

168 FERC ¶ 61,114  
UNITED STATES OF AMERICA  
FEDERAL ENERGY REGULATORY COMMISSION

Before Commissioners: Neil Chatterjee, Chairman;  
Cheryl A. LaFleur, Richard Glick,  
and Bernard L. McNamee.

DTE Electric Company  
Heritage Stoney Corners Wind Farm I, LLC

Docket No. ER19-2358-000

ORDER GRANTING AUTHORIZATION TO MAKE AFFILIATE SALES

(Issued August 26, 2019)

1. On July 3, 2019, DTE Electric Company (DTE Electric), on behalf of Heritage Stoney Corners Wind Farm I, LLC (Stoney Corners) (collectively, Applicants), requested authorization under section 205 of the Federal Power Act (FPA)<sup>1</sup> and sections 35.39(b) and 35.44(a) of the Commission's regulations<sup>2</sup> to make affiliate sales under an existing power purchase agreement (PPA). The parties to the PPA are not currently affiliates, but are expected to become affiliated when DTE Sustainable Generation Holdings, LLC (DTE Sustainable Generation Holdings) acquires all the membership interests in Stoney Corners from Northwestern Wind Energy, LLC (Northwestern Wind), Muskegon Energy Company (Muskegon), and Rock Land, LLC (Rock Land) (Proposed Transaction).<sup>3</sup> As discussed below, we authorize continued sales under this PPA after the Proposed Transaction because it was negotiated at arms-length several years before the Proposed Transaction and, as such,

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<sup>1</sup> 16 U.S.C. § 824d (2012).

<sup>2</sup> 18 C.F.R. §§ 35.39(b) and 35.44(a) (2019).

<sup>3</sup> DTE Electric and Stoney Corners submitted an application pursuant to section 203 of the FPA to request the authorizations necessary to complete the Proposed Transaction. *See* DTE Electric Company, Application For Authorization Under Section 203 of the Federal Power Act, Request for Waivers, Request for Expedited Consideration, Request for Confidential Treatment, and Request for 21-Day Comment Period, Docket No. EC19-111-000 (filed July 3, 2019).

satisfies the Commission's concerns regarding the potential for affiliate abuse. This authorization will take effect as of the date of the consummation of the Proposed Transaction.

## **I. Background**

2. Stoney Corners owns a 60 megawatt (MW) wind generation facility in Missaukee County, Michigan (Stoney Corners Facility).<sup>4</sup> Approximately 58 percent of the membership interests in Stoney Corners are currently held by Northwestern Wind, 38 percent are currently held by Muskegon, and four percent are currently held by Rock Land. Pursuant to the Proposed Transaction, DTE Sustainable Generation Holdings will acquire 100 percent of the membership interests in Stoney Corners. DTE Electric, an affiliate of DTE Sustainable Generation Holdings, currently purchases 24 MW of output from the Stoney Corners Facility pursuant to a 20-year PPA that expires on December 31, 2030. The remaining output of the Stoney Corners Facility is sold under two other long-term PPAs with third parties that are not affiliated with Stoney Corners or DTE Electric.<sup>5</sup> DTE Electric's agreement to purchase power from the Stoney Corners Facility (and, by extension, the Garden Wind Facility) was negotiated at arms-length between unaffiliated parties, executed, and approved by the Michigan Public Service Commission in 2009.

3. Following consummation of the Proposed Transaction, sales pursuant to the PPA between Stoney Corners and DTE Electric will be affiliate sales transactions.

4. Applicants argue that there is no potential for affiliate abuse because the existing PPA was negotiated at arms-length between unaffiliated parties nearly a decade ago. They state that the rates DTE Electric pays for electric energy and capacity under the PPA will not change as a result of consummating the Proposed Transaction and, therefore, the pricing terms of the PPA are evidence of prices that DTE Electric, as a non-affiliated buyer, was willing to pay. Applicants further state that because the terms

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<sup>4</sup> Stoney Corners is authorized to sell electric energy, capacity, and certain ancillary services at market-based rates. *See Heritage Stoney Corners Wind Farm I, LLC*, Docket No. ER11-2731-000 (March 17, 2011) (delegated order).

<sup>5</sup> Stoney Corners also sells 8 MW of wind-generated electricity from a qualifying small power production facility (Garden Wind Facility), which is owned by Heritage Garden Wind Farm I, LLC (Heritage Garden), an affiliate of Stoney Corners. While DTE Electric will become affiliated with Heritage Garden as a result of the Proposed Transaction, Heritage Garden is not a party to the Stoney Corners PPA or any other power sales agreement with DTE Electric and therefore authorization under 18 C.F.R. § 35.39(b) or 18 C.F.R. § 35.44(a) is not required. Application at 3.

of the PPA will not change as a result of the Proposed Transaction, the PPA is benchmark evidence that shows the prices, terms, and conditions of sales made by non-affiliated sellers.<sup>6</sup>

## II. Notice of Filing

5. Notice of this filing was published in the *Federal Register*,<sup>7</sup> with interventions and protests due on or before July 24, 2019. None was filed.

## III. Discussion

### A. Affiliate Abuse Analysis

6. At issue here is whether the affiliate sales transactions described above satisfy the Commission's concerns regarding the potential for affiliate abuse. In *Edgar*, the Commission stated that, in cases where affiliates are entering into market-based rate agreements, it is essential that ratepayers be protected and that transactions be above suspicion in order to ensure that the market is not distorted.<sup>8</sup> Under *Edgar*, the Commission has approved affiliate sales after the Commission has determined that, based on the evidence, the proposed sale was a result of direct head-to-head competition between affiliated and competing unaffiliated suppliers.<sup>9</sup>

7. *Edgar* describes three types of evidence that demonstrate a lack of affiliate abuse: (1) evidence of direct head-to-head competition; (2) evidence of the prices non-affiliated buyers were willing to pay for similar services from the affiliate; or (3) benchmark evidence that shows the prices, terms, and conditions of sales made by non-affiliated sellers.<sup>10</sup>

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<sup>6</sup> *Id.* at 6.

<sup>7</sup> 84 Fed. Reg. 32904 (2019).

<sup>8</sup> *Boston Edison Co. Re: Edgar Electric Energy Company*, 55 FERC ¶ 61,382 (1991) (*Edgar*).

<sup>9</sup> *Id.* at 62,167-69. See also *Connecticut Light & Power Co.*, 90 FERC ¶ 61,195, at 61,633-34 (2000); *MEP Pleasant Hill, LLC*, 88 FERC ¶ 61,027, at 61,059-60 (1999); *Aquila Energy Marketing Corp.*, 87 FERC ¶ 61,217, at 61,857-58 (1999).

<sup>10</sup> *Edgar*, 55 FERC ¶ 61,382 at 62,168-69; *Market-Based Rates for Wholesale Sales of Electric Energy, Capacity and Ancillary Services by Public Utilities*, Order No. 697, 119 FERC ¶ 61,295, P 532 n.544, *clarified*, 121 FERC ¶ 61,260 (2007), *order on reh'g*, Order No. 697-A, 123 FERC ¶ 61,055, *clarified*, 124 FERC ¶ 61,055, *order on*

8. We find that Applicants have set forth evidence as contemplated in *Edgar* to ensure that the affiliate sales are above suspicion, the market is not distorted, and captive ratepayers are protected. Specifically, the PPA was negotiated at arms-length several years ago by unaffiliated parties. The Commission has approved similar affiliate sales associated with long-term PPAs that had been negotiated between parties several years before they became affiliates.<sup>11</sup> The Commission has found that arms-length pricing terms in such PPAs constitute evidence of the price purchasers were willing to pay for identical services in the same market from an unaffiliated seller and provide a precise benchmark for the prices, terms, and conditions of sales made by unaffiliated sellers to purchasers.<sup>12</sup>

### **B. Other Issues**

9. This order satisfies the requirement that Stoney Corners must first receive Commission authorization, pursuant to FPA section 205, before engaging in power sales at market-based rates for the affiliate sales discussed herein. We note that Stoney Corners must receive prior approval from the Commission under FPA section 205 for any other sales to affiliates with a franchised electric service territory and captive customers.

10. Finally, we direct Stoney Corners to submit a compliance filing, within 30 days of the date of the consummation of the Proposed Transaction, notifying the Commission of such consummation and revising the limitations and exemptions section of its market-based rate tariff to list the specific, limited authorizations granted herein and to include a citation to this order.<sup>13</sup>

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*reh'g*, Order No. 697-B, 125 FERC ¶ 61,326 (2008), *order on reh'g*, Order No. 697-C, 127 FERC ¶ 61,284 (2009), *order on reh'g*, Order No. 697-D, 130 FERC ¶ 61,206 (2010), *aff'd sub nom. Mont. Consumer Counsel v. FERC*, 659 F.3d 910 (9th Cir. 2011), *cert. denied sub nom. Public Citizen, Inc. v. FERC*, 567 U.S. 934 (2012).

<sup>11</sup> *See, e.g., Flat Ridge 2 Wind Energy LLC*, 167 FERC ¶ 61,036, at P 10 (2019) (authorizing affiliate transaction under a PPA that was negotiated several years prior by third parties).

<sup>12</sup> *Id.*

<sup>13</sup> Order No. 697, 119 FERC ¶ 61,295 at App. C; Order No. 697-A, 123 FERC ¶ 61,055 at P 384.

The Commission orders:

(A) Stoney Corners is hereby authorized to make affiliate wholesale power sales under the existing PPA described in its application, effective upon consummation of the Proposed Transaction, as discussed in the body of this order.

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

By the Commission.

( S E A L )

Kimberly D. Bose,  
Secretary.