

STATE OF MICHIGAN

BEFORE THE MICHIGAN PUBLIC SERVICE COMMISSION

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In the matter, on the Commission’s own motion,)
regarding the regulatory reviews, revisions,)
determinations, and/or approvals necessary for)
DTE ELECTRIC COMPANY to fully comply with)
Public Acts 286 and 295 of 2008.)
_____)

Case No. U-16582

At the September 10, 2013 meeting of the Michigan Public Service Commission in Lansing,
Michigan.

PRESENT: Hon. John D. Quackenbush, Chairman
Hon. Greg R. White, Commissioner
Hon. Sally A. Talberg, Commissioner

ORDER

On February 22, 2011, the Commission commenced this case to facilitate DTE Electric Company f/k/a The Detroit Edison Company (DTE Electric) in obtaining the regulatory reviews, determinations, and approvals necessary for it to fully comply with 2008 PA 295, MCL 460.1001 *et seq.* (Act 295).

On August 12, 2013, DTE Electric filed an application requesting *ex parte* Commission review and approval of a long-term, non-firm power purchase agreement (PPA) with Big Turtle Wind Farm, LLC (Big Turtle). According to DTE Electric’s application, the PPA is for 20 megawatts (MW) of energy, capacity, and renewable energy credits from a wind farm in Huron County. Delivery under the PPA is expected to begin in 2014. In addition, DTE Electric requested: (1) *ex parte* approval of the transfer prices, as set forth in Exhibit A-11 in Case

No. U-17302, for recovery under the company's power supply cost recovery (PSCR) process; (2) *ex parte* approval of the capacity charges, which are included in the transfer prices; (3) *ex parte* approval of the recovery of the remainder of costs associated with the PPA through DTE Electric's revenue recovery mechanism as an incremental cost of compliance; (4) *ex parte* assurance that the full costs of the PPA will be recovered through the combined application of the transfer price mechanism in the PSCR, application of the revenue recovery mechanism surcharges under Act 295, and other mechanisms as determined by the Commission to recover these costs after the 20-year renewable energy plan period; (5) *ex parte* approval of the future recognition and recovery of imputed debt cost, subject to reconciliation; and (6) *ex parte* grant of any additional approvals that the Commission may find necessary under 2008 PA 295 or MCL 460.6j.

DTE Electric states that the PPA resulted from an unsolicited bid submission. Pursuant to MCL 460.1033(1)(a)(ii) and MCL 460.1033(1)(b), the company may enter into an unsolicited contract if it determines that the proposal provides opportunities that may not otherwise be available or commercially practical. DTE Electric states that the contract is with a facility that is expected to contain more than 50% Michigan-sourced content in terms of materials, components, logistics, and labor, compared to an average of 30% Michigan-sourced content for other DTE Electric wind farms. In addition, construction on the project is expected to begin in 2013, in time to take advantage of federal production tax credits. Thus, DTE Electric claims that the PPA with Big Turtle provides commercial benefits and opportunities that may not otherwise be available.

DTE Electric filed a copy of the PPA, and other related material, with certain sensitive portions of the PPA redacted to protect confidential information that might negatively affect the competitive market. However, DTE Electric offered the Commission Staff (Staff) the opportunity to review unredacted versions of the document.

In its application, DTE Electric states that the term of the PPA is 20 years and that the estimated pricing is up to \$53.00 per megawatt-hour. According to DTE Electric, the average price for the PPA is favorable when compared to wind contracts previously approved by the Commission.

DTE Electric further states that the requested approvals will not result in any change in rates or rate schedules and will not result in an increase in the cost of service to customers because the contracts are consistent with the planning activities, expenses, and revenue recovery mechanisms described in the company's amended renewable energy plan in Case No. U-16582, approved on December 20, 2011. Therefore, DTE Electric's application may be approved without notice or hearing pursuant to MCL 460.6a(1).

The Staff reviewed DTE Electric's application and the PPA and, except for the company's request to use transfer prices that have not yet been approved and its request to include imputed debt, recommends that the Commission approve the PPA.

Discussion

MCL 460.1033 provides in part (emphasis added):

(1) Subject to subsections (2) and (3), an electric provider that had 1,000,000 or more retail customers in this state on January 1, 2008 shall obtain the renewable energy credits that are necessary to meet the renewable energy credit standard in 2015 and thereafter as follows:

* * *

(b) At least 50% of the renewable energy credits shall be from renewable energy contracts that do not require transfer of ownership of the applicable renewable energy system to the electric provider or from contracts for the purchase of renewable energy credits without the associated renewable energy. A renewable energy contract or contract for the purchase of renewable energy credits under this subdivision shall be executed after a competitive bidding process conducted pursuant to guidelines issued by the commission. **However, an electric provider may consider unsolicited proposals presented to it outside of a competitive bid process by a renewable energy system developer that is not affiliated with the**

electric provider. If the provider determines that such an unsolicited proposal provides opportunities that may not otherwise be available or commercially practical, the provider may enter into a contract with the developer. The contract is subject to review and approval by the commission under section 21.

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(3) An electric provider shall submit a contract entered into pursuant to subsection (1) to the commission for review and approval. If the commission approves the contract, it shall be considered to be consistent with the electric provider's renewable energy plan. **The commission shall not approve a contract based on an unsolicited proposal unless the commission determines that the unsolicited proposal provides opportunities that may not otherwise be available or commercially practical.**

MCL 460.1037 provides in part:

If, after the effective date of this act, an electric provider whose rates are regulated by the commission enters a renewable energy contract or a contract to purchase renewable energy credits without the associated renewable energy, the commission shall determine whether the contract provides reasonable and prudent terms and conditions and complies with the retail rate impact limits under section 45. In making this determination, the commission shall consider the contract price and term.

After reviewing the proposed PPA, and considering the factors under Sections 21, 33, and 37 of Act 295 and the Staff's recommendation, the Commission finds that the PPA should be approved. However, DTE Electric's request to apply the transfer price schedule it proposes in Case No. U-17302 is denied, as is its request for future recognition and recovery of imputed debt. As was discussed in the October 31, 2012 order in this docket, MCL 460.1047(2)(b)(iv) prohibits the approval of new transfer prices in an *ex parte* proceeding. Thus, the Commission agrees to provide assurance that the full cost of the PPA will be recoverable through the combined application of the transfer price mechanism, subject to the final approval of the transfer price schedule in Case No. U-16656, and application of the renewable energy surcharges.

In the March 18, 2010 order in Case No. U-15699, p. 12, the Commission noted "how difficult it is to predict how ratings agencies will react to changes in various factors, including financial

metrics.” Further, on p. 6 of the September 14, 2010 order in Case No. U-15806, the Commission ordered that, “[t]he Detroit Edison Company shall submit requests for imputed debt-related cost recovery in a future general rate case proceeding. The company shall bear the burden of proof that the infusion of equity resulting from imputed debt is necessary.” The Commission has repeatedly found that the accounting associated with imputed debt is best handled in a general rate case proceeding because a company’s total financial metrics can be analyzed and the Staff can better determine how a particular PPA or a combination of PPAs has affected these metrics. At such time, the company would bear the burden of proof that the infusion of equity resulting from imputed debt is necessary.

Ex parte review and approval of the PPA is appropriate because the contract will not affect rates or rate schedules resulting in an increase in the cost of service to customers. Furthermore, as stated in the Commission’s December 4, 2008 order in Case No. U-15800, the Commission intends to act on requests for contract approval within 30 days of the date that the Commission has all necessary information needed to make the determination. The Commission has all necessary information needed to approve this contract. In the Commission’s view, expeditious treatment of renewable energy contracts is needed to encourage development of the most cost practical and highest quality renewable energy resources. The Commission finds no prohibition against *ex parte* approval of a renewable energy purchase agreement in Act 295.

THEREFORE, IT IS ORDERED that:

A. DTE Electric Company’s power purchase agreement with Big Turtle Wind Farm, LLC, is approved for the purposes of compliance with 2008 PA 295.

B. If necessary, DTE Electric Company shall submit requests for imputed debt-related cost recovery in a future general rate case proceeding. The company shall bear the burden of proof that the infusion of equity resulting from imputed debt is necessary.

The Commission reserves jurisdiction and may issue further orders as necessary.

Any party desiring to appeal this order must do so in the appropriate court within 30 days after issuance and notice of this order, under MCL 462.26.

MICHIGAN PUBLIC SERVICE COMMISSION

John D. Quackenbush, Chairman

Greg R. White, Commissioner

Sally A. Talberg, Commissioner

By its action of September 10, 2013.

Mary Jo Kunkle, Executive Secretary