UNITED STATES OF AMERICA
FEDERAL ENERGY REGULATORY COMMISSION

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

Michigan Electric Transmission Company, LLC Docket Nos. EC04-110-002
ER04-847-002
ER04-847-003

ORDER ON COMPLIANCE FILING AND REQUEST FOR CLARIFICATION

(Issued November 1, 2005)

1. In this order, the Commission accepts the revised transmission ownership and operating agreements between Michigan Electric Transmission Company, LLC (METC) and each of Michigan Public Power Agency (MPPA) and Michigan South Central Power Agency (MSCPA and, together with MPPA, the Michigan Agencies) submitted by the parties on June 30, 2005 in compliance with the Commission's October 27, 2004 Original Order and March 29, 2005 Order on Rehearing in these proceedings.[1] In addition, we address Consumers Energy Company's (Consumers Energy) request for clarification of the Order on Rehearing.

Background

2. METC is a transmission-owning member of the Midwest Independent Transmission System Operator, Inc. (Midwest ISO), and transmission service across its facilities is provided under the Midwest ISO's Open Access Transmission Tariff (OATT).

3. The Michigan Agencies are municipal power agencies in Michigan (and are not public utilities subject to the Commission's jurisdiction under section 205 of the Federal Power Act (FPA)),[2] and have certain ownership interests in and transmission service

[1] *Michigan Electric Transmission Co., LLC*, 109 FERC ¶ 61,080 (2004) (Original Order), *order on reh'g*, 110 FERC ¶ 61,384 (2005) (Order on Rehearing).

[2] 16 U.S.C. § 824d (2000).

rights over the METC transmission system. MPPA is a transmission-owning member and transmission customer of the Midwest ISO and MSCPA is a transmission customer of the Midwest ISO.

4. On May 17, 2004, METC filed an application under section 203 of the FPA[3] for authorization to transfer ownership interests in certain of its 345 kilovolt transmission facilities to the Michigan Agencies (Application). METC also sought Commission approval under section 205 of the FPA of new transmission ownership and operating agreements between it and each of the Michigan Agencies (New Agreements) that were necessitated by the ownership transfer.

5. The New Agreements provide that METC will manage, control, operate and maintain the Midwest ISO facilities, except where the Midwest ISO has that power, and that the Michigan Agencies will bear their share of operation and maintenance costs for the facilities. The New Agreements also provide each Michigan Agency transmission service rights between multiple receipt and delivery points over the METC transmission system.[4]

6. The Application stated that the proposed transfer of ownership interests and the New Agreements would, among other things: (1) integrate the Michigan Agencies into the Midwest ISO; (2) integrate the Michigan Agencies into the Greater Michigan Joint Transmission Pricing Zone (Greater Michigan Joint Zone) established under a settlement conditionally approved by the Commission in Docket No. ER02-2458-000 (Joint Zone Proceeding);[5] and (3) reflect agreeable arrangements among the Midwest ISO and the parties for the integration of the agreements into both the Midwest ISO and the Greater Michigan Joint Zone.

7. In the Original Order, the Commission authorized the disposition of facilities and accepted the Application and the New Agreements, subject to conditions. One of the conditions was that the transmission service provisions in the New Agreements be severed, and that Michigan Agencies take all transmission services associated with the

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[3] 16 U.S.C. § 824b (2000).

[4] The New Agreements provide MPPA with 90 megawatts of transmission service capacity and MSCPA with 31.5 megawatts of transmission service capacity.

[5] *See Midwest Independent Transmission System Operator, Inc.*, 106 FERC ¶ 61,219 (2004) (Joint Zone Order). *See also order on reh'g*, 112 FERC ¶ 61,351 at P 36 (2005) (Joint Zone Rehearing Order).

New Agreements, under the Midwest ISO OATT, through service agreements under that OATT. The Commission allowed the New Agreements to take effect on the date that transfer of ownership interests closed, as requested. The Commission directed METC to file revised agreements, modified to reflect the conditions of the Original Order.[6]

8. In the Order on Rehearing, the Commission reversed a prior finding and allowed the rates, terms and conditions of the transmission service underlying the New Agreements to take place under the Midwest ISO's OATT, while at the same time allowing a capacity offset mechanism to apply in lieu of the payment of license plate zonal transmission rates addressed in Schedules 7, 8, and 9 of the OATT.[7] Accordingly, the Commission required METC to submit revised New Agreements in compliance with the Original Order as modified by the Order on Rehearing.[8]

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[6] The original deadline for filing the revised New Agreements was extended to accommodate resolution of the requests for rehearing of the Original Order.

[7] Order on Rehearing at P 17, as revised by a March 30 Errata Notice, explains:

> Upon further consideration, we agree…that it is not possible to preserve the parties' financial bargain [in settlement] through an arrangement for sharing revenues received for transmission service under the Midwest ISO OATT. Therefore, while, as discussed below, we will still require that the transmission service provisions be removed from the New Agreements and that the transmission service contemplated in those agreements be provided under the Midwest ISO's OATT, through service agreements under the Midwest ISO's OATT, we will allow capacity offsets or credits equal to the MW capacity amounts currently defined in the New Agreements, to the billing demand for the license plate zonal changes in Schedules 7, 8 and 9 for Network Integration Transmission Service or Point-to-Point Transmission Service that the Michigan Agencies take under the Midwest ISO OATT. The Michigan Agencies would pay all other Midwest ISO OATT charges, except for the license plate zonal transmission rates in Schedules 7, 8, and 9. This rate treatment associated with these capacity offsets or credits should be reflected in Schedules 7, 8, and 9 of the Midwest ISO OATT. This will ensure that the additional transmission service rights provided pursuant to [settlement] are consistent with the applicable OATT…

[8] METC was directed to file the revised New Agreements within 30 days of the Order on Rehearing. At the request of the parties, the Commission subsequently extended this date, until June 30, 2005.

Public Notice, Intervention And Protests

9. On April 28, 2005, Consumers Energy filed a request for clarification or, in the alternative, rehearing of the Order on Rehearing.[9] METC filed an answer to Consumers Energy's request for clarification on May 13, 2005. Consumers Energy then filed an answer to METC's answer on May 31, 2005.

10. METC submitted revised New Agreements, to comply with Commission directions, on June 30, 2005. Notice of METC's Compliance Filing was published in the *Federal Register*, 70 Fed. Reg. 41,000 (2005), with motions to intervene or protest due by July 21, 2005. Consumers Energy filed timely comments.

Commission Discussion

A. Procedural Matters

11. Rule 213(a)(2) of the Commission's Rules of Practice and Procedure, 18 C.F.R. § 385.213(a)(2)(2005), prohibits answers to a request for rehearing unless otherwise ordered by the decisional authority. We will accept METC's answer to Consumers Energy's request for clarification because it has provided information that assisted us in our decision-making process. We are not persuaded to accept Consumers Energy's answer and will, therefore, reject it.

B. Consumers Energy's Request for Clarification

1. Consumers Energy's Arguments

12. Consumers Energy asks how the capacity offset provided under the revised New Agreements would function if the Greater Michigan Joint Zone is implemented, and non-METC facilities become involved, as proposed and conditionally approved by the Commission in the Joint Zone Proceeding.[10] Consumers Energy contends that the Order

[9] Consumers Energy is METC's predecessor in ownership of certain transmission facilities.

[10] Consumers Energy says that, in the Joint Zone Order, the Commission recognized the same issue raised in Consumer Energy's request for clarification with regard to Wolverine Power Supply Cooperative, Inc. (Wolverine), another party in the Greater Michigan Joint Zone.

on Rehearing[11] recognizes the Michigan Agencies' investment in METC transmission facilities, as well as their agreement to pay a portion of the operating costs of those facilities, and that the Order on Rehearing therefore relieves the Michigan Agencies of having to pay their share of the costs of those facilities a second time, through payment of the Midwest ISO's OATT Schedule 7, 8 and 9 base transmission rates.

13. Consumers Energy acknowledges that the application of this capacity offset mechanism is clear when the Michigan Agencies take service in a pricing zone in which all facilities are owned at least in part by METC. However, it argues that it is not clear how the credit offset mechanism will apply in the future, if the Michigan Agencies take service in the contemplated Greater Michigan Joint Zone. Consumers Energy contends that the Order on Rehearing does not address how the Michigan Agencies would bear their share of the cost responsibility for any non-METC facilities that may be added in the future to form the Greater Michigan Joint Zone. It argues that the Michigan Agencies should be required to pay any increased level of Schedules 7, 8 and 9 rates attributable to new non-METC facilities that may be added in the future in the Greater Michigan Joint Zone. Consumers Energy states that it would be arbitrary and capricious to relieve the Michigan Agencies of cost responsibility for non-METC facilities added to the Greater Michigan Joint Zone, as well as unduly discriminatory to place the responsibility on all load using those facilities except the Michigan Agencies' transmission entitlement load.

14. Consumers Energy also requests clarification of footnote 4 in the Background section of the Order on Rehearing. Consumers Energy contends that the footnote makes incorrect implications about the settlement developments that led to the New Agreements, and notes that the language fails to correctly track the original presentation of the matter in the Application.

2. <u>Michigan Agencies' Answer</u>

15. Michigan Agencies ask the Commission to reject Consumers Energy's request for clarification, arguing that is procedurally inappropriate. According to Michigan Agencies, Consumers Energy is attempting to have the Commission revisit an issue that the Commission has already considered in the Joint Zone Proceeding. They state that Consumers Energy, in citing Commission discussion in the Joint Zone Order, has already identified how the parties should account for non-METC facilities in the Greater Michigan Joint Zone. Michigan Agencies contend that Consumers Energy's request for clarification is therefore a collateral attack on prior Commission-issued orders approving

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[11] *See* Order on Rehearing at P 17.

the Midwest ISO's zonal rate structure,[12] and that the instant proceeding is not the appropriate venue in which to mount such a challenge. If, as Consumers Energy alleges, it is not challenging the Commission's findings in the Joint Zone Proceeding, then, according to Michigan Agencies, Consumers Energy completely misunderstands the Midwest ISO pricing structure and the treatment of capacity offsets.

16. Finally, Michigan Agencies argue that Consumers Energy's requested clarification regarding footnote 4 in the Background section of the Order on Rehearing should be denied. Michigan Agencies note that the explanatory statement where the footnote appears in the Commission's Background section is correct and that therefore no clarification is needed.

3. Commission Determination

17. To the extent that Consumers Energy is raising matters of the treatment of capacity offsets in the Greater Michigan Joint Zone that were addressed in the Joint Zone Proceeding, we will dismiss Consumers Energy's request for clarification as an attempt to challenge here the findings in another proceeding. Consumers Energy admits that its concern regarding the capacity offsets has already been addressed by the Commission in the Joint Zone Proceeding.[13] There, in response to the same concern raised by Consumers Energy, the Commission directed entities that are contributing facilities to create the Greater Michigan Joint Zone (including MPPA) to reduce proportionally the costs associated with those facilities so that the entities that have capacity offsets and are exempt from paying Schedule 7, 8, or 9 charges bear their share of the cost responsibility for non-METC facilities.[14] Consumers Energy appears to be seeking assurance that the capacity offset in the New Agreements will be treated the same way.

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[12] *Citing Midwest Independent Transmission System Operator, Inc.*, 84 FERC ¶ 61,231 (1998) (allowing certain transmission-owning public utilities to transfer operational control of their facilities to the Midwest ISO, and accepting the Midwest ISO's OATT); *Midwest Independent Transmission System Operator, Inc.*, 97 FERC ¶ 61,326 (2001) (authorizing the Midwest ISO to operate as a Regional Transmission Organization).

[13] Consumers Energy's Request for Clarification at p 3, citing the Joint Zone Order at P 19.

[14] *Id.*

18. In its response, Michigan Agencies agree with Consumers Energy that the issue of treatment of capacity offsets in the Greater Michigan Joint Zone was resolved in the Joint Zone Proceeding. Therefore, we expect that the capacity offsets under the New Agreements will be treated consistently with the Commission's directives in the Joint Zone Order and Joint Zone Rehearing Order. If Consumers Energy believes that the capacity offset mechanism in the revised New Agreements is being treated inconsistently with the Commission's directive on the capacity offset mechanism in the Greater Michigan Joint Zone, then Consumers Energy may file a complaint under section 206 of the FPA.[15]

19. The Commission also dismisses Consumers Energy's request for clarification of footnote 4 in the Background of the Order on Rehearing. As Consumers Energy concedes, the introductory material is not determinative. As Michigan Agencies point out, the statement referencing the footnote is correct and no clarification is needed. Moreover, the Order on Rehearing does not depend on the statement in Footnote 4.

C. METC's Compliance Filing

1. METC's Revised New Agreements

20. As directed by the Commission, METC submitted revised New Agreements with modifications required by the Original Order and Order on Rehearing. METC explains that the Michigan Agencies and the Midwest ISO reviewed the revisions and found them acceptable. METC and Michigan Agencies request that the revised New Agreements be made effective on the date on which the transfer of the new ownership entitlements occurs.

21. In its Compliance Filing, METC explains that the addition of two new sections to Article 6 in the revised New Agreements are fundamental to the implementation of the Commission's directive that any transmission service taken under the New Agreements must be provided under the Midwest ISO OATT. At the same time, these provisions allow the capacity offset to apply to the payment of license plate zonal transmission rates set forth in Schedules 7, 8, and 9 of the Midwest ISO OATT. METC states that each of the new sections address the current circumstance, in which METC facilities are under the functional control of an RTO. The original sections, which allowed Michigan Agencies to use their capacity entitlements at no charge, are renumbered and clarified to apply only when METC facilities are not under RTO control.

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[15] 16 U.S.C. § 824d (2000).

22. METC explains that the new provisions, sections 6.1.1 and 6.1.3 of the revised New Agreements, provide that the capacity offsets associated with the jointly owned facilities will be governed by the Midwest ISO OATT. Under the OATT, the Michigan Agencies will pay all Midwest ISO charges, except the license plate zonal transmission rates in Schedules 7, 8, and 9.[16] These sections also provide that the transmission facilities in which Michigan Agencies have new ownership entitlements will be under the Midwest ISO's control. They require each of the Michigan Agencies to enter into service agreements with the Midwest ISO regarding the use of these entitlements. METC notes that these sections also recognize the possibility that the Midwest ISO's zonal rate structure may change over time and that amendments may be needed to address how the capacity offsets are applied.

23. METC discusses several conforming revisions. First, METC states that modified section 9.1 in the New Agreements clarifies that, while Michigan Agencies may pay certain RTO charges, they do not need to pay the zonal charges under Schedules 7, 8, and 9 to the extent of their capacity offsets, and that they do not have to pay ancillary services other than losses except as otherwise provided in the agreements. Next, section 10.5.5 of the New Agreements is modified to state that each Michigan Agency shall have evidence that the Midwest ISO will incorporate into the applicable service agreement provisions acceptable to the Agency to implement and maintain the capacity offsets approved in the Commission's Order on Rehearing. Further, METC notes various typographical changes.

24. Finally, METC explains that the easement agreements are not yet executed, although the process is nearing completion. According to METC, Michigan Agencies will provide METC with copies of the easement agreements upon execution, and, consistent with the Original Order, METC will submit executed copies to the Commission within 15 days of the easement agreements becoming final.

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[16] METC explains that the language in new section 6.1.3 differs in each of the Michigan Agencies' revised New Agreements because the respective companies are differently situated. In the revised New Agreement with MPPA, the section addresses the instance in which a municipal system is connected to the wholesale distribution system. In the revised New Agreement with MSCPA, the provision is conditioned upon MSCPA making necessary advance arrangements with Consumers Energy for its use of the wholesale distribution system.

2. Consumers Energy's Comments

25. Consumers Energy takes no position on whether the Compliance Filing meets the conditions of the Commission's orders. Rather, it seeks to clarify the following three matters. First, Consumers Energy states that the discussion of wholesale distribution service in the cover letter to METC's June 30 Compliance Filing is incorrect.[17] METC implies that MSPCA will take wholesale distribution service directly from Consumers Energy, and that MPPA's revised New Agreement provides MPPA an entitlement to use Consumers Energy's wholesale distribution service. Consumers Energy points out, however, that no transmission customers take wholesale distribution service directly from Consumers Energy. It expects that the provision of, and payment for, wholesale distribution service in connection with the revised New Agreements will be covered in the Midwest ISO's service agreements. Consumers Energy notes that, while METC may be obligated to arrange and pay for wholesale distribution service for MPPA, MPPA will not have an entitlement to this service under the revised New Agreement in the same way as it will have an entitlement to transmission service.

26. Second, Consumers Energy refers to the issues it raised in its request for clarification of the Order on Rehearing related to the allocation of transmission rates in sections 6.1.1, 6.1.3 and 9.1 of the New Agreements. Consumers Energy points out that, as of its comment date, the issues remain outstanding.

27. Finally, Consumers Energy challenges the capacity offsets in section 10.55 of the revised New Agreements. It argues that, as the largest the Midwest ISO transmission customer in the METC service territory, it has an interest in ensuring that these capacity offsets are treated properly in the revised New Agreements and that costs are not improperly shifted to other customers as the Midwest ISO's rate structure changes in the future. Consumers Energy states, however, that, rather than speculate now as to how those service agreements should be structured, it will reserve its comments until those agreements are filed with the Commission.

3. Commission's Determination

28. The Commission finds that METC's June 30 Filing to be in compliance with the Original Order and Order on Rehearing, effective on the date on which the transfer of the new ownership entitlements occurs, as requested. However, within 15 days of the date of

[17] *See* METC's June 30 Compliance Filing Transmittal Letter at p. 4.

conveyance, METC is directed to refile the revised New Agreements to show the actual effective date. The commitment to submit the executed easement agreements within 15 days of becoming final is acceptable.

29. We note that, while section 9.1 governs costs that METC may pass through to the agencies, section 6.1.1. requires Michigan Agency adherence to all non-rate terms and conditions of Midwest ISO OATT and the payment of all Midwest ISO OATT charges, including ancillary service charges, except for the charges for transmission service under schedules 7, 8 and 9 of the Midwest ISO OATT.

30. We note Consumers Energy's concern about METC's cover letter explanations. However, the cover letter is not determinative. We find that, while the revised New Agreement provisions at issue are unique in each agreement, a plain reading of each section 6.1.3, with the section 3.4 it references, is clear. We address Consumers Energy's second issue earlier in this order, since it was first raised in the context of its request for clarification.

The Commission orders:

(A) Consumers Energy's request for clarification of the Commission's Order on Rehearing is denied, as discussed in the body of this order.

(B) METC's revised New Agreements in the June 30 Compliance Filing are accepted, to be effective on the date on which the transfer of the new ownership entitlements occurs, as discussed in the body of this order. METC shall refile the revised New Agreements, displaying the actual effective date, within 15 days of the date of transfer.

(C) METC shall submit executed copies of the easement agreements within 15 days of the agreements becoming final, as discussed in the body of this order.

By the Commission.

(S E A L)

Magalie R. Salas,
Secretary.