

UNITED STATES OF AMERICA
FEDERAL ENERGY REGULATORY COMMISSION

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

Dearborn Industrial Generation, L.L.C.

Docket Nos. ER05-1497-000
ER05-1497-001

ORDER CONDITIONALLY ACCEPTING PROPOSED TARIFF REVISIONS
AND ESTABLISHING HEARING AND SETTLEMENT JUDGE PROCEDURES

(Issued December 29, 2005)

1. Dearborn Industrial Generation, L.L.C. (Dearborn) filed proposed revisions to its existing cost-based capacity and energy sales tariff to: (1) revise Service Schedule A demand charges for its peaking generator; (2) add new demand charges to Service Schedule A for its combined cycle combustion turbines and steam turbine; and (3) add Service Schedule B to include proposed revenue requirements for reactive power service for its generating facilities located within the Midwest Independent Transmission System Operator, Inc.'s (Midwest ISO) control area. As discussed below, we conditionally accept the proposed revisions to Service Schedule A and the addition of Service Schedule B, suspend them for a nominal period, to become effective on January 1, 2006, as requested, subject to refund, and establish hearing and settlement judge procedures.

Background

2. On October 1, 2004, the Commission issued an order directing the Midwest ISO to compensate all generators for reactive power service under Schedule 2 of its Open Access Transmission Tariff (OATT)¹. This order required both transmission owners and independent power producers (IPP) that provided such service to be compensated by the Midwest ISO. The Midwest ISO submitted a filing providing a mechanism for the transmission owners to be compensated, but that mechanism did not allow the IPP's to be compensated. Subsequently, the Midwest ISO filed

¹ *Midwest Independent Transmission System Operator, Inc.*, 109 FERC ¶ 61,005 (2004), *order on reh'g*, 110 FERC ¶ 61,267 (2005).

Schedule 2 revisions which provided a mechanism for compensation to the IPP's. The Commission approved these revisions in an October 17, 2005 Order.²

3. Dearborn is an IPP within the Midwest ISO control area and is also an exempt wholesale generator under section 32 of the Public Utility Holding Company Act of 1935.³ Dearborn owns and operates electric generating facilities within the Ford Rouge automotive manufacturing complex in Dearborn, Michigan. These facilities are interconnected with the electric transmission system of Detroit Edison Company (Detroit Edison).⁴

The Filing

4. On September 21, 2005, as amended on November 2, 2005, Dearborn filed an application seeking approval of revisions to its Service Schedule A – Negotiated Capacity and Energy, and the addition of a new Service Schedule B – Reactive Supply and Voltage Control Service. Dearborn requests an effective date of January 1, 2006.

5. Dearborn proposes two changes to its cost-based Service Schedule A tariff: (1) that the rate for its peaking generator be based on actual rather than estimated data;⁵ and (2) that the rates for the remainder of its facilities be cost-based instead of market-based. Dearborn also requests authority to discount the cost-based rate to meet competitive challenges.

6. Dearborn states that it filed Schedule B to enable it to receive compensation as an IPP for reactive power service. Schedule B provides a rate tariff with revenue requirements for reactive power service for Dearborn's generation facilities. Dearborn proposes two alternative sources for satisfaction of the revenue requirement:

² *Midwest Independent Transmission System Operator, Inc.*, 113 FERC ¶ 61,046 (2005) (October 17 Order).

³ *See Dearborn Industrial Generation, L.L.C.*, 87 FERC ¶ 62,241 (1999). Dearborn is authorized to make wholesale sales of power at market-based rates. *See Dearborn Industrial Generation, L.L.C.*, Docket No. ER01-570-000 . (February 27, 2001) (unpublished letter order).

⁴ Detroit Edison is a non-transmission-owning member of the Midwest ISO.

⁵ *See Dearborn Industrial Generation, L.L.C.*, Docket No. ER99-2773-000 (May 26, 1999) (unpublished letter order) (accepting Dearborn's cost-based rate tariff).

(1) the Distribution Interconnection Agreement between Dearborn and Detroit Edison (Interconnection Agreement), or (2) the Midwest ISO's Schedule 2.

7. Dearborn seeks to recover its costs for supplying reactive power service in two parts: (1) an annual cost-based revenue requirement; and (2) a provision for recovery of actual operating costs. The cost-based total reactive power revenue requirement consists of three components. These components permit recovery of a fair allocation of the portion of plant costs attributable to the reactive power capability of the facilities. These components consist of: (1) the generator/exciter and step-up transformers; (2) accessory electrical equipment; and (3) the remaining total plant investment in production related assets. In addition, proposed Schedule B provides for the recovery of Dearborn's out-of-pocket expenses for Startup Costs and Opportunity Costs.

8. Dearborn states that it calculated the fixed capability component by determining the portion of its facilities' generator/excitation system and its generator step-up transformers used to produce reactive power. Because this equipment contributes to the provision of both real and reactive power, Dearborn allocated the cost of these facilities between real and reactive power. Dearborn also determined the accessory electrical equipment used in support of the generator/exciter and the portion of total plant investment used to provide reactive power service. Dearborn states that the allocation methodology used in its computations was previously approved by the Commission.⁶

9. The annual revenue requirement uses a fixed rate reflecting the capital investment components. Dearborn used an annual carrying cost approach to develop the annual revenue requirement. Dearborn states that the computation methodology it used is the same as that approved by the Commission in Docket No. ER99-2773-000.

10. If there are Startup and Opportunity Costs, the proposed tariff would allow for their recovery. Startup Costs occur when Dearborn is asked to provide reactive power when its facilities would not otherwise be operating. Opportunity Costs occur when Dearborn is directed to restrict real power output in order to provide reactive power service.

11. Dearborn states that no specific charges for Startup Cost or Opportunity Costs are included in its annual revenue requirement. The tariff language is included to recognize that Dearborn may be compensated by the Midwest ISO for out-of-pocket expenses. Compensation for out-of-pocket expenses would not alter Dearborn's revenue requirement for reactive power service.

⁶ See *American Electric Power Service Corp.*, Opinion 440, 88 FERC ¶ 61,141 (1999)(AEP).

Notice of Filing, Interventions and Protests

12. Notices of Dearborn's filings in Docket Nos. ER05-1497-000 and ER05-1497-001 were published in the *Federal Register*, 70 Fed. Reg. 57,590 and 71,124 (2005), with interventions and protests due on or before November 28, 2005.

13. Timely motions to intervene were filed by the Midwest ISO, Detroit Edison, and International Transmission Company (ITC). Detroit Edison comments on the filing while ITC conditionally protests it. Detroit Edison comments that Dearborn has not provided sufficient support for its filing. ITC protests the filing to the extent that it implies that ITC is a procurer of, or is somehow liable to Dearborn for payment for, reactive power service. Dearborn filed an erratum and an answer to the comments and conditional protest.

Discussion

Procedural Matters

14. Pursuant to Rule 214 of the Commission's Rules of Practice and Procedure, 18 C.F.R. § 385.214 (2004), the timely, unopposed motions to intervene serve to make the entities that filed them parties to this proceeding.

15. Rule 213(a)(2) of the Commission's Rules of Practice and Procedure, 18 C.F.R. § 385.213(a)(2) (2004), prohibits an answer to a protest unless otherwise ordered by the decisional authority. We are not persuaded to accept Dearborn's answer and will, therefore, reject it.

ITC's Conditional Protest

16. ITC notes that the filing provides two alternative sources for satisfaction of Dearborn's revenue requirement regarding reactive power: (1) the Interconnection Agreement, and (2) the Midwest ISO's Schedule 2. To the extent that either of these documents is interpreted as requiring ITC to compensate Dearborn for reactive power service, ITC protests the filing.

17. With respect to the Interconnection Agreement, ITC states that it is not a party to that agreement. Rather, the agreement is between Dearborn and Detroit Edison. ITC contends that because it is not a party to the agreement, it cannot be bound by the terms of the agreement.⁷ ITC also argues that because its facilities are not

⁷ Citing *Northwest Pipeline Corporation*, 65 FERC ¶ 61,337 at 62,608 (1993) (Company not bound by an agreement to which it is not a party).

interconnected with Dearborn's, Dearborn would not be entitled to recover revenues for reactive power directly from ITC.

18. With respect to the Midwest ISO's Schedule 2, ITC states that Schedule 2 applies to service provided by the Transmission Provider and paid for by Transmission Customers.⁸ ITC states that it is neither the Transmission Provider nor a Transmission Customer.⁹ Therefore, it cannot be required to pay Dearborn for reactive power.

Detroit Edison's Comments

19. Detroit Edison comments that Dearborn has not supported various portions of its proposal including its revenue requirement, 14.76 percent carrying cost factor, operating expenses, cost of capital, load-related charges, startup costs, and allocation of plant costs. Detroit Edison also comments that Dearborn appears to have used a design power factor of 0.85. Detroit Edison states that if this is the case, the filing is inconsistent with the Power Factor Design Criteria in the Commission's Standard Large Generator Interconnection Agreement.¹⁰

20. Detroit Edison requests that the Commission set the filing for hearing and/or settlement judge procedures to address the matters raised in Detroit Edison's comments.

Commission Determination

21. The October 17 Order accepted revisions to Schedule 2 of the Midwest ISO's OATT. Those revisions provide a mechanism to compensate independent power producers, such as Dearborn, for reactive power service. Dearborn's revenue

⁸ *Id.* General Provisions, Ancillary Services, Second Revised Sheet 145; Schedule 2, Substitute Second Revised Sheet No. 855.

⁹ *See Midwest Independent Transmission System Operator, Inc.*, 108 FERC ¶ 61,163 (2005), Definition of Transmission Provider, §1.320, Second Revised Sheet No. 133 and Definition of Transmission Customer, §1.317, Second Revised Sheet No. 132.

¹⁰ *Standardization of Generator Interconnection Agreements and Procedures*, Order No. 2003-A, 69 Fed. Reg. 15,932 (Mar. 26, 2004), FERC Stats. & Regs., ¶ 31,160 at 31,020 (2004), *order on reh'g*, Order No. 2003-B, 70 Fed. Reg. 265 (Jan. 4, 2005), FERC Stats & Regs. ¶ 31,171 (2004), *order on reh'g*, Order No. 2003-C, 70 Fed. Reg. 37,661 (June 30, 2005), FERC Stats. & Regs. ¶ 31,190 (2005).

requirement must be determined before rates relating to the compensation for reactive power service can be established. Accordingly, the Commission is accepting Dearborn's proposed revenue requirement, to become effective January 1, 2006, subject to the hearing and settlement conditions set forth below.

22. Since the Midwest ISO's revised Schedule 2 provides a mechanism for the compensation which Dearborn seeks, it is not necessary for Dearborn to have an alternative source for receiving compensation for reactive power service. Accordingly, the Commission is denying Dearborn's request that it be allowed the alternative of using the Interconnection Agreement as a vehicle for receiving compensation.

23. ITC conditionally protests the filing to the extent that it could be interpreted to require ITC to compensate Dearborn for reactive power service either pursuant to the Interconnection Agreement or the Midwest ISO's Schedule 2. Since the Commission is not allowing the Interconnection Agreement to become a vehicle for compensation and ITC is not a party to that agreement, nor is it even interconnected with Dearborn, the Commission concludes that the Interconnection Agreement does not obligate ITC to compensate Dearborn for reactive power service.

24. With respect to Schedule 2, ITC contends that it is neither a transmission provider nor a transmission customer according to their definitions in the Midwest ISO's OATT. Under Schedule 2, the Midwest ISO is the party responsible for obtaining reactive power service and paying for it. Thus, ITC is correct that it would not be required to compensate Dearborn directly for reactive power service.

25. With respect to Detroit Edison's comments, the Commission agrees that Dearborn's filing does not provide adequate support for the various aspects of the proposal. Among other things, Dearborn did not provide cost support for its generator/exciter equipment, accessory electric equipment, GSU transformers, or total production plant. Also, the rationale behind the proposal is not fully explained. For example, Dearborn does not explain why it is filing the proposed Schedule A cost-based demand charges for its non-peaking units when it already has market-based rate authority for these units.

26. In view of the above, the Commission finds that the matters raised by Dearborn's filing present issues of material fact that cannot be resolved based on the record before us. Based on a review of the parties' pleadings, our analysis indicates that the rates at issue may be unjust and unreasonable, unduly discriminatory or preferential, or otherwise unlawful. Accordingly, we will conditionally accept Dearborn's proposed revisions to Schedules A and B under the existing cost-based capacity and energy sales tariff for filing, suspend them for a nominal period, to

become effective on January 1, 2006 as requested,¹¹ subject to refund, and set them for hearing and settlement judge procedures as ordered below.

27. While we are setting these matters for a trial-type evidentiary hearing, we encourage the parties to make every effort to settle their disputes 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.¹² If the parties desire, they may, by mutual agreement, request a specific judge as a settlement judge in the proceeding; otherwise the Chief Judge will select a judge for this purpose.¹³ 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 Judge shall provide the parties with additional time to continue their settlement discussions or provide for the commencement of a hearing by assigning the case to a presiding judge.

28. We direct Dearborn to submit a compliance filing within thirty days of the date of this order to include tariff sheets showing that the Midwest ISO is the party responsible for obtaining reactive power service and paying for it, pursuant to Schedule 2 of the Midwest ISO's OATT. Dearborn is directed to delete those portions of its tariff which provide Dearborn with the alternative of receiving compensation for reactive power service under the Interconnection Agreement.

The Commission orders:

(A) Dearborn's proposed revisions to its Service Schedule A and its newly proposed Service Schedule B, as modified, are hereby accepted for filing and suspended for a nominal period, to become effective on January 1, 2006, 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 the Federal Power Act, particularly

¹¹ We note that Dearborn did not seek waiver of the 60-day prior notice requirement under section 205 of the Federal Power Act.

¹² 18 C.F.R. § 385.603 (2004).

¹³ If the parties decide to request a specific judge, they must make their request to the Chief Judge by telephone at 202-502-8500 within five days of the date of this order. The Commission's website contains a listing of Commission judges and a summary of their background and experience (www.ferc.gov - click on Office of Administrative Law Judges).

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 the justness and reasonableness of Dearborn's proposed rate schedule. However, the hearing will 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 (2004), 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 by telephone within five (5) days of the date of this order.

(D) Within sixty (60) days of the date of this order, the settlement judge shall file a report with the Chief Judge and with the Commission 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 30 days thereafter, informing the Chief Judge and the Commission of the parties' progress toward settlement.

(E) If settlement judge procedures fail, and a trial-type evidentiary hearing is to be held, a presiding administrative law judge, to be designated by the Chief Administrative Law Judge, shall convene a prehearing conference in this proceeding, to be held within approximately fifteen (15) days of the date on which the Chief Judge designates the presiding judge, in a hearing room of the Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, D.C. 20426. Such conference shall be held for the purpose of establishing a procedural schedule. The presiding administrative law 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.