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Introduction

Good afternoon, Commissioners. I want to thank you for the invitation to participate in this Technical Conference on behalf of DTE Energy Trading. DTE Energy Trading, a subsidiary of DTE Energy, is a physical gas and power marketing company located in Ann Arbor, Michigan. DTE has substantial experience in managing transmission positions throughout the Eastern Interconnect, including the organized RTO markets, the Canadian IESO and bilateral Day 1 markets such as the SERC Region.

DTE would like to present a case study based on its operating experience in the LG&E Energy control area (LG&E control area.) This case study is a real world illustration of the consequences that can arise when a vertically integrated utility is permitted to leave an RTO in order to return to a "Day 1" bilateral market. In the case of LG&E, transmission customers now find themselves in a pre-Order 888 world due to the lack of ATC to destination markets outside of the LG&E control area. DTE has a unique perspective because we have been active participants throughout the period that spanned LG&E's participation under the MISO Day 1 and Day 2 operations, and the months subsequent to LG&E's exit from MISO on September 1, 2006. I will conclude my remarks by presenting what we consider to be the next steps in resolving the competitive issues that have arisen since LG&E's exit from MISO.

Background

DTE was a participant in a three-way arrangement under which it purchased power from a group of municipal customers located in Kentucky known as the KU Municipals at Kentucky Utility's ("KU") generation bus. (KU is LG&E's sister company, also located within the LG&E control area.) DTE scheduled this power up to a week in advance and procured day-ahead point-to-point transmission in order to flow the power out of the LG&E control area to destination markets including MISO, PJM and TVA.

This arrangement worked smoothly under both MISO's Day 1 and Day 2 markets. However, LG&E's exit from MISO has been an *unmitigated disaster* from the perspective of customers, like DTE, seeking to arrange firm point to point transmission through the LG&E Control Area. Beginning on *the very first day of LG&E's exit from MISO on September 1, 2006*, DTE consistently found itself unable to procure, on an advanced basis, point-to-point transmission from the LG&E control area to any of the destination markets. As a result, LG&E's exit from MISO virtually destroyed the value of DTE's contractual arrangement with the KU Municipals.

DTE contacted SPP, the Independent Transmission Operator for LG&E, to inquire about the lack of firm transmission. The ITO explained that there was no ATC on any of the paths that DTE had successfully used prior to September 1, 2006. This adverse impact occurred despite the fact that: 1) the ITO cited no operational changes for the lack of ATC; and 2) DTE made its requests in what is decidedly an "off-peak" season as far as the amount of load on the transmission system. In effect, this left the power stranded at the KU Bus.

DTE marketing personnel sought alternative arrangements with the LG&E marketing arm to substitute hourly non-firm transmission in place of day-ahead transmission, since ATC was often available on an intra-day basis. LG&E repeatedly refused our request to make intra-day changes in our energy schedules, which was particularly disturbing given the fact that LG&E had apparently accommodated its own intra-day energy schedule changes to take advantage of hourly non-firm transmission.

Ultimately, the KU Municipals suffered as well because the RFP that they put out went unsubscribed for 2007, and they ended up selling the power to LG&E. Thus, the KU Municipals were denied the opportunity to take advantage of the competitive marketplace and are now the equivalent of pre-Order 888 captive customers.

Next Steps

DTE and the KU Municipals did not simply stand pat. We had a meeting with the SPP ITO staff in January at SPP's headquarters in Little Rock. There were several possible solutions that came out of our meeting that SPP agreed to pursue:

- Study the reasons for the lack of ATC due to constrained flowgates and critical values that are incorporated into the ATC calculation.

- Submit the issue of off-path usage on constrained flowgates through the inter-regional Congestion Management Committee, a seams coordination group made up of regional transmission providers including MISO, PJM and TVA.

- Develop a non-firm ATC calculation for advance sales of non-firm transmission. This non-firm ATC calculation methodology would be less conservative than that used for calculating firm ATC. For example, non-firm ATC would include capacity that would otherwise be absorbed by Capacity Benefit Margin (which is released anyway under normal circumstances prior to the day of flow for sales of non-firm transmission).

- Seek contractual flexibility that would enable a marketer to use intra-day hourly non-firm transmission.

Unfortunately, there is no timeline or guarantee that our efforts will bear fruit.

DTE would also like the Commission to consider the impact of mergers and prior merger order conditions between utilities that operate in bilateral markets, and to take affirmative action when competition has been or could be harmed. The Commission itself stated in the LG&E and KU merger order that if LG&E and KU sought permission to withdraw from the Midwest ISO, that "we will evaluate that request in light of its impact on competition in the KU destination markets, use our authority under section 203(b) of the FPA to address any concerns, and order further procedures as appropriate." (82 FERC ¶61,308, Docket No. EC98-2-000, Order issued March 27, 1998, slip op. at 37.)

Our experience is in stark contrast to the testimony of LG&E's expert witness William Hieronymous, in the LG&E MISO exit proceeding, when he concluded that LG&E's exit from MISO would have "*no significant adverse competitive impacts.*" (Docket No. EC06-4, Accession No. 20051012-0254, Testimony of William H. Hieronymus, submitted October 7, 2005, at 4 (PDF page 47)).

Indeed, Witness Hieronymous in that same proceeding, referring back to the 1998 merger between LG&E and KU, stated that "Applicants' proposal is comparable in all material respects to the membership in MISO as contemplated at the time of the [1998 merger] commitments insofar as Applicants' proposal will achieve the same competitive benefits – albeit through different means – that the Commission sought through the merger commitments imposed on Applicants in those prior orders." (Docket No. EC06-4, Accession No. 20051012-0254, Testimony of William H. Hieronymus, submitted October 7, 2005, at 4 (PDF page 47)).

In closing, DTE asks that the Commission enforce the conditions that accompanied its approval of the LG&E/KU merger and the companies' withdrawal from MISO.