

DTE ENERGY TRADING, INC.

Docket No. EA- 211-2

3 As used herein, the terms “marketer” and “power marketer” mean an entity that buys and sells electric power for its own account. DTE Energy Trading has a currently-effective power marketing rate schedule approved by the Federal Energy Regulatory Commission (“FERC”). A copy of the FERC Order approving such rate schedule and authorizing DTE Energy Trading to make sales of electric power at wholesale in interstate commerce at market-based rates is attached hereto as Attachment 1.

wholesale pursuant to a market-based rate wholesale power sales tariff on file with FERC, and arranges services in related areas. DTE Energy Trading also is authorized to sell electricity at retail in several states pursuant to licenses and authorizations granted by state regulatory commissions. DTE Energy Trading purchases power to be exported from electric utilities and federal power marketing agencies as defined in Sections 3(22) and (19) of the FPA (16 U.S.C. Section 796(22) and (19)). The instant application relates to DTE Energy Trading as a marketer of electric power only.

II. Jurisdiction

No other known federal, state or local government has jurisdiction over the actions to be taken under the authority sought in this application.

III. Communications

All service and correspondence concerning this application should be sent to:

Brian C. Drumm
DTE Energy Company
One Energy Plaza
Detroit, MI 48226
(313) 235-8340 (ph)
(313) 235-8500 (f)

Marcia Hisson
DTE Energy Trading, Inc.
414 S. Main Street
Ann Arbor, MI 48104
(734) 887-2042 (ph)
(734) 887-2235 (f)

IV. Technical Discussion of Proposal

DTE seeks to renew its existing authority to transmit electric power to Canada as a power marketer. As noted above, DTE Energy Trading has no "system" of its own on which its exports of power could have a reliability or stability impact. DTE Energy Trading will purchase the power to be exported from electric utilities and federal power marketing agencies as those terms are defined in Section 3(22) and (10) of the FPA. By definition, such power is surplus to the system of the generator and thus will not impair the sufficiency of the electric power supply within the United States.⁴

DTE Energy Trading will make all necessary commercial arrangements and will obtain any and all other regulatory approvals required in order to effect any power exports. This would include (1) scheduling each transaction with the appropriate control area in compliance with all reliability criteria, standards and guidelines of the North American Electric Reliability Council ("NERC") and member regional councils in effect at the time of export and (2) obtaining all necessary transmission access over the existing facilities listed in Exhibit C.⁵

⁴ See DTE Energy Trading Authorization at 2.

⁵ The location, voltage, owner and the Presidential Permits under which the relevant border transmission facilities were constructed and maintained are also set forth in Exhibit C.

As the DOE noted in a similar export authorization,⁶ DOE may utilize the reliability analyses performed in the most recent export authorization proceedings of the above-named transmission systems in order to make the findings required for a grant of export authority to DTE Energy Trading. DTE Energy Trading respectfully requests that DOE do so and agrees to abide by the export limits contained in the relevant export authorization of any transmission system over which DTE Energy Trading exports electric power to Canada. The controls which are inherent in any transaction that complies with all NERC requirements and the export limits imposed by DOE on the above-named transmission systems are sufficient to ensure that exports by DTE Energy Trading would not impede or tend to impede the coordinated use of transmission facilities within the meaning of Section 202(e) of the FPA. This Application is consistent with the North American Free Trade Agreement ("NAFTA") and United States energy policy as established in the Energy Policy Act of 1992. Renewal of DTE Energy Trading's export authorization will foster the development and maintenance of a more efficient and competitive energy market in North America.

V. Procedures

DTE Energy Trading will continue to comply with the procedures established in the DTE Energy Trading Authorization. From time to time DTE Energy Trading will enter into agreements with third parties which involve the export of electric power from the United States to Canada. Prior to commencing or continuing the export of electric power under such agreements, DTE Energy Trading will provide DOE with written evidence that sufficient transmission access to complete the export transaction has been obtained. DTE Energy Trading will make and preserve complete records with respect to the electric power exported to Canada and will provide DOE with quarterly reports within 30 days following each calendar quarter. These quarterly reports will show the gross amount of kilowatt-hours of electric energy delivered and the consideration received therefore during each month of the previous quarter and the maximum hourly rate of transmission.

VI. Exhibits and Attachments

The following Exhibits and Attachments are attached hereto:

- Exhibit A - Agreements (Not Applicable)
- Exhibit B - Legal Opinion of DTE Energy Trading's Counsel
- Exhibit C - Transmission System Information
- Exhibit D - Non-U.S. Applicant's Power of Attorney (Not Applicable)
- Exhibit E - Statement of Any Corporate Relationship or Existing Contract Which in Any Way Relates to the Control or Fixing of Electric Power Rates

⁶ See *Enron Power Marketing, Inc.*, Order No. EA-102, issued Feb. 6, 1996.

Exhibit F - Operating Procedures Regarding Available Capacity and Energy (Not Applicable)

Attachment 1 – Copies of the September 24, 1997 FERC Order in Docket No. ER97-3834, *et al.*, the 2001 Order, the Affiliate Waiver Order and the 2011 Affiliate Waiver Order are provided in Attachment 1 to this Application for Renewal

Pursuant to the requirement of 10 C.F.R. § 205.309, a copy of this Application is being provided to:

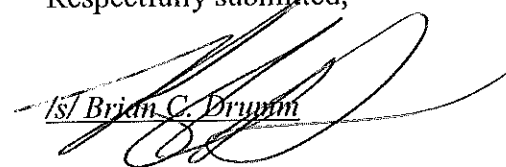
Federal Energy Regulatory Commission
888 First Street, N.E.
Washington, D.C. 20426

Michigan Public Service Commission
6545 Mercantile Way
PO Box 30221
Lansing, MI 48909

VII. Conclusion

DTE Energy Trading respectfully requests that this application for renewal of existing blanket authority to transmit electric energy to Canada be expeditiously considered and approved on terms substantially similar to those imposed upon DTE Energy Trading in the DTE Energy Trading Authorization, and that such renewal be for a five year term. Finally, DTE Energy Trading respectfully requests action on this application and issuance of an order granting DTE Energy Trading renewed export authority to Canada no later than April 1, 2012.

Respectfully submitted,

A handwritten signature in black ink, appearing to read "Brian C. Drumm", is written over a horizontal line.

Brian C. Drumm
Attorney for DTE Energy Trading, Inc.

Dated: January 20, 2012

Exhibit A

Agreements

(Not Applicable)

Exhibit B

Legal Opinion of DTE Energy Trading's Counsel

DTE Energy



Tel. (734) 887-4097
Fax (734) 887-2235
careyp@dteenergy.com

LEGAL OPINION AND STATEMENT OF COUNSEL

The following opinion is given in support of the Application for Renewal of DTE Energy Trading, Inc. for Authorization to Transmit Electric Energy to Canada.

1. I am an attorney at law authorized to practice law in the State of Michigan;
2. I am the Vice President – Corporate Services and Assistant Corporate Secretary of DTE Energy Trading, Inc.;
3. The proposed renewal of authorization for export of electricity by DTE Energy Trading, Inc. is within the corporate power of DTE Energy Trading, Inc.; and
4. DTE Energy Trading, Inc. has complied with or will comply with all pertinent federal and state laws regarding the matters contemplated in the attached Application.

A handwritten signature in black ink, appearing to read 'Patrick Carey', written over a horizontal line.

Patrick Carey
Vice President – Corporate Services and Assistant
Corporate Secretary for DTE Energy Trading, Inc.

January 18, 2012

Exhibit C

Transmission System Information

TRANSMISSION LINES TO BE USED TO EXPORT ENERGY

<u>Presidential Permit Holder</u>	<u>Permit No.</u>	<u>Voltage</u>	<u>Location</u>
Basin Electric Coop.	PP-64	230 kV	Tioga, ND
Bonneville Power Admin.	PP-10	2-500 kV	Blaine, WA
	PP-36	230 kV	Nelway, WA
	PP-46	230 kV	Nelway, WA
Citizens Utilities	PP-66	130 kV	Derby Line, VT
Eastern Maine Electric Coop.	PP-32	69 kV	Calais, ME
International Transmission Co.	PP-230	345 kV	St. Clair, MI
	PP-230	230 kV	Marysville, MI
	PP-230	230 kV	Detroit, MI
	PP-230	345 kV	St. Clair, MI
Joint Owners of Highgate	PP-82	345 kV	Franklin, VT
Long Sault, Inc.	PP-24	2-115 kV	Massena, NY
Maine Electric Power Co.	PP-43	345 kV	Houlton, ME
Maine Public Service	PP-12	69 kV	Limestone, ME
		69 kV	Ft. Fairfield, ME
	PP-29	138 kV	Aroostook, ME
		2-69 kV	Madawaska, ME
Minnesota Power & Light	PP-78	115 kV	International Falls, MN
Minnkota Power	PP-61	230 kV	Roseau County, MN
New York Power Authority	PP-30	230 kV	Devil's Hole, NY
	PP-74	2-345 kV	Niagara Falls, NY
	PP-56	765 kV	Ft. Covington, NY
	PP-25	2-230 kV	Massena, NY
Niagara Mohawk Power Corp.	PP-31	230 kV	Devil's Hole, NY

Northern States Power	PP-45	230 kV	Red River, ND
	PP-63	500 kV	Roseau County, MN
	PP-231	230 kV	Rugby, ND

Vermont Electric Trans. Co.	PP-76	450 kV DC	Norton, VT
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Exhibit D

Non-U.S. Applicant's Power of Attorney

(Not Applicable)

Exhibit E

Statement of Any Corporate Relationship or Existing Contract Which in Any Way Relates to the Control or Fixing of Electric Power Rates

The September 24, 1997 FERC Order in Docket No. ER97-3834, *et al.* that granted DTE Energy Trading authorization to make market-based sales of electric power prohibited DTE Energy Trading from making any sales of power to its affiliate, Detroit Edison, without having first filed a rate schedule with the FERC pursuant to Section 205 of the Federal Power Act, 16 U.S.C. §824d. The same Order also required that all sales of power by Detroit Edison to DTE Energy Trading: a) be priced at rates no lower than rates charged to non-affiliated enterprises, b) be offered at discounted prices only if the same discount was offered to similarly situated unaffiliated customers, and c) be reported publicly via an electronic bulletin board at the time the transactions occurred. Detroit Edison has contracted for the sale of power and transmission services to DTE Energy Trading in conformity with the requirements of the Order in the past, but has not done so at any time since the initial DTE Energy Trading Authorization was issued.

In *Detroit Edison Co.*,¹ the Commission approved Detroit Edison and DTE Energy Trading's request to make market-based power sales between DTE Energy Trading and Detroit Edison and to eliminate the Commission's information-sharing and independent functioning restrictions with respect to such inter-affiliate transactions. The Commission found that Michigan's retail choice program was adequate protection for Detroit Edison's retail customers with choice and also found that Detroit Edison's wholesale customers were adequately covered by various other protections proposed by the DTE Entities.²

On December 17, 2009, Detroit Edison and DTE Energy Trading notified the Commission that as of December 2009, more than eight percent of Detroit Edison's average annual retail sales elected to take service from an alternative electric supplier.³ In the December 17 Filing, Detroit Edison and DTE Energy Trading also notified the Commission that they wish to maintain their current waiver of the Commission's affiliate restrictions and committed to submit a proposal to justify the continuance of the current waiver. In light of the change in Michigan law described above, and in light of Detroit Edison having reached the legislative cap on retail load served by alternative electric suppliers, Detroit Edison and DTE Energy Trading

¹ *The Detroit Edison Co.*, 95 FERC ¶ 61,240 (2001) ("2001 Order").

² Those conditions generally insulated these customers from the financial impact of transactions between Detroit Edison and DTET except if the transactions would reduce the charges to those customers. *See* 2001 Order at 61,822. On January 9, 2008, the Commission accepted for filing the DTE Entities' revisions to their market-based rate tariffs to incorporate the previously approved waiver, in conformity with the requirements of Order No. 697. *Detroit Edison Co.*, Docket Nos. ER97-324-010 and ER97-3834-016 (unpublished, delegated letter order issued Jan. 9, 2008) ("January 9 Order"). The DTE Entities also submitted the informational filing required in Order No. 707 in order to ensure that the partial waiver of the Commission's market-based rate affiliate restrictions accepted in the January 9 Order extended, as applicable, to the new affiliate restrictions adopted in Order No. 707. *Cross-Subsidization Restrictions on Affiliate Transactions*, Docket No. RM07-15-000, Informational Filing of The Detroit Edison Company and DTE Energy Trading, Inc. (filed Mar. 12, 2008).

³ *The Detroit Edison Co. and DTE Energy Trading, Inc.*, Docket Nos. ER97-324-012 and ER97-3834-019 (filed Dec. 17, 2009) ("December 17 Filing").

submitted a filing to the Commission on January 19, 2010, to offer the additional pricing protections against any potential for affiliate abuse described below (in addition to maintaining the 2001 protections).⁴ Specifically, Detroit Edison and DTE Energy Trading requested continued Commission authorization (i) for DTE Energy Trading to make sales of energy to Detroit Edison at a price not to exceed the prevailing price of electricity at the MISO Cinergy Hub; (ii) for Detroit Edison to make sales of energy to DTE Energy Trading at (or above) the prevailing price of electricity at the MISO Cinergy Hub; and (iii) for DTE Energy Trading to make sales to Detroit Edison of capacity in the event that DTE Energy Trading is a successful bidder in a Detroit Edison competitive solicitation for capacity to meet reserve requirements for the summer of 2010, held in a manner consistent with the description in the January 19, 2010 filing, at the clearing price of such competitive solicitation. Detroit Edison and DTE Energy Trading subsequently renewed their request for 2011 in a separate filing,⁵ and will submit an additional request to the Commission for 2012.

A copy of the September 24, 1997 FERC Order in Docket No. ER97-3834, *et al.*, the 2001 Order, the Affiliate Waiver Order and the 2011 Affiliate Waiver Order are provided in Attachment 1 to this Application for Renewal.

⁴ See *The Detroit Edison Company*, Application of The Detroit Edison Company and DTE Energy Trading, Inc. for Continued Waiver of Affiliate Restrictions, Docket Nos. ER97-342-017, *et al.*, filed Jan. 19, 2010, *approved by The Detroit Edison Company*, Delegated Letter Order, Docket Nos. ER97-324-017, *et al.*, issued March 15, 2010 ("Affiliate Waiver Order").

⁵ See *The Detroit Edison Co.*, Request for Reaffirmation of Affiliate Waiver, filed Oct. 11, 2011, as amended Dec. 3, 2011, Docket Nos. ER97-324-021, *et al.* ("2011 Affiliate Waiver Request"); *approved by The Detroit Edison Co.*, Delegated Letter Order, Docket Nos. ER97-324-020, *et al.*, issued Mar. 2, 2011 ("2011 Affiliate Waiver Order").

Exhibit F

Operating Procedures Regarding Available Capacity and Energy

(Not Applicable)

Attachment 1

Copy of FERC Order in Docket No. ER97-3834, et. al., issued September 24, 1997,
accepting DTE Energy Trading's FERC Rate Schedule No. 1



Detroit Edison Company, DTE Energy Trading, Inc., DTE-CoEnergy L.L.C.

Docket No. ER97-3832-000, Docket No. ER97-3834-000, Docket No. ER97-3835-000

FEDERAL ENERGY REGULATORY COMMISSION - COMMISSION

80 F.E.R.C. P61,348; 1997 FERC LEXIS 2014

September 24, 1997

ACTION:

[**1] ORDER ACCEPTING PROPOSED MARKET-BASED RATES AND CONDITIONALLY ACCEPTING PROPOSED COST-BASED RATES FOR FILING

JUDGES: Before Commissioners: James J. Hoecker, Chairman; Vicky A. Bailey, and William L. Massey.

OPINION:

[*62,194]

In this order, we accept for filing, without suspension or hearing, the proposed market-based power sales rates filed by DTE Energy Trading, Inc. (DTE Energy Trading) and DTE-CoEnergy L.L.C. (DTE-CoEnergy), affiliates of the Detroit Edison Company (Detroit Edison). We also conditionally accept for filing the proposed cost-based power sales rates and the proposed reassignment of transmission capacity filed by Detroit Edison.

I. Background

DTE Energy Company, an exempt public utility holding company which owns Detroit Edison, n1 has formed two new subsidiaries to engage in power marketing and related activities. DTE Energy Trading will engage in power marketing and brokering. DTE-CoEnergy will engage in power marketing.

n1 Detroit Edison is a public utility which owns, operates and controls facilities used for the generation, transmission and distribution of electric power.

[**2]

On July 23, 1997, DTE Energy Trading and DTE-CoEnergy filed separate applications for Commission authorization to engage in the wholesale sale of electric capacity and energy at market-based rates. DTE Energy Trading and DTE-CoEnergy request the same waivers and authorizations afforded to other power marketers with market-based rate authorization. DTE Energy Trading and DTE-CoEnergy [*62,195] request an October 1, 1997 effective date for their rate schedules.

On July 23, 1997, Detroit Edison filed for Commission authority to sell power to DTE Energy Trading at cost-based rates and to reassign transmission capacity to DTE Energy Trading. Detroit Edison requests an October 1, 1997 effective date for its rate schedule.

Notice of Detroit Edison's, DTE Energy Trading's, and DTE-CoEnergy's filings were published in the Federal Register, 62 Fed. Reg. 43,724 (1997), with comments, protests and interventions due on or before August 22, 1997. Consumers Energy Company (Consumers Energy) filed a timely motion to intervene in the Detroit Edison proceeding, Docket No. ER97-3832-000.

In its pleading, Consumers Energy stated that it reserved the right to seek further proceedings, [**3] including a technical conference or a formal hearing, if it does not obtain timely and satisfactory assurances from Detroit Edison regarding the impact of the Detroit Edison/DTE Energy Trading Power Sales Agreement on the tight power pool that Detroit Edison and Consumers Energy operate (the Michigan Electric Coordination System). Consumers Energy expressed concern that Commission approval of the Detroit Edison/DTE Energy Trading Power Sales Agreement could be the basis for the future contention that Detroit Edison can remove power or transmission capacity from that which would otherwise be available to Michigan Electric Coordination System operations by selling it to DTE Energy Trading. Consumers Energy stated that it does not have any evidence of an intention by Detroit Edison to do so and has requested assurances to the contrary from Detroit Edison but has not received such assurances to date. n2

n2 Consumers Energy Intervention at p. 4.

On September 8, 1997, Detroit Edison filed an answer to Consumers Energy's [**4] motion to intervene. Detroit Edison stated that it does not oppose Consumers Energy's intervention in this proceeding. However, Detroit Edison opposes Consumers Energy's apparent effort to hold its Power Sales Agreement, at issue in this proceeding, hostage to undefined, unrelated and premature Consumers Energy concerns involving the Michigan Electric Coordinated Systems power pool agreement. Consumers Energy, according to Detroit Edison, raises no issue relating to the Power Sales Agreement. Detroit Edison asserts that if Consumers Energy has concerns about Detroit Edison's compliance with the Michigan Electric Coordinated Systems Agreement, it can raise those issues at an appropriate time and in the appropriate proceeding when a dispute actually exists.

On September 18, 1997, the Electricity Consumers Resource Council (ELCON), the American Iron and Steel Institute, and the Association of Businesses Advocating Tariff Equity, collectively referred to as "Industrial Consumers," filed a motion for late intervention and protest.

II. Discussion

A. Procedural Matters

Pursuant to Rule 214 of the Commission's Rules of Practice and Procedure, 18 C.F.R. § 385.214 (1996) [**5], the timely, unopposed motion to intervene of Consumers Energy makes it a party to the Detroit Edison proceeding, Docket No. ER97-3832-000.

The Commission will deny Industrial Consumers' motion for late intervention. Industrial Consumers have not persuaded the Commission that good cause exists to excuse their tardiness. 18 C.F.R. § 385.214(d)(1)(i)(1996). Moreover, even if the Commission granted the late intervention, Industrial Consumers' allegations are without sufficient specificity to warrant investigation at this time. We also note that at such time as Industrial Consumers may be able to raise specific and substantiated allegations of harm or wrongdoing, they may file a complaint with the Commission under section 206 of the Federal Power Act, 16 U.S.C. § 824e (1994).

B. Market-Based Rates

The Commission allows power sales at market-based rates if the seller and its affiliates do not have, or have adequately mitigated, market power in generation and transmission and cannot erect other barriers to entry. In order for an affiliate of a transmission-owning public utility to demonstrate the requisite absence or mitigation of [**6] market power, the utility must have on file with the Commission an open access transmission tariff for the provision of comparable services. The Commission also considers whether there is evidence of affiliate abuse or reciprocal dealing. n3

n3 E.g., *Progress Power Marketing, Inc.*, 76 FERC P61,155 at p. 61,919 (1996); *Northwest Power Marketing Company, L.L.C.*, 75 FERC P61,281 at p. 61,889 (1996); accord *Heartland Energy Services, Inc., et al.*, 68 FERC P61,223 at pp. 62,060-63 (1994) (Heartland).

As we explain below, we find that, with Detroit Edison's filing of an open access pro forma tariff, n4 DTE Energy Trading's and DTE-CoEnergy's market-based rate applications [*62,196] meet these standards. Accordingly, we will accept the proposed market-based rates for filing, without modification, to become effective on October 1, 1997, as requested by DTE Energy Trading and DTE-CoEnergy.

n4 See Promoting Wholesale Competition Through Open Access Non-discriminatory Transmission Services by Public Utilities; Recovery of Stranded Costs by Public Utilities and Transmitting Utilities, Order No. 888, 61 Fed. Reg. 21,540 (1996), FERC Stats. & Regs. P 31,036 (1996), order on reh'g, Order No. 888-A, 62 Fed. Reg. 12,274 (1997), FERC Stats. & Regs. P 31,048 (1997), reh'g pending.

[**7]

1. Generation Market Power

In support of their market-based rate applications, DTE Energy Trading and DTE-CoEnergy submitted a generation dominance analysis. That analysis indicates that DTE Energy Trading's, DTE-CoEnergy's, and Detroit Edison's market share of installed and uncommitted capacity will not exceed levels the Commission previously has found to be acceptable. n5 Specifically, neither DTE Energy Trading nor DTE-CoEnergy own or control any electric generation, transmission, or distribution facilities. While DTE Energy Trading and DTE-CoEnergy do have affiliates with qualifying facilities, all of this capacity is committed under long-term contracts. Finally, DTE Energy Trading and DTE-CoEnergy rely upon the generation dominance analysis submitted by their affiliate Detroit Edison in its request for market-based rates. In *Detroit Edison Co.*, 77 FERC P61,279 (1996) (Detroit Edison), the Commission concluded that Detroit Edison met the Commission's generation market power standard for market-based rates. DTE Energy Trading and DTE-CoEnergy assert that no material facts have changed since the Commission reached that conclusion.

n5 See, e.g., *Southwestern Public Service Company*, 72 FERC P61,208 at pp. 61,966-67 (1995), reh'g pending; *Louisville Gas & Electric Company*, 62 FERC P61,016 at p. 61,146 (1993) (Louisville).

[**8]

Based upon these facts, we find that DTE Energy Trading and DTE-CoEnergy meet the Commission's generation market power standard for approval of market-based rates.

2. Transmission Market Power

When an affiliate of a transmission-owning public utility seeks authorization to charge market-based rates, the Commission has required the public utility to have an open access pro forma compliance transmission tariff on file before granting such authorization. n6 Detroit Edison has filed an open access pro forma compliance transmission tariff in Docket No. OA96-78-000. Further, as discussed above, DTE Energy Trading and DTE-CoEnergy do not own or control any transmission or distribution facilities.

N6 See, e.g., Order No. 888 at pp. 31,656-57; accord *Southern Company Services, Inc.*, 71 FERC P61,392 at p. 62,536 (1995).

Accordingly, we find that DTE Energy Trading and DTE-CoEnergy have satisfied the Commission's transmission market power standard for approval of market-based rates.

3. Other Barriers [**9] to Entry/Reciprocal Dealing

DTE-CoEnergy is affiliated with Michigan Consolidated Gas Company (MichCon), a gas distribution company in the state of Michigan. Should MichCon or any of its affiliates deny, delay, or require unreasonable terms, conditions or rates for natural gas service to a potential electric competitor of DTE-CoEnergy or any of its affiliates in bulk power markets, that electric competitor may file a complaint with the Commission which could result in the suspension of the authority to sell power at market-based rates. n7 With this safeguard, we are satisfied with DTE-CoEnergy's explanation that there are no other barriers to entry or reciprocal dealing considerations of concern here.

n7 See Louisville, 62 FERC at p. 61,148.

4. Affiliate Abuse

DTE Energy Trading's and DTE Co-Energy's proposed rate schedules prohibit the sale of power to Detroit Edison absent a separate filing under section 205 of the Federal Power Act (FPA), 16 U.S.C. § 824d (1994). Further, [**10] DTE Energy Trading and DTECoEnergy commit that they will not purchase power from Detroit Edison absent a separate section 205 filing n8 and that any transmission service provided by Detroit Edison to the affiliate will be provided under Detroit Edison's open access pro forma transmission tariff. In addition, both DTE Energy Trading and DTE Co-Energy submitted a code of conduct (which governs the relationship between Detroit Edison and wholesale power marketing affiliates of DTE Energy Company) that satisfies the Commission's requirements concerning affiliate abuse. We thus are satisfied that there are no affiliate abuse considerations of concern here.

n8 See also, Detroit Edison, 77 FERC at p. 62,219.

C. Waivers, Authorizations, and Reporting Requirements

DTE Energy and DTE-CoEnergy requested the following authorizations and waivers of various Commission regulations consistent with those granted other power marketers: (1) waiver of Parts 41, 101, and 141; (2) waiver of Part 45 or, in the alternative, [**11] permission to file an abbreviated statement under Part 45; (3) [*62,197] waiver of the reporting requirements of Subparts B and C of Part 35, except sections 35.12(a), 35.13(b), 35.15, and 35.16; and (4) blanket authorization under Part 34 for all future issuances of securities and assumptions of liability. We will grant the requested authorizations and waivers to the extent granted to other power marketers. n9

n9 See, e.g., *Central Hudson Enterprise Corp.*, 79 FERC P61,390 at pp. 62,655-56 (1997).

Consistent with previous Commission decisions, we will require DTE Energy Trading and DTE-CoEnergy to file quarterly reports detailing the purchase and sale transactions undertaken in the prior quarter. This requirement is necessary to ensure that contracts relating to rates and services are on file as required by section 205(c) of the FPA, and to allow the Commission to evaluate the reasonableness of the charges and to provide for ongoing monitoring of the marketer's ability to exercise market power. [**12] n10

n10 See, e.g., *Heartland*, 68 FERC at pp. 62,065-66.

Additionally, we direct DTE Energy Trading and DTE-CoEnergy to inform the Commission promptly of any change in status that would reflect a departure from the characteristics the Commission has relied upon in approving market-based pricing. These include, but are not limited to: (1) ownership of generation or transmission facilities or inputs to electric power production other than fuel supplies; or (2) affiliation with any entity not disclosed in the filing that owns generation or transmission facilities or inputs to electric power production, or affiliation with any entity that has a franchised service area. n11 Alternatively, rather than reporting continually, DTE Energy Trading and DTE-CoEnergy may elect to report such changes every three years in conjunction with the updated market analysis they will be required to file. n12

n11 See, e.g., *Morgan Stanley Capital Group Inc.*, 69 FERC P61,175 at p. 61,695 (1994), order on reh'g, 72 FERC P61,082 (1995)(Morgan Stanley); *Intercoast Power Marketing, Inc.*, 68 FERC P61,248 at p. 62,134, clarified, 68 FERC P61,324 (1994).

[**13]

n12 We reserve the right to require such an analysis at any time.

D. Reporting Risk Management Transactions

DTE Energy Trading and DTE-CoEnergy state that they may engage in risk management transactions. They request that they be required to reflect such transactions in their quarterly reports only if they result in the actual delivery of electricity. Consistent with Morgan Stanley, 69 FERC at p. 61,696, the Commission grants this request.

E. Detroit Edison's Request for Cost-Based Rates

Currently, Detroit Edison has tariffs on file with the Commission to engage in sales of capacity and energy to unaffiliated wholesale customers at cost-based rates and marketbased rates. n13 These tariffs do not, however, permit Detroit Edison to transact with an affiliate. In this filing, Detroit Edison seeks Commission authorization to sell power to DTE Energy Trading at negotiated rates, subject to a cost-based price cap. The rates under Schedule A of the Power Sales Agreement will be no lower than Detroit Edison's system incremental cost of energy and no higher than the cost-based price caps set [**14] forth in Detroit Edison's WPS-1 Tariff for sales of capacity and energy to unaffiliated wholesale customers. In accordance with sections 205 and 206 of the FPA, Detroit Edison will make sales to DTE Energy Trading under the Power Sales Agreement on a nondiscriminatory basis.

n13 On December 19, 1996, the Commission conditionally accepted for filing Detroit Edison's proposed market-based power sales tariff. Detroit Edison, 77 FERC at p. 62,219.

The Commission is concerned that Detroit Edison may have an incentive to favor sales of power to its affiliate, DTE Energy Trading, to the detriment of Detroit Edison's captive customers. Affiliate abuse takes place when the public utility and its affiliated power marketer transact in ways that result in a transfer of benefits from the affiliated public utility (and its captive customers) to the affiliated power marketer (and its shareholders). n14 For example, if Detroit Edison sells power to DTE Energy Trading under its proposed cost-based power sales tariff, [**15] whether at a discounted cost-based rate or even at the cost-based ceiling rate, and if the market price at the time the sale is agreed to is higher than the cost-based rate, then Detroit Edison's captive customers will be harmed. In effect the difference between the market price and the cost-based rate would be transferred from Detroit Edison's captive customers to DTE Energy Trading's shareholders (which are the same shareholders as Detroit Edison's shareholders). n15 To prevent these types of cross-subsidization by captive customers, we will impose the following conditions on Detroit Edison's authorization to sell power to DTE Energy Trading.

n14 Heartland, 68 FERC at p. 62,062.

n15 We note that Detroit Edison presumably would never sell to a non-affiliate under its proposed cost-based power sales tariff if the market price it could receive was above the cost-based ceiling rate.

[*62,198]

First, the Commission will permit Detroit Edison to sell power to DTE Energy Trading only at a rate that [**16] is no lower than the rate it charges non-affiliates. This requires that Detroit Edison sell to its affiliated power marketer at a rate above its cost-based ceiling (i.e., the market-based rate it charges non-affiliates under its market-based rate tariff) if it charges such higher rate to a non-affiliate. Detroit Edison should revise its Power Sales Agreement within 15 days from the date of this order accordingly.

Second, we will accept with modification Detroit Edison's commitment that if it sells to DTE Energy Trading at a discount below the cost-based ceiling rate, it will offer the same discount to similarly-situated unaffiliated customers. In this case the existence of captive customers requires additional protection. Accordingly, we additionally will require that, with respect to any power offered to its affiliate, Detroit Edison must make the same offer to unaffiliated entities at the same time through its electronic bulletin board.

Further, in order to allow unaffiliated customers to monitor affiliated transactions between Detroit Edison and DTE Energy Trading, Detroit Edison states that it will make publicly available via an electronic bulletin board the price charged to [**17] DTE Energy Trading for transactions under its cost-based tariff simultaneously with each such transaction. We clarify that Detroit Edison will be required to simultaneously post the actual price charged to DTE Energy Trading for all transactions. (Sales to DTE Energy Trading above the cost-based ceiling are subject to the same filing and reporting requirements that apply to marketbased sales to non-affiliates.)

With the pricing revision discussed above, the requirement to make the same offer to non-affiliates at the same time, and the simultaneous public posting of all prices charged to DTE Energy Trading for individual transactions, n16 the Commission finds that Detroit Edison has adequately addressed the potential for affiliate abuse. Accordingly, we will accept the agreement subject to the discussion above.

n16 See *Illinois Power Co.*, 76 FERC P61,041 (1996).

The agreement also provides for the resale by Detroit Edison's merchant function of transmission services obtained from Detroit Edison's [**18] transmission function or from other transmission providers. Consistent with *Commonwealth Edison Company*, 78 FERC P61,312 at pp. 62,335-36 (1997), Detroit Edison's merchant function may resell all or a portion of its rights to transmission service over Detroit Edison's system or other systems at a price not to exceed the higher of the price Detroit Edison's merchant function originally paid for the service, the transmission provider's maximum transmission rate on file at the time of the resale, or Detroit Edison's own opportunity costs capped at the cost of expansion. Additionally, the resold transmission service will be provided in accordance with the terms and conditions of service of the original transmission provider's applicable transmission tariff. n17 The Commission thus will accept Detroit Edison's proposed reassignment of transmission services.

n17 See *Central Vermont Public Service Corp.*, 80 FERC P61,203, slip op. at pp. 2-3 (1997); *Southwestern Public Service Co.*, 80 FERC P61,245, slip op. at p. 3 (1997).

[**19]

Our preliminary review indicates that Detroit Edison's proposed rate schedule, as modified, appears to be just and reasonable and has not been shown to be unjust, unreasonable, unduly discriminatory or preferential, or otherwise unlawful. Accordingly, we will conditionally accept the rate schedule, as modified, for filing, without suspension or hearing, effective October 1, 1997.

The Commission orders:

(A) DTE Energy Trading and DTE-CoEnergy's market-based rate applications are hereby accepted for filing, to become effective on October 1, 1997, as requested.

(B) Detroit Edison's application is hereby conditionally accepted for filing, to become effective on October 1, 1997, as requested. Detroit Edison is hereby directed to revise its Power Sales Agreement, within 15 days of the date of this order, as discussed in the body of this order.

(C) DTE Energy Trading's and DTE-CoEnergy's request for waiver of Parts 41, 101, and 141 of the Commission's regulations is hereby granted.

(D) Within 30 days of the date of this order, any person desiring to be heard or to protest the Commission's blanket approval of issuances of securities or assumptions of liabilities by DTE Energy Trading [**20] or DTE-CoEnergy should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 888 First Street, NE, Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure, 18 C.F.R. §§ 385.211 and 385.214 (1996).

(E) Absent a request to be heard within the period set forth in Ordering Paragraph (D) above, DTE Energy Trading and DTE-CoEnergy [**21] are hereby authorized to issue securities and assume obligations and liabilities as guarantor, indorser, surety, or otherwise in respect of any security of another person; provided that such issue or assumption is for some lawful object within the corporate purposes of DTE Energy Trading or DTE-CoEnergy compatible with the public interest, and reasonably necessary or appropriate for such purposes.

(F) Until further order of this Commission, the full requirements of Part 45 of the Commission's regulations, except as noted, are hereby waived with respect to any person now holding or who may hold an otherwise proscribed interlocking directorate involving DTE Energy Trading and/or DTE-CoEnergy. Any such person [**21] instead shall file a sworn application providing the following information:

(1) full name and business address; and

(2) all jurisdictional interlocks, identifying the affected companies and the positions held by that person.

(G) The Commission reserves the right to modify this order to require a further showing that neither public nor private interests will be adversely affected by continued Commission approval of DTE Energy Trading's and DTE-CoEnergy's issuances of securities or assumptions of liabilities, or by the continued holding of any affected interlocks.

(H) DTE Energy Trading's and DTE-CoEnergy's requests for waiver of the provisions of Subparts B and C of Part 35 of the Commission's regulations, with the exception of sections 35.12(a), 35.13(b), 35.15, and 35.16, are hereby granted.

(I) DTE Energy Trading and DTE-CoEnergy are hereby directed to conform to the filing and reporting requirements specified in this order. The first quarterly report of the transactions undertaken by DTE Energy Trading and DTE-CoEnergy will be due within 30 days of the calendar quarter ending December 31, 1997.

(J) DTE Energy Trading and DTE-CoEnergy are hereby directed to file an [**22] updated market analysis within three years of the date of this order, and every three years thereafter.

(K) DTE Energy Trading and DTE-CoEnergy are hereby directed to inform the Commission promptly of any change in status that would reflect a departure from the characteristics that the Commission has relied upon in approving market-based pricing. Alternatively, as discussed in the body of this order, DTE Energy Trading and DTE-CoEnergy may elect to report any such changes every three years with the updated market analysis filed pursuant to Ordering Paragraph (J) above. DTE Energy Trading and DTECoEnergy shall notify the Commission of which option they elect in the first quarterly report filed pursuant to Ordering Paragraph (I) above.

(L) Industrial Consumers' motion for late intervention is hereby denied.

(M) DTE Energy Trading, DTE-CoEnergy, and Detroit Edison are hereby informed of the rate schedule designations shown on the Attachment to this order.

By the Commission.

APPENDIX:

Attachment		Rate Schedule Designations	
		Designation	Description
Detroit Edison Company Docket No. ER97-3832-000			
(1)	Rate Schedule FERC No. 33		Power Sales Agreement with DTE Energy Trading, Inc.
(2)	Supplement No. 1 to Rate Schedule FERC No. 33		Schedule A-Power Sales
(3)	Supplement No. 2 to Rate Schedule FERC No. 33		Schedule B-Reassignment of Transmission
DTE Energy Trading, Inc. Docket No. ER97-3834-000			
(4)	Rate Schedule FERC No. 1		Market-Based Rates
(5)	Supplement No. 1 to Rate		Code of Conduct

80 F.E.R.C. P61,348, *; 1997 FERC LEXIS 2014, **

Rate Schedule Designations

Designation	Description
	Detroit Edison Company Docket No. ER97-3832-000 Schedule FERC No. 1
	DTE-CoEnergy L.L.C. Docket No. ER97-3835-000
(6) Rate Schedule FERC No. 1	Market-based Rates
(7) Supplement No. 1 to Rate Schedule FERC No. 1	Code of Conduct
[**23]	

Legal Topics:

For related research and practice materials, see the following legal topics:
 Energy & Utilities LawAdministrative ProceedingsU.S. Federal Energy Regulatory CommissionGeneral OverviewEn-
 ergy & Utilities LawTransportation & PipelinesElectricity TransmissionEnergy & Utilities LawUtility Companies-
 RatesGeneral Overview

95 FERC ¶ 61,240
UNITED STATES OF AMERICA
FEDERAL ENERGY REGULATORY COMMISSION

Before Commissioners: Curt Hébert, Jr., Chairman;
William L. Massey, and Linda Breathitt.

The Detroit Edison Company
DTE Energy Trading, Inc.

Docket No. ER01-1572-000

ORDER CONDITIONALLY ACCEPTING FOR FILING SERVICE AGREEMENTS,
REVISED MARKET-BASED RATE TARIFF, AND CODE OF CONDUCT

(Issued May 17, 2001)

In this order, the Commission accepts for filing a revised market-based rate tariff for The Detroit Edison Company (Detroit Edison) and two proposed service agreements: one allowing Detroit Edison to sell capacity and energy at market-based rates to its power marketing affiliate, DTE Energy Trading, Inc. (DTE Energy), and a second agreement which allows DTE Energy to sell capacity and energy at market-based rates to Detroit Edison. The Commission also grants DTE Energy's request to modify its code of conduct.

BACKGROUND

Detroit Edison is a public utility serving retail electric and wholesale customers in Michigan and the surrounding region. Detroit Edison is the principal operating subsidiary of DTE Energy Company, an exempt public utility holding company. DTE Energy is a power marketer affiliated with Detroit Edison and is a wholly-owned subsidiary of DTE Energy Company. DTE Energy's market-based rates tariff, originally accepted in Detroit Edison Company, et al., 80 FERC ¶ 61,348 (1997) (Detroit Edison), prohibits DTE Energy from engaging in affiliate sales or purchases without making a separate filing under section 205 of the Federal Power Act (FPA).¹ In Detroit Edison, the Commission also allowed Detroit Edison to make wholesale power sales to DTE Energy at negotiated rates subject to the following conditions: (1) Detroit Edison may sell power to DTE Energy only

¹16 U.S.C. §824(d) (1994).

at a rate that is no lower than the rate it charges non-affiliates; (2) with respect to any power offered to DTE Energy, Detroit Edison must make the same offer at the same time to non-affiliated entities through its electronic bulletin board; and (3) Detroit Edison must simultaneously post via its electronic bulletin board the actual price charged to DTE Energy for individual transactions.

In the instant application, filed on March 19, 2001, Detroit Edison and DTE Energy (collectively, Applicants) seek authorization to make sales among each other at market-based rates. Specifically, Applicants propose to modify Detroit Edison's market-based rate tariff to allow sales to DTE Energy and to establish service agreements for inter-affiliate sales under Detroit Edison's proposed tariff and DTE Energy's Rate Schedule FERC No. 1. Applicants also seek to modify the code of conduct governing the relationship between Detroit Edison and DTE Energy to allow the sharing of market information between employees of Detroit Edison and DTE Energy without public disclosure and to allow employees of Detroit Edison (who operate the electric transmission system and/or sell wholesale power) and employees of DTE Energy to operate jointly "as necessary to effectuate inter-affiliate sales transactions under the market-based rate tariffs of DTE Energy and Detroit Edison."

Notice, Interventions, and Protests

Notice of Applicants' March 19, 2001 application was published in the Federal Register, with comments, protests, and interventions due on or before April 19, 2001.² The Association of Businesses Advocating Tariff Equity (ABATE) filed a timely motion to intervene. On April 11, 2001, Thumb Electric Cooperative and Sebewaing Light and Water Department filed letters supporting the filing, but did not move to intervene in this proceeding.

DISCUSSION

A. Procedural Matters

Pursuant to Rule 214 of the Commission's Rules of Practice and Procedure,³ the timely, unopposed motion to intervene of ABATE serves to make it a party to this proceeding.

²65 Fed. Reg. 64,941 (2000).

³18 C.F.R. § 385.214 (2000).

B. Sales to Affiliates and Code of Conduct Issues

In support of their request for Detroit Edison to make affiliate sales, Applicants rely on the same protections Consumers Energy Company committed to for sales to CMS Marketing Services and Trading Company.⁴ In Consumers, the Commission conditionally granted Consumers' request to make sales at market-based rates to its power marketing affiliate and accepted proposed modifications to the information sharing and functional separation provisions of the code of conduct to the extent necessary to effectuate inter-affiliate sales. The Commission found that with the protections offered by Consumers and those the Commission imposed, there were adequate safeguards in place for inter-affiliate sales. Detroit Edison states that it will adopt the same protection mechanisms outlined in Consumers for its retail and five wholesale customers, and will offer additional protections.

Wholesale Customer Protections

Detroit Edison has five wholesale partial requirements customers. Contracts with two customers contain system incremental cost (SIC) clauses, two other customer contracts contain both SIC and fuel adjustment clauses (FAC), and one contract is a fixed-rate contract.

Applicants offer the following, to protect wholesale customers from the possibility of affiliate abuse associated with its purchases of power from DTE Energy. For those wholesale customers whose rates contain a FAC, Detroit Edison will exclude power purchases from DTE Energy from the FAC calculation for the life of the contracts. For sales by Detroit Edison to DTE Energy, Applicants propose to adopt the same protection mechanism as the Commission required in Consumers, that is, Detroit Edison will credit the cost of the fuel recovered at the hourly system incremental cost for sales to affiliates.

For wholesale customers with rates that contain a SIC clause, Detroit Edison will exclude any power purchased from DTE Energy for purposes of establishing the SIC for the life of the contract except where such purchases would reduce SIC charges to these customers. In this instance, Detroit Edison commits that when it purchases power from DTE Energy to meet the load of Detroit Edison's other customers, and if such purchases are temporarily in excess of the energy requirements of those other customers, and the cost of power purchased from DTE Energy is less than non-affiliate supply sources or the cost

⁴Consumers Energy Co., 94 FERC ¶ 61,180 (2001). (Consumers).

Detroit Edison was generating itself that would otherwise be used to establish the SIC for these wholesale customers, Detroit Edison commits to include the lower cost for DTE Energy power in its calculation of the SIC clause charge. Applicants state that this is an additional pricing protection not required by the Commission in Consumers. For power sales by Detroit Edison to DTE Energy, Applicants state that Detroit Edison will calculate its SIC by removing the highest cost supply resource corresponding to the megawatts sold to DTE Energy in that hour. Detroit Edison states that this commitment is equivalent to the mechanism the Commission required in Consumers, where customers with a FAC were required to receive a full credit based on the hourly SIC.

Consistent with Consumers, and within 30 days of the Commission's issuance of an order authorizing the power transactions requested herein, Detroit Edison states it will file with the Commission amended wholesale power contracts to reflect its commitments to the applicable wholesale customers.

Retail Customer Protections

Applicants state that in June 2000, electric restructuring legislation was enacted in Michigan that: (1) mandates full retail choice by January 1, 2002; (2) requires an immediate 5 percent rate reduction for Detroit Edison's residential customers with rates to be frozen through December 31, 2003, and capped at least until January 1, 2006, and potentially until December 31, 2013; and (3) requires rate freezes for Detroit Edison's commercial and manufacturing customers until at least January 1, 2003. According to Applicants, the only retail customers with rate provisions not subject to the rate freeze and rate cap are certain retail interruptible customers. For these customers, Applicants offer the same protections as for its wholesale customers discussed above. The service agreements submitted in the instant filing specify these commitments to retail customers.

Commission Conclusion

As the Commission has explained in previous cases, there is a concern whenever a traditional public utility can transact with an affiliated power marketer in such a way as to transfer benefits from the public utility's captive ratepayers to the shareholders.⁵ In the instant case, Applicants concede that certain of Detroit Edison's wholesale and retail customers are not served under fixed-rate contracts. However, they submit that these customers will be fully protected from the possibility of affiliate abuse associated with Detroit Edison sales to, and purchases from, DTE Energy because Detroit Edison has

⁵See GPU Advanced Resources, Inc., 81 FERC ¶ 61,335 at 62,539 (1997); Detroit Edison, 80 FERC at 62,197.

adopted the same protection mechanisms the Commission found sufficient in Consumers. Applicants also submit they voluntarily offer an additional pricing protection (will use the lower of the cost of power from DTE Energy or a non-affiliate in the calculation of SIC) to assure that wholesale and retail customers are not harmed.

We conclude that the protective measures the Applicants have adopted in this proceeding provide sufficient information and guarantees such that we are satisfied that there will be adequate protections against affiliate abuse. On this basis, we will approve Applicants' request to make market-based sales between affiliates.

Detroit Edison proposes to file with the Commission amended wholesale power contracts to reflect its commitments to the applicable wholesale customers as discussed in the body of this order. Specifically, Detroit Edison is directed to amend its wholesale requirements contracts within 30 days of the date of issuance of this order to credit the cost of the fuel recovered at the hourly system incremental cost for sales to affiliates.

Code of Conduct

Applicants also seek to modify their code of conduct to reflect changes necessary to consummate the power sales. Applicants have added language identical to that which the Commission found acceptable in Consumers. They propose to allow the sharing of market information without public disclosure and to allow employees of the franchised utility who are involved in sales, purchases, and brokering, and the employees of the marketing affiliate to operate jointly as necessary to effectuate inter-affiliate sales.

We will grant Applicants' request to modify the code of conduct. In order to transact at market-based rates, the Commission requires a code of conduct when a power marketer is affiliated with a traditional public utility with captive ratepayers. The purpose of the code of conduct requirement is to safeguard against affiliate abuse and protect against the possible diversion of benefits or profits from traditional public utilities with captive ratepayers to an affiliate entity for the benefit of shareholders. The Commission has waived the code of conduct requirement in cases where there are no captive wholesale or retail customers, and thus no potential for affiliate abuse.⁶ Here, Detroit Edison has captive wholesale and retail customers, but these customers will be protected against affiliate abuse by the protective measures discussed above that Detroit Edison agrees to adopt.

⁶See, e.g., Baltimore Gas & Electric Company, 91 FERC ¶ 61,270 at 61,922 (2000); Alcoa, Inc., et al., 88 FERC ¶ 61,045 at 61,119 (1999); Green Power Partners 1 LLC, 88 FERC ¶ 61,005 61,010-11 (1999).

ABATE requests that the Commission consider two issues in determining whether to grant Applicants' request. First, it asks the Commission to ensure that calculation of the SIC clause is in accordance with the Applicants' representation. In this regard we note that Detroit Edison is directed by this order to submit a compliance filing with its proposed amendments to its wholesale contracts with SIC clauses. The Commission and other parties will have an opportunity to review and comment on those amendments at that time. Second, ABATE asks the Commission to monitor the development of retail access in Michigan. It expresses concern that industrial customers might remain captive customers of Detroit Edison for the foreseeable future. In response to ABATE's concern in this regard, we note that our decision to permit affiliate sales and to modify the conduct of conduct is based on our conclusion that Applicants have proposed adequate protective measures to ensure that captive retail (as well as wholesale) customers of Detroit Edison are not subject to affiliate abuse. However, we direct Applicants to notify us if the circumstances on which we rely in granting market-based rate authority should change so as to create a potential for affiliate abuse. In any event, our action here does not constitute a waiver of the separate requirement contained in 18 C.F.R. Part 37 (2000), nor does it constitute a waiver of the requirements of the Federal Power Act, e.g., that all rates be just and reasonable and not unduly discriminatory or preferential.

The Commission orders:

(A) Detroit Edison's revised market-based rate tariff and the respective service agreements between Detroit Edison and DTE Energy are hereby conditionally accepted for filing, subject to the compliance filing directed in Ordering Paragraph B below, as discussed in the body of this order, to become effective upon issuance of this order.

(B) The Applicants are directed to submit a compliance filing, as discussed in the body of this order, within 30 days of the issuance of this order.

(C) Applicants' request to modify the code of conduct governing transactions between Detroit Edison and DTE Energy is hereby granted as discussed in the body of this order.

By the Commission.

(S E A L)

Linwood A. Watson, Jr.,

Acting Secretary.

FEDERAL ENERGY REGULATORY COMMISSION
Washington, D.C. 20426

In Reply Refer To:
Detroit Edison Company and
DTE Energy Trading, Inc.
Docket Nos. ER97-324-017 and
ER97-3834-023

March 15, 2010

Mr. Earle H. O'Donnell
Counsel for the Detroit Edison Company
and DTE Energy Trading, Inc.
White & Case LLP
701 Thirteenth Street, NW
Washington, D.C. 20005

Reference: Authorization for Affiliate Sales

Dear Mr. O'Donnell:

On January 19, 2010, you filed a request for continued waiver of the Commission's affiliate restrictions with respect to transactions at market-based rates between the Detroit Edison Company (Detroit Edison) and DTE Energy Trading, Inc. (DTE Energy Trading) (collectively, the DTE Entities).

You state that that the Michigan legislature has enacted legislation providing that no more than ten percent of an electric utility's average weather-adjusted retail sales customers for the preceding calendar year may take service from an alternative supplier at any time (ten percent retail cap). While you maintain that the Michigan legislation does not change the circumstances that the Commission relied on when granting the DTE Entities authority to make affiliate sales¹ when the ten percent retail cap has not been reached, you propose the following pricing protections for whenever the ten percent retail cap is met: (1) that DTE Energy Trading be permitted to sell energy to Detroit Edison at a price not to exceed the prevailing price of electricity at the MISO Cinergy Hub; (2) that Detroit Edison be permitted to sell energy to DTE Energy Trading at (or above) the prevailing price of electricity at the MISO Cinergy Hub; and (3) that DTE Energy Trading be permitted to sell capacity to Detroit Edison at the market clearing price of a

¹ *Detroit Edison Co.*, 95 FERC ¶ 61,240 (2001).

competitive solicitation process to be held by Detroit Edison to procure capacity for the summer of 2010, in the event that DTE Energy Trading is a successful bidder in that auction. You contend that the MISO Cinergy Hub is an established, relevant market price that mitigates any affiliate abuse concerns for sales made outside of the competitive solicitation process. You also contend that Detroit Edison's competitive solicitation process satisfies the requirements established by the Commission in *Edgar*² and *Allegheny*.³ In support, you submit a copy of Detroit Edison's most recent request for proposals (March 2009 RFP) and state that Detroit Edison's competitive solicitation process to procure capacity for summer 2010 will be held in a manner that is materially consistent with the March 2009 RFP.

Your filing was noticed on January 20, 2010, with comments, protests or interventions due on or before February 9, 2010. None was filed.

Pursuant to the authority delegated to the Director, Division of Electric Power Regulation - West, under 18 C.F.R. § 375.307, your submittal filed in the referenced dockets is accepted for filing, as requested. Based on the DTE Entities' representations, Detroit Edison's competitive solicitation process to procure capacity for summer 2010 must be consistent with the March 2009 RFP in all material respects.

Please submit a compliance filing, within 30 days of the date of this order, to amend the limitations and exemptions sections of the DTE Entities' market-based rate tariffs to include a reference to the instant order. Further, please indicate whether sales between the DTE Entities occurred at a time when the ten percent retail cap had been met when reporting such sales in the DTE Entities' Electric Quarterly Reports (EQR).⁴ DTE Entities have committed to submit an informational filing advising the Commission when the retail load served by alternative suppliers falls below the ten percent retail cap to the extent that they seek to engage in affiliate transactions without the additional pricing protections discussed above.

This action does not constitute approval of any service, rate, charge, classification, or any rule, regulation, or practice affecting such rate or service provided for in the filed

² *Boston Edison Co. Re: Edgar Electric Energy Co.*, 55 FERC ¶ 61,382 (1991) (*Edgar*).

³ *Allegheny Energy Supply Co., LLC*, 108 FERC ¶ 61,082 (2004) (*Allegheny*).

⁴ The DTE Entities should consult with the Office of Enforcement (OE) to determine how to designate whether an affiliate sale occurred at a time when the ten percent retail cap was or was not met. You may contact the OE regarding this matter at EQR@FERC.GOV.

documents; nor shall such action be deemed as recognition of any claimed contractual right or obligation affecting or relating to such service or rate; and such acceptance is without prejudice to any findings or orders which have been or may hereafter be made by the Commission in any proceeding now pending or hereafter instituted by or against any of the applicant(s).

This order constitutes final agency action. Requests for rehearing by the Commission may be filed within 30 days of the date of issuance of this order, pursuant to 18 C.F.R. § 385.713.

Questions regarding the above order should be directed to:

Federal Energy Regulatory Commission
Attn: Michelle Barnaby
Phone: (202) 502-8407
Office of Energy Market Regulation
888 First Street, N.E.
Washington, D.C. 20426

Sincerely,

Steve P. Rodgers, Director
Division of Electric Power
Regulation - West

FEDERAL ENERGY REGULATORY COMMISSION
Washington, D.C. 20426

In Reply Refer To:
Detroit Edison Company and
DTE Energy Trading, Inc.
Docket Nos. ER97-324-020 and
ER97-3834-026

March 2, 2011

Mr. Brian C. Drumm
Attorney for the Detroit Edison Company
and DTE Energy Trading, Inc.
DTE Energy
One Energy Plaza
Detroit, Michigan 48226

Reference: Authorization for Affiliate Sales

Dear Mr. O'Donnell:

On October 12, 2010, as amended on December 3, 2010, you filed a request for continued waiver of the Commission's affiliate restrictions with respect to transactions at market-based rates between the Detroit Edison Company (Detroit Edison) and DTE Energy Trading, Inc. (DTE Energy Trading) (collectively, the DTE Entities).

You state that Detroit Edison is preparing to engage in a 2011 competitive solicitation for bids for capacity to meet Detroit Edison's reserve requirements for the summer of 2011. As part of these preparations you request that the Commission extend the authorizations that were granted in the Commission's 2010 waiver order.¹

In support of this request you maintain that the relevant facts on which the initial waiver was granted remain unchanged. In addition, you contend that Detroit Edison's 2011 competitive solicitation process satisfies the requirements established by the Commission in *Edgar*² and *Allegheny*.³ In support, you submit a copy of Detroit

¹ *Detroit Edison Company*, Docket No. ER97-324-017 (March 15, 2010) (unpublished letter order). *See also Detroit Edison Co.*, 95 FERC ¶ 61,240 (2001).

² *Boston Edison Co. Re: Edgar Electric Energy Co.*, 55 FERC ¶ 61,382 (1991) (*Edgar*).

Docket Nos. ER97-324-020
and ER97-3834-026

- 2 -

Edison's most recent request for proposals (2010 RFP) and state that Detroit Edison's competitive solicitation process to procure capacity for summer 2011 will be held in a manner that is materially consistent with the 2010 RFP.

Your filing was noticed on October 14, 2010, and December 6, 2010, with comments, protests or interventions due on or before November 2, 2010 and December 27, 2010. None was filed.

Pursuant to the authority delegated to the Director, Division of Electric Power Regulation - West, under 18 C.F.R. § 375.307, your submittal filed in the referenced dockets is accepted for filing, as requested.

Based on the DTE Entities' representations, Detroit Edison's competitive solicitation process to procure capacity for summer 2011 must be consistent with the summer of 2010 RFP in all material respects. In addition, we expect the following pricing protections to continue to apply whenever the ten percent retail cap is met: (1) DTE Energy Trading will only be permitted to sell energy to Detroit Edison at a price not to exceed the prevailing price of electricity at the Midwest Independent Transmission System Operator, Inc.'s (MISO) Cinergy Hub; (2) that Detroit Edison is only permitted to sell energy to DTE Energy Trading at (or above) the prevailing price of electricity at the MISO Cinergy Hub; and (3) DTE Energy Trading is only permitted to sell capacity to Detroit Edison at the market clearing price of a competitive solicitation process to be held by Detroit Edison to procure capacity for the summer of 2011, in the event that DTE Energy Trading is a successful bidder in that auction.

Please submit a compliance filing, within 30 days of the date of this order, to amend the limitations and exemptions sections of the DTE Entities' market-based rate tariffs to include a reference to the instant order. We also note the DTE Entities commitment to submit an informational filing advising the Commission when the retail load served by alternative suppliers falls below the ten percent retail cap to the extent that they seek to engage in affiliate transactions without the additional pricing protections discussed above.

This action does not constitute approval of any service, rate, charge, classification, or any rule, regulation, or practice affecting such rate or service provided for in the filed documents; nor shall such action be deemed as recognition of any claimed contractual right or obligation affecting or relating to such service or rate; and such acceptance is without prejudice to any findings or orders which have been or may hereafter be made by the Commission in any proceeding now pending or hereafter instituted by or against any of the applicant(s).

³ *Allegheny Energy Supply Co., LLC*, 108 FERC ¶ 61,082 (2004) (*Allegheny*).

Docket Nos. ER97-324-020
and ER97-3834-026

- 3 -

This order constitutes final agency action. Requests for rehearing by the Commission may be filed within 30 days of the date of issuance of this order, pursuant to 18 C.F.R. § 385.713.

Questions regarding the above order should be directed to:

Federal Energy Regulatory Commission
Attn: Michelle Barnaby
Phone: (202) 502-8407
Office of Energy Market Regulation
888 First Street, N.E.
Washington, D.C. 20426

Sincerely,

Steve P. Rodgers, Director
Division of Electric Power
Regulation - West