UNITED STATES OF AMERICA
FEDERAL ENERGY REGULATORY COMMISSION

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

Detroit Edison Company

Docket Nos. EL01-51-006
EL01-51-007
ER01-1649-006
ER01-1649-007

ORDER ON COMPLIANCE FILING

(Issued January 27, 2006)

1. In this order, the Commission conditionally accepts Detroit Edison Company's (Detroit Edison) second compliance filing, as amended, submitted in response to the Commission's December 22, 2004 Order[1] conditionally accepting a compliance filing relating to a Distribution Interconnection Agreement (Agreement) between Detroit Edison and Dearborn Industrial Generation, LLC (Dearborn). We also direct a third compliance filing in this proceeding, as discussed in the body of this order.

Background

2. On June 15, 2001, the Commission issued an order accepting the Agreement, as modified, for filing, suspending it, to become effective March 14, 2001, subject to refund, and setting charges in Exhibit B of the Agreement for hearing and settlement judge procedures.[2] The Commission also directed Detroit Edison to make a compliance filing modifying the Agreement (1) to remove an obligation by Dearborn to pay retail access charges and (2) to include a curtailment provision similar to the provision that it included in its agreements with its affiliates.

3. Detroit Edison filed the first compliance filing on June 29, 2001, and the Commission issued an order conditionally accepting this first compliance filing. The Commission, however, found that Detroit Edison had not deleted all references to retail

[1] *Detroit Edison Co.*, 109 FERC ¶ 61,329 (2004) (December 22 Order).

[2] *Detroit Edison Co.*, 95 FERC ¶ 61,415 (2001) (June 15 Order).

matters that are the subject of state law. The Commission also found that, while Detroit Edison had included a curtailment provision, the provision was not similar to the one included in agreements with its affiliates. The Commission, therefore, directed Detroit Edison to file a second compliance filing.

4. On January 21, 2005, Detroit Edison filed a second compliance filing in response to the Commission's December 22 Order. On March 1, 2005, Detroit Edison amended the second compliance filing to include a revision inadvertently omitted from the filing.

Notice of Filings and Pleadings

5. Notice of Detroit Edison's January 21, 2005 compliance filing was published in the *Federal Register*, 70 Fed. Reg. 6434 (2005), with protests or interventions due on or before February 11, 2005. The date for filing protests or interventions was subsequently extended until February 16, 2005. On February 28, 2005, Dearborn filed a protest out of time. On March 15, 2005, Detroit Edison filed an answer to Dearborn's protest.

6. Notice of Detroit Edison's March 1, 2005 amendment to the January 21, 2005 compliance filing was published in the *Federal Register*, 70 Fed. Reg. 12,673 (2005), with protests or interventions due on or before March 22, 2005. None was filed.

Discussion

Procedural Matters

7. Rule 213(a)(2) of the Commission's Rules of Practice and Procedure, 18 C.F.R. § 385.213(a)(2) (2005), prohibits an answer to a protest unless otherwise ordered by the decisional authority. We will accept Detroit Edison's answer to Dearborn's protest because it has provided information that assisted us in our decision-making process.

Analysis

A. Retail Access Charges Amendments

8. In its comments, Dearborn argues that revised section 8.3 in Detroit Edison's January 21, 2005 compliance filing fails to comply with the Commission's direction to remove all references to retail access charges from the Agreement. Specifically, Dearborn notes that the final sentence in the first paragraph of section 8.3 states: "The provisions herein shall be in addition to, and shall not limit or supersede, *other applicable* metering requirements." According to Dearborn, the italicized words were newly added by Detroit Edison. Dearborn argues that the addition of those words in combination with Detroit Edison's deletion of the words "established in the OATT or the Company's Retail Access Service Tariff" in an earlier compliance filing has the effect of retaining the

metering requirements imposed under a state retail access tariff; Dearborn explains that "other applicable metering requirements" is a broad term that would include metering imposed by any source, state or Federal. Dearborn, therefore, requests the Commission to direct Detroit Edison to modify the final sentence in the first paragraph of section 8.3 to state: "The provisions herein shall be in addition to, and shall not limit or supersede, metering requirements established in the OATT."

9. In its answer, Detroit Edison argues that it removed all references to "a state-retail access tariff" or charges under that tariff in section 8.3 as the Commission directed in the December 22 Order. Detroit Edison argues further that the provision, as revised, does not impose any affirmative obligation on Dearborn or Detroit Edison, but merely memorializes the parties' intention that the metering provision of section 8.3 not supersede or waive other applicable metering provisions that arise elsewhere. Detroit Edison argues that its insertion of the words "other applicable" in the final sentence in the first paragraph of section 8.3 gives meaning to what otherwise would be a non-meaningful sentence.

10. Detroit Edison also argues that insertion of the phrase "other applicable" preserves the original meaning of the sentence. According to Detroit Edison, the revised sentence recites the legal truism that the metering obligations the parties memorialized in the Agreement are separate and apart from metering requirements that might otherwise apply to the parties and their facilities. Detroit Edison points out that it has an obligation to operate and maintain its distribution system in a reliable and secure manner and in a manner that supports the reliability and security of the Detroit Edison system. Detroit Edison states that metering facilities and equipment are important components of safe and reliable interconnected and integrated systems. Detroit Edison asserts that the parties should be subject to applicable metering requirements established by applicable law, regulation, order, practice, or other authority. Detroit Edison notes that, if advances in technology or refinements in regulation or utility practices lead to the promulgation of new or different metering requirements in the future, during the 25 years remaining in the Agreement's term, and, if those metering requirements are "applicable" to the parties by virtue of the jurisdiction of the promulgator over the parties or the parties' obligation or by voluntary agreement to abide by those requirements, then nothing in section 8.3 of the Agreement should supersede those requirements or exempt the parties from compliance. Detroit Edison concludes, therefore, that section 8.3, as revised, does not impose an affirmative obligation on either party to abide by any particular metering requirements (other than the metering requirements memorialized in the first sentence of section 8.3, which Detroit Edison notes Dearborn does not dispute).

11. We disagree with Detroit Edison. In the December 22 Order, the Commission's direction to Detroit Edison to remove from its agreement all references to retail matters that are subject to state law was clear. The Commission explained that there was no place in an agreement subject to this Commission's jurisdiction for references to a state-

jurisdictional retail tariff or to charges under that tariff. In its January 21, 2005[3] compliance filing, Detroit Edison inserted the phrase "other applicable" in section 8.3 in a sentence which now would read, "The provisions herein shall be in addition to, and shall not limit or supercede, other applicable metering requirements." This addition was not authorized or directed by the Commission. Moreover, rather than giving meaning to an otherwise non-meaningful sentence as Detroit Edison argues,[4] the insertion of the phrase "other applicable" now results in a new, broadened implication that is, as Dearborn states,[5] opposite of the original intention of this Commission.

12. Accordingly, we direct Detroit Edison submit a third compliance filing to remove the phrase "other applicable" from the final sentence in the first paragraph of section 8.3 of the Agreement, and to insert after the phrase "metering requirements" the phrase "established in the OATT" within thirty (30) days of the date of this order. With these revisions, the final sentence in the first paragraph of section of 8.3 should read as follows: "The provisions herein shall be in addition to, and shall not limit or supercede, metering requirements established in the OATT." This language is consistent with Detroit Edison's earlier revision to this section, the only difference being that the sentence is ended after "OATT." The sentence, as revised, is also in keeping with the intent of the Commission that this Agreement is subject to Commission jurisdiction and, as such, is subject to a Commission-approved OATT. There should be no doubt by either party that the metering requirements in this Agreement are subject only to the Commission-approved OATT.

B. <u>Curtailment Provision Amendment</u>

13. In its comments, Dearborn points out that Detroit Edison failed to remove the final sentence in the curtailment provision in section 7.8 of the Agreement as directed by the Commission in the December 22 Order. Dearborn, therefore, requests the Commission to direct Detroit Edison to delete that sentence. In its answer, Detroit Edison states that it has resolved Dearborn's concern with its March 1, 2005 amendment to the January 21, 2005 compliance filing deleting the final sentence in section 7.8 in its entirety.

14. With Detroit Edison's March 1, 2005 amendment to its January 21, 2005 compliance filing deleting the final sentence in section 7.8 of the Agreement, we find that Detroit Edison has complied with the Commission's direction in the December 22 Order

---

[3] December 22 Order, 109 FERC ¶ 61,329 at P 18.

[4] Detroit Edison Answer at 6.

[5] Dearborn Comments at 3.

to include a curtailment provision similar to the curtailment provisions in its agreements with its affiliates.

The Commission orders:

(A) Detroit Edison's January 21, 2005 compliance filing, as amended, is hereby conditionally accepted, effective January 22, 2005, as discussed in the body of this order.

(B) Detroit Edison is hereby directed to submit a compliance filing, as discussed in the body of this order, within thirty (30) days of the date of this order.

By the Commission.

(S E A L)

Magalie R. Salas,
Secretary.