

UNITED STATES OF AMERICA
FEDERAL ENERGY REGULATORY COMMISSION

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

The Detroit Edison Company	Docket Nos. ER97-324-004 ER97-324-007 ER97-324-008
DTE Energy Trading, Inc.	ER97-3834-010 ER97-3834-012 ER97-3834-013 ER97-3834-014
DTE Edison America, Inc.	ER98-3026-007 ER98-3026-008 ER98-3026-009
DTE Energy Marketing, Inc.	ER99-3368-003 ER99-3368-004 ER99-3368-005
DTE Georgetown, L.P.	ER00-1746-001 ER00-1746-002 ER00-1746-003
DTE River Rouge No. 1, L.L.C.	ER00-1816-002 ER00-1816-003 ER00-1816-004
Crete Energy Venture, L.L.C.	ER02-963-002 ER02-963-004 ER02-963-005

ORDER ACCEPTING UPDATED MARKET POWER ANALYSIS

(Issued May 5, 2005)

1. In this order, we accept an updated market power analysis filed by The Detroit Edison Company (Detroit Edison), DTE Energy Trading, Inc. (DTE Trading), DTE Edison America (DTE Edison), DTE Energy Marketing, Inc. (DTE Marketing), DTE Georgetown, L.P. (DTE Georgetown),¹ DTE River Rouge No. 1, L.L.C. (DTE River Rouge), and Crete Energy Venture, L.L.C. (Crete Energy) (collectively, DTE Parties). As discussed below, we conclude that DTE Parties satisfy the Commission's standards for market-based rate authority. This order benefits customers by reviewing the conditions under which market-based rate authority is granted, thus ensuring that the prices charged for jurisdictional sales are just and reasonable. DTE Parties' next updated market power analysis is due three years from the date of this order.

Background

2. On January 31, 2003, DTE Parties filed an updated market power analysis including a supply margin assessment of generation market power pursuant to the Commission's orders granting DTE Parties authority to sell electric energy and capacity at market-based rates.² In that filing, DTE Parties stated that they satisfy the Commission's standards for generation market power, transmission market power, barriers to entry, and affiliate abuse or reciprocal dealing.

3. On December 23, 2004, as supplemented on December 27, 2004, March 21, 2005, and March 29, 2005, DTE Parties submitted for filing a revised updated market power analysis, pursuant to the Commission's order issued on May 13, 2004.³ The May 13 Order addressed the procedures for implementing the generation market power analysis announced on April 14, 2004, and clarified on July 8, 2004.⁴

¹ In December 2000, the Commission approved an internal company reorganization in which DTE Georgetown, L.L.C. became DTE Georgetown, L.P. *DTE Energy Services, Inc.*, 93 FERC ¶ 62,220 (2000).

² *The Detroit Edison Company*, 77 FERC ¶ 61,279 (1996); *DTE Energy Trading, Inc.*, 80 FERC ¶ 61,348 (1997); *DTE Edison America, Inc.*, 84 FERC ¶ 61,026 (1998); *DTE Energy Marketing, Inc.*, 88 FERC ¶ 61,189 (1999); *DTE Georgetown, L.L.C.*, 91 ¶ FERC 61,073 (2000); *DTE River Rouge No. 1, L.L.C.*, 91 FERC ¶ 61,139 (2000); and *Crete Energy Venture, L.L.C.*, Docket No. ER02-963-000 (2001) (unpublished letter order).

³ *Acadia Power Partners, LLC*, 107 FERC ¶ 61,168 (2004) (May 13 Order).

⁴ *AEP Power Marketing, Inc.*, 107 FERC ¶ 61,018 (April 14 Order), *order on reh'g*, 108 FERC ¶ 61,026 (2004) (July 8 Order).

4. DTE Parties also filed amended tariff sheets for DTE Trading, DTE Edison, DTE Georgetown, and DTE River Rouge to include the Commission's market behavior rules.⁵

5. DTE Parties state that DTE Marketing is no longer engaged in any business activities and has terminated its operations and its corporate existence. DTE Parties state that on December 20, 2004, DTE Marketing filed with the Commission a notice of cancellation of its market-based rate tariff.⁶

6. DTE Trading filed, on March 1, 2005, a notice of change in status informing the Commission of a proposed internal corporate reorganization, pursuant to which DTE Trading's corporate affiliate, CoEnergy Trading Company (CoEnergy) will merge with and into DTE Trading, leaving DTE Trading as the surviving corporation.⁷

Notice and Responsive Pleadings

7. Notice of DTE Parties' January 31, 2003 Filing was published in the *Federal Register*, 68 Fed. Reg. 7,360 (2003), with interventions or protests due on or before February 21, 2003. None was filed.

8. Notice of DTE Parties' December 23, 2004 Filing and December 27, 2004 supplement was published in the *Federal Register*, 70 Fed. Reg. 1,429 (2005), with interventions or protests due on or before January 13, 2005. None was filed.

9. Notice of DTE Trading's March 1, 2005 Filing was published in the *Federal Register*, 70 Fed. Reg. 11,965 (2005), with interventions or protests due on or before March 22, 2005. None was filed.

⁵ *Investigation of Terms and Conditions of Public Utility Market-Based Rate Authorizations*, 105 FERC ¶ 61,218 (2003), order on *reh'g*, 107 FERC ¶ 61,175 (2004). DTE Edison America, Inc., FERC Electric Tariff, Original Vol. No. 2, Original Sheet Nos. 4-5; DTE Georgetown, L.P., FERC Electric Tariff, Original Vol. No. 2, Original Sheet Nos. 4-5; DTE Energy Trading, Inc., FERC Electric Tariff, Original Vol. No. 2, Original Sheet Nos. 4-5; DTE River Rouge No. 1, L.L.C., FERC Electric Tariff, Original Vol. No. 2, Original Sheet Nos. 4-5. Market behavior rules for Detroit Edison were accepted in Docket No. ER97-324-006 (unpublished letter order) and market behavior rules for Crete Energy were accepted in Docket No. ER02-963-003 (2004) (unpublished letter order).

⁶ The Commission accepted for filing, effective December 21, 2004, DTE Marketing's notice of cancellation in Docket No. ER05-362-000 (2005) (unpublished letter order).

⁷ DTE Trading filed an application for approval of internal reorganization in Docket No. EC05-55-000.

10. Notice of DTE Parties' March 21, 2005 Filing and March 29, 2005 supplement was published in the *Federal Register*, 70 Fed. Reg. 17,081 (2005), with interventions or protests due on or before March 31, 2005. None was filed.

Discussion

Market-Based Rate Authorization

11. 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. The Commission also considers whether there is evidence of affiliate abuse or reciprocal dealing.⁸

12. As discussed below, the Commission concludes that DTE Parties satisfy the Commission's standards for market-based rate authority.

Generation Market Power

13. In the April 14 Order, the Commission adopted two indicative screens for assessing generation market power, the pivotal supplier screen and the wholesale market share screen.⁹ DTE Parties have prepared both the pivotal supplier and the wholesale market share screen analyses for the Michigan Electric Coordinated System and their first-tier markets, as well as for the Midwest Independent Transmission System Operator, Inc. (Midwest ISO) market. As the Commission noted in the April 14 Order, once Midwest ISO becomes a single market and performs functions such as a central commitment and dispatch with Commission-approved market monitoring and mitigation, Midwest ISO would be considered to have a single geographic market for purposes of our generation dominance screens.¹⁰ The Commission has reviewed DTE Parties' generation market power screen analyses for the Midwest ISO market and has determined that DTE Parties pass the screens in that market. Accordingly, the Commission finds that DTE

⁸ See, e.g., *Progress Power Marketing, Inc.*, 76 FERC ¶ 61,155, at 61,919 (1996); *Northwest Power Marketing Co., L.L.C.*, 75 FERC ¶ 61,281, at 61,899 (1996); *accord Heartland Energy Services, Inc.*, 68 FERC ¶ 61,223, at 62,062-63 (1994).

⁹ *AEP Power Marketing, Inc.*, 107 FERC ¶ 61,108, *order on reh'g*, 108 FERC ¶ 61,026 (2004).

¹⁰ Because the Midwest ISO became a single market and began performing the central commitment and dispatch functions with Commission-approved market monitoring and mitigation on April 1, 2005, we have used the Midwest ISO market as the geographic market for purposes of analyzing DTE Parties' generation market power screens.

Parties satisfy the Commission's generation market power standard for the grant of market-based rate authority based on the Midwest ISO becoming a single market and performing these functions with Commission-approved market monitoring and mitigation.

Transmission Market Power

14. DTE Parties state that they do not own or control any transmission facilities other than certain limited interconnection facilities, none of which could be used by another party to effectuate a wholesale sale of electric energy.¹¹ Further, no intervenors have raised transmission market power concerns. Based on DTE Parties' representation, the Commission finds that DTE Parties satisfy the Commission's transmission market power standard for the grant of market-based rate authority.

Other Barriers to Entry

15. DTE Parties state that they are affiliated with Michigan Consolidated Gas Company, a Hinshaw pipeline which provides retail gas service to approximately 1.2 million customers in southeastern Michigan, and engages in limited interstate activity pursuant to a "limited jurisdiction" certificate the Commission issued in accordance with Commission Order No. 63.¹² DTE Parties state that they also control the operations of Washington 10 Storage Company, Inc., an intrastate pipeline which currently engages in limited interstate storage activity pursuant to a "limited jurisdiction" certificate the Commission issued under section 311 of the Natural Gas Policy Act of 1978 (NGPA), and Washington 28 Storage Company, Inc., an intrastate pipeline company which currently engages in no interstate activity. In addition, the DTE Parties state that they also have a 39.6-percent interest in Vector Pipeline L.P., the owner of a 348-mile, 42-inch natural gas pipeline subject to the Commission's jurisdiction under the NGA. The DTE Parties further state that they hold a one hundred-percent interest in DTE Coal Services, which operates coal sourcing, transportation, marketing, trading, and services nationally to electric utilities, steel companies, and other industries, transports coal to third parties by rail, aids power plants in reducing fuel costs, and supplies coal procurement and logistics services to its customers. DTE Parties state that DTE Coal does not control any rail

¹¹ DTE Parties state that they divested themselves of any ownership interest in transmission lines when they sold International Transmission Company to an unaffiliated entity on February 28, 2003.

¹² *Certain Transportation, Sales and Assignments by Pipeline Companies Not Subject to Commission Jurisdiction Under section 1(c) of the Natural Gas Act*, Order No. 63, FERC Stats. & Regs., Regulations Preambles 1977-1981 ¶ 30,118 (1981).

capacity but contracts to move coal on multiple railroads. DTE Parties further state that DTE Coal holds a limited market share and cannot use its position in the market to create any barriers to entry.

16. DTE Parties acknowledge that should DTE Parties or any affiliate deny, delay, or require unreasonable terms, conditions, or rates for natural gas service to potential electric competitors of the DTE Parties in bulk power markets, the Commission could suspend the DTE Parties' authority (or that of any other affiliate) to sell power at market-based rates. DTE Parties state that the Commission has previously deemed this safeguard sufficient to eliminate concern that a utility might use its ownership of a natural gas distribution system to create barriers to entry.¹³

17. DTE Parties state that neither they nor any of their affiliates are engaged in the manufacture of electric equipment, have the ability to hinder the siting of generation plants or to block others from siting new plants, or own or control resources that could impede potential competitors from gaining access to alternative generation suppliers. In addition, no intervenors have raised barrier to entry concerns.

18. Based on DTE Parties' representations, the Commission is satisfied that DTE Parties cannot erect barriers to entry.

Affiliate Abuse

19. DTE Parties state that their inter-affiliate activities are currently governed by codes of conduct submitted with the market-based rate applications of DTE Trading, DTE Georgetown, DTE River Rouge, DTE Marketing, DTE Edison, and Crete Energy. Further, DTE Parties affirm their commitment to continued adherence to these codes of conduct and to abide by the Commission's policies concerning inter-affiliate transactions and communications. In addition, no intervenors have raised affiliate abuse concerns. Based on this representation, the Commission finds that DTE Parties satisfy the Commission's concerns regarding affiliate abuse.

Change in Status

20. DTE Trading submitted a notice of change in status informing the Commission of an internal corporate reorganization, pursuant to which DTE Trading's corporate affiliate, CoEnergy will merge with and into DTE Trading, leaving DTE Trading as the surviving corporation. The Commission is issuing an order, in Docket No. EC05-55-000,

¹³ See, e.g., *Louisville Gas & Electric Co.*, 62 FERC ¶ 61,016 (1993).

concurrently with this order, dismissing DTE Trading's application for approval of internal reorganization for lack of jurisdiction. Therefore, this change in status will have no impact on DTE Trading's authority to make sales at market-based rates.

Reporting Requirements

21. Consistent with the procedures the Commission adopted in Order No. 2001, an entity with market-based rates must file electronically with the Commission an Electric Quarterly Report containing: (1) a summary of the contractual terms and conditions in every effective service agreement for market-based power sales; and (2) transaction information for effective short-term (less than one year) and long-term (one year or greater) market-based power sales during the most recent calendar quarter.¹⁴ Electric Quarterly Reports must be filed quarterly no later than 30 days after the end of the reporting quarter.¹⁵

22. DTE Parties must timely report to the Commission any change in status that would reflect a departure from the characteristics the Commission relied upon in granting market-based rate authority.¹⁶ Order No. 652 requires that the change in status reporting requirement be incorporated in the market-based rate tariff of each entity authorized to make sales at market-based rates. Accordingly, DTE Parties are directed, within 30 days of the date of issuance of this order, to revise their market-based rate tariffs to incorporate the following provision:

¹⁴ *Revised Public Utility Filing Requirements*, Order No. 2001, 67 Fed. Reg. 31,043 (May 8, 2002), FERC Stats. & Regs. ¶ 31,127 (2002). Required data sets for contractual and transaction information are described in Attachments B and C of Order No. 2001. The Electric Quarterly Report must be submitted to the Commission using the EQR Submission System Software, which may be downloaded from the Commission's website at <http://www.ferc.gov/docs-filing/eqr.asp>.

¹⁵ The exact dates for these reports are prescribed in 18 C.F.R. § 35.10b (2004). Failure to file an Electric Quarterly Report (without an appropriate request for extension), or failure to report an agreement in an Electric Quarterly Report, may result in forfeiture of market-based rate authority, requiring filing of a new application for market-based rate authority if the applicant wishes to resume making sales at market-based rates.

¹⁶ *Reporting Requirement for Changes in Status for Public Utilities with Market-Based Rate Authority*, Order No. 652, 70 Fed. Reg. 8,253 (Feb. 18, 2005), FERC Stats. & Regs. ¶ 31,175 (2005).

[insert market-based rate seller name] must timely report to the Commission any change in status that would reflect a departure from the characteristics the Commission relied upon in granting market-based rate authority. A change in status includes, but is not limited to, each of the following: (i) ownership or control of generation or transmission facilities or inputs to electric power production other than fuel supplies, or (ii) affiliation with any entity not disclosed in the application for market-based rate authority that owns or controls generation or transmission facilities or inputs to electric power production, or affiliation with any entity that has a franchised service area. Any change in status must be filed no later than 30 days after the change in status occurs.

23. DTE Parties are directed to file an updated market power analysis within three years of the date of this order, and every three years thereafter. The Commission also reserves the right to require such an analysis at any intervening time.

The Commission orders:

(A) DTE Parties' updated market power analysis is hereby accepted for filing, as discussed in the body of this order.

(B) DTE Trading's, DTE Edison's, DTE Georgetown's, and DTE River Rouge's revised tariff sheets incorporating the market behavior rules are hereby accepted for filing, effective December 17, 2003.

(C) DTE Parties' next updated market power analysis is due within three years of the date of this order.

(D) DTE Parties are directed, within 30 days of the date of issuance of this order, to revise their market-based rate tariffs to include the change in status reporting requirement adopted in Order No. 652, as discussed in the body of this order.

By the Commission.

(S E A L)

Linda Mitry,
Deputy Secretary.