parties in their settlement efforts, we will hold the hearing in abeyance and direct that a settlement judge be appointed, pursuant to Rule 603 of the Commission's Rules of Practice and Procedure.[4] If the parties desire, they may, by mutual agreement, request a specific judge as the settlement judge in the proceeding; otherwise, the Chief Judge will select a judge for this purpose.[5] 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

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[4] 18 C.F.R. § 385.603 (2005).

[5] If the parties decide to request a specific judge, they must make their joint request to the Chief Judge by telephone at (202) 502-8500 within five days 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 Office of Administrative Law Judges).

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Judge shall provide the parties with additional time to continue their settlement discussions or provide for commencement of a hearing by assigning the case to a presiding judge.

The Commission orders:

(A) East China's proposed rate schedule is hereby accepted for filing and suspended for a nominal period, to become effective on December 21, 2005, subject to refund, as discussed in the body of this order.

(B) 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 by the Federal Power Act, particularly sections 205 and 206 thereof, and pursuant to the Commission's Rules of Practice and Procedure and the regulations under the Federal Power Act (18 C.F.R., Chapter I), a public hearing shall be held concerning East China's proposed rate schedule for reactive power. However, the hearing shall be held in abeyance to provide time for settlement judge procedures, as discussed in Paragraphs (C) and (D) below.

(C) Pursuant to Rule 603 of the Commission's Rules of Practice and Procedure, 18 C.F.R. § 385.603 (2005), the Chief Administrative Law Judge is hereby directed 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 Judge designates the settlement judge. If the parties decide to request a specific judge, they must make their request to the Chief Judge within five (5) days of the date of this order.

(D) Within thirty (30) days of the date of the appointment of the settlement judge, the settlement judge shall file a report with the Commission and the Chief Judge on the status of the settlement discussions. Based on this report, the Chief Judge shall provide the parties with additional time to continue their 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 Judge of the parties' progress toward settlement.

(E) If settlement judge procedures fail and a trial-type evidentiary hearing is to be held, a presiding judge, to be designated by the Chief Judge, shall, within fifteen (15) days of the date of the presiding judge's designation, convene a prehearing conference in these proceedings in a hearing room of the Commission, 888 First Street, N.E., Washington, DC 20426. Such a conference shall be held for the purpose of

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establishing a procedural schedule. The presiding judge is authorized to establish procedural dates 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.