

UNITED STATES OF AMERICA
FEDERAL ENERGY REGULATORY COMMISSION

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

Quest Energy, L.L.C.

Docket No. EL04-31-000

v.

The Detroit Edison Company

ORDER GRANTING COMPLAINT

(Issued March 5, 2004)

1. In this order, we grant a complaint by Quest Energy, L.L.C. (Quest) alleging that, since October 2000, Detroit Edison Company (Detroit Edison) improperly calculated the rates it charged Quest for Energy Imbalance Service in contravention of Schedule 4 of its OATT, and direct Detroit Edison to reimburse its customers for any undercompensation due to its misapplication of the formula in its OATT. This order benefits customers by ensuring that Detroit Edison's rates conform with the rates approved by the Commission in Detroit Edison's OATT.

Background

2. Detroit Edison is an investor-owned utility that sold its transmission assets to International Transmission Company (International Transmission) which in turn became a transmission-owning member of Midwest Independent Transmission System Operator, Inc. (Midwest ISO). Under the Midwest ISO open access transmission tariff (OATT), Energy Imbalance Service is provided by each control area operator, in this case Detroit Edison.

3. Quest, an Alternate Electric Supplier in the state of Michigan, engages in retail electric sales in that state, with a peak retail contract capacity of over 800 MW. Quest is also authorized to make wholesale electric sales under market-based rates. Quest's market-based rate authority is used to facilitate its retail marketing authority. Quest is currently a customer under Midwest ISO's OATT. Quest purchases ancillary services

from Detroit Edison under Detroit Edison's OATT to support its retail and wholesale electric sales, and has done so since October 2000.¹

4. Energy Imbalance Service is provided when a difference occurs between scheduled and actual delivery of energy to load over a single hour. For purposes of pricing Energy Imbalance Service, Detroit Edison's OATT defines a deviation band of +/- 1.5 percent (with a minimum of 2 MW) of the hourly scheduled transaction. Schedule 4 of Detroit Edison's OATT provides that: (1) for energy imbalances outside the deviation band that are caused by the customer's load being more than the scheduled delivery (i.e., under-deliveries), the transmission customer is charged a rate equal to the greater of \$100/MWh or 110 percent of Detroit Edison's incremental cost for the hour of the imbalance; and (2) for energy imbalances occurring outside the deviation band that are caused by the customer's load being less than the scheduled delivery (i.e., over-deliveries), Detroit Edison will compensate the customer at a rate of 90 percent of Detroit Edison's decremental cost for the hours of the imbalance. Schedule 4 defines incremental and decremental costs as follows:

For purposes of this Schedule 4, the term "incremental cost" shall mean the average cost of the last 10 MWs of energy produced or purchased to meet Detroit Edison's obligations. The cost will include, but is not limited to: replacement cost of fuel, unit heat rates, start up costs, incremental operating and maintenance costs, the costs of emissions allowances, purchased power costs including capacity charges, demand charges and option premium and transmission costs. For purposes of this Schedule 4, the term "decremental cost" shall mean the average cost of the second to last 10 MWs of energy produced or purchased to meet Detroit Edison's obligations. The cost will include, but is not limited to: replacement cost of fuel, unit heat rates, start up costs, incremental operating and maintenance costs, the costs of emissions allowances, purchased power costs and transmission costs.

¹ Prior to becoming a transmission-owning member of Midwest ISO on February 1 2002, transmission service over the International Transmission system was provided under the International Transmission OATT and, prior to Detroit Edison transferring its transmission facilities to International Transmission on January 1, 2001, such transmission service was provided under the Detroit Edison OATT. As the control area operator, Detroit Edison also remained the ancillary service provider for customers taking service under the International Transmission OATT during the period that it was in effect.

Quest's Complaint

5. On December 2, 2003, Quest filed a complaint alleging that, from October 2000 through December 1, 2003, during which Quest purchased Energy Imbalance Service under the Detroit Edison OATT,² Detroit Edison calculated the rates for Energy Imbalance Service based on a formula contained in Detroit Edison's Electric Choice Supplier Handbook (Handbook) that is inconsistent with the provisions in Schedule 4 of Detroit Edison's OATT. Quest asserts that the formula for compensation for Energy Imbalance Service in Detroit Edison's OATT treats under-deliveries and over-deliveries of energy outside the +/- 1.5 percent deviation band similarly – charges for both are calculated by looking to adjacent small blocks in the dispatch stack, the total of generated power and purchased power, in order of cost, used to meet Detroit Edison's total load obligations. Quest points out that one block of the dispatch stack – the last 10 MWs – constitutes Detroit Edison's incremental costs, and an adjacent block of the dispatch stack – the next to last 10 MWs – constitutes Detroit Edison's decremental costs.

6. Quest notes that, under the terms of Schedule 4 of Detroit Edison's OATT, Detroit Edison will compensate the transmission customer for over-deliveries outside the deviation band at a rate equal to 90 percent of Detroit Edison's decremental cost, which is defined in the OATT as the average cost of the second to last 10 MWs of energy produced or purchased to meet Detroit Edison's obligations. Quest points out that Detroit Edison's OATT provides that the decremental cost will include, but is not limited to: (1) replacement cost of fuel, (2) unit heat rates, (3) start up costs, (4) incremental operating and maintenance costs, (5) the costs of emissions allowances, (6) purchased power costs, and (7) transmission costs.

7. In contrast, Quest points out that, in Detroit Edison's Handbook, the formula for determining decremental cost is defined as the average cost of the highest cost block of Automatic Generation Control (AGC) capable unit(s) dispatched to meet Detroit Edison's obligations, and the costs will include (1) the replacement costs for fuel, (2) unit heat

² On October 2, 2003, in Docket No. ER04-14-000, Detroit Edison filed, pursuant to Section 205 of the FPA (16 U.S.C. §824d (2000)), a stand-alone ancillary services tariff, which includes updated and revised ancillary service rates, including rates for Energy Imbalance Service, and supersedes its OATT service schedules applicable to these ancillary services. By order issued December 1, 2003, the Commission accepted, to take effect December 2, 2003, subject to refund, and set for hearing, Detroit Edison's proposed ancillary services tariff. Detroit Edison Company, 105 FERC ¶ 61,264 (2003) (December 1 Order), rehg denied.

rates, (3) startup costs, and (4) incremental operating and maintenance costs.³ Quest points out that the method for calculating Detroit Edison's decremental cost contained in the Handbook does not include (1) generation resources not on AGC, (2) purchased power costs, (3) transmission costs, or (4) costs of emission allowances, all of which are specifically-identified costs included in the definition of decremental cost in the formula in Schedule 4 of Detroit Edison's OATT. In addition, Quest states that the formula for determining decremental costs in Detroit Edison's Handbook shifts the basis for the calculation from the second to last 10 MWs of energy produced or purchased, as provided in Detroit Edison's OATT, to the average cost of the highest cost block of AGC capable unit(s) dispatched.

8. Quest estimates that Detroit Edison's use of the Handbook's formula for calculating decremental costs instead of the formula provided in Schedule 4 of its OATT resulted in Detroit Edison undercompensating Quest by approximately \$2.7 million from October 2000 through November 2003.⁴ Quest, therefore, requests that the Commission order Detroit Edison to compensate Quest for Energy Imbalance Service in accordance with Schedule 4 of its OATT.

Notice of Filing and Protests

9. Notice of Quest's complaint was published in the Federal Register, 68 Fed. Reg. 69,676 (2003), with motions to intervene and comments due on or before December 22, 2003. Detroit Edison filed its answer on that date. FirstEnergy Solutions filed a timely motion to intervene. Southwest Michigan Systems filed an unopposed motion to intervene one day out-of-time. Quest filed an answer to Detroit Edison's answer on January 5, 2004 (January 5 Answer). Detroit Edison filed a response to Quest's January 5 Answer on January 15, 2004 (January 15 Response).

³ See Detroit Edison's Handbook, Exhibit A, paragraph 10.2.4, contained as an attachment to the Affidavit of Alexander J. Zakem in Exhibit 1 to Quest's complaint.

⁴ Quest points out that, in the stand-alone ancillary services tariff filed by Detroit Edison in Docket No. ER04-14-000, Detroit Edison proposed to adopt the rates for Energy Imbalance Service contained in Schedule 4 of its OATT, except for a modification of the definition of decremental cost to make it consistent with its Handbook. According to Quest, while Detroit Edison classified that change as a clarification, it clearly amounted to a substantive change to its rates for Energy Imbalance Service. Quest notes that in the December 1 Order, the Commission set this matter for hearing. According to Quest, any change to Detroit Edison's stand-alone ancillary services tariff in that proceeding will not impact Quest's complaint in this docket, or the relief Quest is seeking for refunds of amounts paid from October 2000, through December 1, 2003, under Detroit Edison's OATT.

Detroit Edison's Answer

10. Detroit Edison argues that it has always applied its OATT in a consistent manner, and that Quest has been aware of how the OATT was applied through the Handbook.⁵ Detroit Edison asserts, further, that the existing OATT language permits Detroit Edison to bill based on the average cost of the second to last 10 MWs of energy produced or purchased to meet Detroit Edison's obligation. According to Detroit Edison, it does not purchase power to meet the obligation to provide decremental energy, nor does it provide decremental energy from units that are not on AGC. Detroit Edison asserts, further, that the units that are on AGC are the only units available to respond to a need to reduce output when a supplier leaves power on the system that needs to be absorbed in real-time. Detroit Edison states that, under the existing OATT language, even without the clarification, Detroit Edison can calculate the decremental costs with zero dollars included for purchased power because power is not purchased to meet the obligation to decrement Detroit Edison's supply to absorb excess power on the system. Detroit Edison concludes, therefore, that this clarification is consistent with the definition of decremental cost in Schedule 4 of its OATT.

11. Detroit Edison asserts that Quest seeks retroactive refunds back to October 2000 pursuant to Sections 206 and 309 of the Federal Power Act.⁶ Detroit Edison states, however, that under Section 206 of the FPA, the refund date is sixty (60) days from the filing of a complaint, and under section 309, the Commission's authority does not permit the Commission to indirectly order refunds that it is directly prohibited from ordering under Section 206 of the FPA. Detroit Edison explains that the Commission's refund authority under Section 206 of the FPA will not permit a refund effective date in this case prior to January 31, 2004.

⁵ Detroit Edison declares that Quest's complaint raises the same arguments as to tariff violations that Quest raised in its protest to Detroit Edison's filing of the stand-alone ancillary services tariff in Docket No.ER04-14-000. Detroit Edison declares, further, that its filing in that docket clarifies the language in Schedule 4 of its OATT to indicate which costs are avoided in providing decremental energy consistent with its OATT. Detroit Edison states that it provided this same clarification as to the payment for decremental energy to all retail access shippers in its Handbook several years ago at the commencement of Michigan's retail access program. According to Detroit Edison, that clarification stated that the only costs Detroit Edison avoids when it provides decremental energy are the costs of backing down its AGC capable units, and thus, only those costs are included in calculation of decremental energy pursuant to Schedule 4 of its OATT.

⁶ 16 U.S.C. §§ 824e and 825h (2000).

12. Detroit Edison declares that Quest has not demonstrated any basis for claiming refunds back to October 2000 in this case. Detroit Edison contends that Quest has not shown that a tariff violation occurred to support an equitable remedy of disgorgement in this case since Detroit Edison's OATT permits it to calculate the decremental costs based on costs incurred to provide decremental energy. Detroit Edison alleges that it is unfair to allow Quest to reach back over two years to a point in time where Detroit Edison had no notice that its implementation of its OATT would be challenged.

13. According to Detroit Edison, it also is not equitable for the Commission to reward a customer who abuses Energy Imbalance Service as a means of arbitraging energy prices by failing to keep its imbalances within the deviation band. Detroit Edison asserts further that there is no basis in equity for ordering restitution in this case because Quest consistently is out of balance by more than 16 percent beyond the deviation band. According to Detroit Edison, Commission action to increase this payment will create incentives for Quest to game the system through over-scheduling. According to Detroit Edison, Quest's alleged over-scheduling violates the terms of its marketer agreement with Detroit Edison under the Retail Access Program. Detroit Edison, therefore, requests the Commission to reject Quest's complaint.

14. According to Detroit Edison, it is being conservative, and it pays transmission customers more when it uses the highest cost 10 MWh block on AGC instead of the average cost of the second to last 10 MWs in determining its decremental costs. According to Detroit Edison, the transmission customer is advantaged when Detroit Edison uses the first 10 MW block on AGC because the customer is paid based upon the higher cost block. Detroit Edison also asserts that Quest ignores the fact that Detroit Edison makes no purchases for power for the purpose of providing decremental energy, and that it would make no sense for Detroit Edison to purchase power to manage oversupply situations.

15. Citing the Commission's approval of the New York Independent System Operator Inc.'s OATT,⁷ Detroit Edison points out that the Commission, in other cases, has approved tariff provisions that provide no compensation when customers leave power on the system that needs to be absorbed in real-time in order to discourage imbalances outside of the deviation band, while simultaneously approving provisions that require the customer to pay 150 percent of the market price of energy for under-supplying power. According to Detroit Edison, the Commission should follow this precedent until a market solution to energy imbalances is achieved in its region. Detroit Edison also points out that the Commission has allowed utilities to be compensated for lost opportunity costs for

⁷ Citing New York Independent System Operator, Inc., FERC Electric Tariff, Original Volume No. 1, Schedule 4, available at <http://www.nyiso.com/services/oatt.html>.

under-deliveries.⁸ According to Detroit Edison, this precedent supports Detroit Edison's use of a higher cost to compensate for under-deliveries than over-deliveries even though it is not proposing to charge for lost opportunity costs. Detroit Edison cites further Commission precedent supporting the concept of a penalty to provide an incentive to stay within the scheduling deviation band.⁹ Detroit Edison concludes that allowing Quest the relief it requests will encourage greater imbalances that need to be dealt with in real-time will require Detroit Edison to subsidize Quest's imbalances, and will lead to reliability concerns.

Discussion

I. Procedural Matters

16. Pursuant to Rule 214 of the Commission's Rules of Practice and Procedure, 18 C.F.R. § 385.214 (2003), FirstEnergy Solutions' timely, unopposed motion to intervene serves to make it a party to this proceeding. We will grant Southwest Michigan Systems' late filed motion to intervene, in light of its interests in this proceeding, the early stage of the proceeding, and the absence of any undue prejudice or delay.

17. Rule 213(a)(2) of the Commission's Rules of Practice and Procedure, 18 C.F.R. § 385.213(a)(2) (2003), prohibits an answer to an answer or protest unless otherwise ordered by the decisional authority. We are not persuaded to accept Quest's January 5 Answer or Detroit Edison's January 15 Response, and we therefore reject them.

II. Analysis

18. We find that Detroit Edison violated the provisions in Schedule 4 of its OATT when it based the rates for over-deliveries outside the deviation band on a definition of decremental cost provided in its Handbook that is inconsistent with the provisions in Schedule 4 of its OATT. The Commission accepted the tariff sheets implementing the Energy Imbalance Service provisions in Schedule 4 of Detroit Edison's OATT in 1999 in Docket No. ER00-459-000.¹⁰ Schedule 4 of Detroit Edison's OATT contains the provisions for determining the compensation for over-deliveries outside the deviation band and should have been followed by Detroit Edison.

⁸ Citing Public Service Company of New Mexico, 95 FERC ¶ 61,481 at 62,714, reh'g denied, 96 FERC ¶ 61,235 (2001).

⁹ Citing Carolina Power & Light Co., 95 FERC ¶ 61,429 (2001).

¹⁰ See Detroit Edison Company, 89 FERC ¶ 61,280 (1999).

19. We reject Detroit Edison's argument that the formula in its Handbook merely clarifies the Energy Imbalance formula approved by the Commission in Schedule 4 of its OATT. We find that the formula in Detroit Edison's Handbook clearly deviates from the Energy Imbalance provisions approved by the Commission in Schedule 4 of Detroit Edison's OATT because it does not include all of the costs (e.g., purchased power costs, transmission costs, or costs of emission allowances) contained in the definition of decremental cost in Schedule 4 of Detroit Edison's OATT. We also find that the use of the average cost of the highest cost block of AGC capable unit(s) dispatched in the decremental cost formula in Detroit Edison's Handbook does not conform to the use of "the second to last 10 MWs of energy produced or purchased" in the definition of decremental cost in Schedule 4 of its OATT.

20. The Commission has stated on numerous occasions that a company's tariff, not its manuals or handbooks, must define the rates, terms and conditions of jurisdictional services provided by the company.¹¹ Detroit Edison would have needed to file for Commission approval to revise the formula for determining decremental costs in Schedule 4 of its OATT before it could use the Handbook's formula to determine compensation for over-deliveries outside the deviation band. Detroit Edison has only done so recently in Docket No. ER04-14-000, and, in the December 1 Order, the Commission accepted and suspended the proposed rate changes to become effective December 2, 2003, subject to refund, and set them for hearing.

21. The Commission may order refunds for past periods where a public utility has either misapplied a formula rate or otherwise charged rates contrary to the filed rate.¹² Because Detroit Edison did not apply the formula set forth in its tariff to determine the charges, but applied the Handbook's formula for decremental cost to calculate charges for Energy Imbalance Service, it must now recalculate the amounts due and payable to Quest and all other customers who took Energy Imbalance Service under its OATT. Detroit Edison should perform this recalculation using the formula for decremental cost specifically identified in Schedule 4 of its OATT then in effect for the period commencing January 2, 2000, the date that the latest definition of decremental cost in Schedule 4 of Detroit Edison's OATT, filed in Docket No. ER00-459-000, became effective, to December 2, 2003, the date that Detroit Edison's OATT was superseded by its new stand-alone ancillary service tariff. Therefore, we direct Detroit Edison to make this recalculation, and reimburse Quest and all other customers who took Energy Imbalance Service under its OATT during that period, for any under-compensation for over-deliveries outside the deviation band due to its misapplication of the decremental

¹¹ See e.g., *Atlantic City Electric Company, et al. v. PJM Interconnection, L.L.C.*, 91 FERC ¶ 61,063 at 61,219-20 (2000); *PJM Interconnection, L.L.C.*, 81 FERC ¶ 61,257 at 62,242-43 (1997).

¹² See, e.g., *Appalachian Power Co.*, 23 FERC ¶ 61,032 (1983).

cost formula in Schedule 4 of its OATT, as discussed above, along with interest pursuant to § 35.19a of the Commission's regulations.

The Commission orders:

(A) Quest's complaint is hereby granted, as discussed in the body of this order.

(B) Detroit Edison is hereby directed to recalculate the rates for Energy Imbalance Service provided to Quest and all other customers who purchased Energy Imbalance Service under Detroit Edison's OATT, as discussed in the body of this order.

(C) Detroit Edison is hereby directed to submit a compliance report describing its actions taken in compliance with Ordering Paragraph (B), no later than 30 days after the date of issuance this order.

By the Commission.

(S E A L)

Magalie R. Salas,
Secretary.