

UNITED STATES OF AMERICA
FEDERAL ENERGY REGULATORY COMMISSION

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

Michigan Electric Transmission Company, LLC and Docket No. ER06-56-000
Midwest Independent Transmission System Operator, Inc.

ORDER CONDITIONALLY ACCEPTING PROPOSED TARIFF
REVISIONS FOR FILING AND ESTABLISHING HEARING
AND SETTLEMENT JUDGE PROCEDURES

(Issued December 30, 2005)

1. In this order, the Commission conditionally accepts for filing proposed tariff revisions filed by Michigan Electric Transmission Company, LLC (Michigan Electric) and Midwest Independent Transmission System Operator, Inc. (Midwest ISO), to increase rates for Michigan Electric's pricing zone under the Midwest ISO Open Access Transmission and Energy Markets Tariff (TEMT), suspends them for a nominal period, to become effective January 1, 2006, subject to refund, and establishes hearing and settlement judge procedures.

Background

2. By orders dated February 13, 2002, and March 29, 2002, the Commission approved Michigan Electric's proposal establishing it as an independent transmission company¹ and giving Michigan Electric the authority: (1) to use a \$0.98 per kW per month rate for network and point-to-point transmission service, and a \$.056 per kW per month rate for scheduling, system control and dispatch service, for the Michigan Electric pricing zone of the Midwest ISO for the duration of a rate moratorium through December 31, 2004; (2) to defer recovery of depreciation and return on investment in

¹ Michigan Electric became an independently-owned transmission company upon the sale of Michigan Electric by Consumers Energy Company (Consumers Energy) to Michigan Transco Holdings, LP, a partnership managed by Trans-Elect, Inc. (Trans-Elect).

new transmission facilities incurred between January 1, 2001, and December 31, 2004, and amortize those amounts over a five-year period beginning January 1, 2006; (3) to defer and recover over a 20-year period beginning January 1, 2006, an acquisition premium equal to the amount of accumulated deferred income taxes on Michigan Electric's books immediately prior to the sale of Michigan Electric; and (4) to recover carrying costs on those deferred amounts accrued each year from January 2001 through December 2005 and on the unamortized balances of those amounts thereafter.² By subsequent order dated November 17, 2003, the Commission approved Michigan Electric's proposal to use a 13.88 percent return on equity (ROE) (100 basis points above the 12.88 percent ROE that had then been approved for generic use by Midwest ISO transmission owners),³ a target capital structure of 50 percent debt and 50 percent equity through December 31, 2004, and its actual capital structure for 2005, to compute carrying charges on the deferrals.⁴ In a subsequent order dated May 28, 2004, the Commission granted Michigan Electric's request to extend, by one year, through December 31, 2005, the rate moratorium and deferral of recovery of depreciation and return on investment in new transmission facilities.⁵

3. In the instant proceeding, Michigan Electric and Midwest ISO filed revised tariff sheets containing a proposed rate increase to take effect once the rate moratorium expires on December 31, 2005. Michigan Electric proposes to generally follow the formula rate contained in Attachment O of the Midwest ISO TEMT to establish its revenue requirement and rates for the Michigan Electric pricing zone effective January 1, 2006. Michigan Electric proposes modifications to the Attachment O formula rate to reflect recovery of the deferral amounts described above, to reduce the equity component of the

² *Trans-Elect, Inc.*, 98 FERC ¶ 61,142 (February 2002 Order), *order on reh'g*, 98 FERC ¶ 61,368 (2002) (March 2002 Order).

³ *Midwest Independent Transmission System Operator, Inc.*, 100 FERC ¶ 61,262 (2002) (Order on Initial Decision), *order denying reh'g*, 102 FERC ¶ 61,143 (2003), *order on voluntary remand*, 106 FERC ¶ 61,302 (2004). Subsequently, on remand from the court of appeals, the Commission lowered the generic ROE for Midwest ISO transmission owners to 12.38 percent, excluding the 50 basis point incentive adder for participating in a regional transmission organization (RTO). *Midwest Independent Transmission System Operator, Inc.*, 111 FERC ¶ 61,355 (2005) (Order on Remand).

⁴ *Michigan Electric Transmission Company, LLC*, 105 FERC ¶ 61,214 (2003) (November 2003 Order).

⁵ *Michigan Electric Transmission Company, LLC*, 107 FERC ¶ 61,206 (2004) (May 2004 Order).

capital structure to eliminate the accounting treatment of goodwill associated with the sale of limited partner interests,⁶ to reflect a 150 basis-point adder to the 12.38 percent ROE that is currently approved for use by all Midwest ISO transmission owners, and to reflect an income tax allowance for the return on equity associated with partnership interests. Michigan Electric states that the resulting transmission rates are \$1.5869 per kW per month for network service and point-to-point transmission service. Michigan Electric also proposes to adopt the formula rate in Schedule 1 of the Midwest ISO TEMT for scheduling, system control and dispatch service.

Notice, Interventions, Protests and Answers

4. Notice of Michigan Electric's filing was published in the *Federal Register*, 70 Fed. Reg. 66,830 (2005), with protests or interventions due on or before November 10, 2005.
5. MidAmerican Energy Company filed a timely motion to intervene. International Transmission Company (International Transmission) submitted a timely motion to intervene and comments in support of the Attachment O formula rates and incentive rate treatments for independent transmission companies. Consumers Energy filed a timely motion to intervene and protest. Wolverine Power Supply Cooperative, Inc. (Wolverine) submitted a motion to intervene out-of-time. The Michigan Public Power Agency and Michigan South Central Power Agency (Michigan Agencies) submitted a motion to intervene out of time and protest. The Michigan Public Service Commission (the Michigan Commission) submitted a notice of intervention and protest.
6. Michigan Electric filed a motion for leave to answer and answer to the protests and Consumers Energy filed a motion for leave to answer and answer to Michigan Electric's answer.

Discussion

A. Procedural Matters

7. Pursuant to Rule 214 of the Commission's Rules of Practice and Procedure, 18 C.F.R. § 385.214 (2005), the timely, unopposed interventions serve to make the entities that filed them parties to this proceeding. Pursuant to Rule 214(d)(1) of the Commission's Rules of Practice and Procedure, 18 C.F.R. § 385.214(d)(1) (2005), we will also grant Wolverine's and Michigan Agencies' motions to intervene out of time given their interests in the proceeding, the early stage of the proceeding, and the absence of any undue prejudice or delay.

⁶ See *Michigan Transco Holdings, LP*, 105 FERC ¶ 62,013 (2003).

8. 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 and/or answer unless otherwise ordered by the decisional authority. We are persuaded to accept Michigan Electric's and Consumers Energy's answers because they have provided us with information that has assisted us in our decision-making process.

B. Substantive Matters

1. ROE

9. Michigan Electric proposes to modify the formula rate to reflect a proposed 13.88 percent ROE and states that the 13.88 percent ROE will fairly compensate Michigan Electric's investors consistent with Commission policy and precedent, and legislative initiatives, promoting independent ownership and operation of transmission. Michigan Electric notes that the proposed 13.88 percent ROE is consistent with the ROE approved previously for both it and International Transmission, another independently-owned transmission company participating in Midwest ISO. Michigan Electric states that nothing has changed since the 13.88 percent ROE was approved for use in computing the carrying charge on its deferrals that would warrant disparate treatment of Michigan Electric and International Transmission. It states that Michigan Electric and International Transmission compete with one another to attract equity capital and that, as a matter of law, and consistent with fundamental notions of fairness, the Commission may not authorize different or preferential equity returns for similarly-situated companies.

10. Michigan Electric states that its formation was an integral part of the Commission's efforts to secure the benefits of independent transmission and notes that the Commission, on numerous occasions, has recognized the benefits of independent, transmission-only companies; they focus on rigorous and sustained transmission investment, improve transmission system reliability, and promote development of competitive bulk power markets. Michigan Electric states that these consistent policy pronouncements have finally begun to elicit investment community interest in the independent transmission sector.

11. Further, it states that, since its formation in 2002, Michigan Electric's exclusive focus on independent ownership of transmission assets, consistent with Trans-Elect's business model, has resulted in a similar focus and concentration in investments and capital expenditures designed solely to maintain and improve Michigan Electric's systems and services. Michigan Electric submits testimony identifying improvements that it has made or plans to make to its transmission system that it claims demonstrate that Michigan Electric's independent ownership is delivering the system and service improvements anticipated by the Commission when it approved innovative rate treatments to establish Michigan Electric as the first independent transmission company. Michigan Electric states that the continuation of such capital investment and

improvements will be encouraged by maintenance of the Commission's commitment to infrastructure growth through independent ownership, and the Commission can strengthen this commitment and promote regulatory certainty by approving Michigan Electric's proposed ROE and other aspects of its proposal.

12. The Michigan Commission and Consumers Energy argue that Michigan Electric has not demonstrated that 12.38 percent represents an appropriate base-line cost-based ROE for Michigan Electric under current market conditions. The Michigan Commission notes that Michigan Electric does not provide a discounted cash flow (DCF) analysis or other quantitative analysis of the cost-based ROE required by investors. It adds that the 2001 data used in the DCF analysis upon which the Commission relied in approving the 12.38 percent ROE applicable to Midwest ISO transmission owners is now out-dated and that a cost-based ROE of 12.38 percent is not warranted under current market conditions.

13. Protestors also argue that Michigan Electric has not demonstrated that an "incentive" for independence is needed. Michigan Agencies note that Michigan Electric elected to become independent years ago and argue that after the fact premiums by definition are not incentives. The Michigan Commission requests that the proposed ROE be set for hearing to determine, among other things, whether it is appropriate to grant a higher ROE as an incentive for independence, even though Michigan Electric has been an independent transmission company for several years, and whether the incentive is calibrated to the benefits that customers can hope to obtain from independent ownership and operation of transmission assets.

14. Michigan Agencies, the Michigan Commission and Consumers Energy argue that the proposed ROE at least should be reduced to exclude the 50 basis point adder for RTO participation. They note that International Transmission requested and was authorized to use a 100 basis point ROE adder and the 12.88 percent ROE that was then approved for use by all Midwest ISO transmission owners, but that the Commission subsequently, on remand from the courts, vacated its authorization of the 50 basis point adder included in the 12.88 percent.

15. We will allow Michigan Electric to use an ROE of 13.38 percent, reflecting the 12.38 percent ROE approved for use by all Midwest ISO transmission owners under the Midwest ISO TEMT and a 100 basis point adder for independent ownership. However, we will reject Michigan Electric's proposal to adopt a 50 basis point adder for RTO participation, without prejudice to Michigan Electric participating in a proposal to adopt an ROE adder for RTO participation in a proceeding addressing the ROE applicable to all Midwest ISO transmission owners, and direct Michigan Electric and Midwest ISO to adjust the proposed rates reflecting a 13.38 percent ROE prior to billing.

16. In a filing on December 3, 2001 (December 2001 Filing), Midwest ISO proposed revisions to its tariff in order to, among other things, increase the ROE used in the

Attachment O formula rate from 10.5 to 13 percent in all Midwest ISO pricing zones except for the American Transmission Company, LLC (ATCLLC) pricing zone. This proposal was set for hearing, and, in the Order on Initial Decision,⁷ the Commission affirmed the initial decision and adopted an ROE of 12.38 percent for the Midwest ISO transmission owners. In that order, the Commission also provided an upward adjustment of 50 basis points because the transmission owners had turned over operational control of their transmission facilities to an independent entity, Midwest ISO. Although Midwest ISO did not originally propose to increase the ROE in the ATCLLC pricing zone because ATCLLC did not join the December 2001 Filing, the Commission approved ATCLLC's later proposal to adopt this ROE for use under the Attachment O formula rate in *American Transmission Co., LLC*.⁸ The Commission has also approved the adoption of this ROE by other transmission owners that have joined Midwest ISO since the December 2001 Filing was made.⁹ Accordingly, we find it appropriate for Michigan Electric to use the 12.38 percent ROE approved for use by all Midwest ISO transmission owners in the Midwest ISO Attachment O formula rate even though Michigan Electric was not included in the December 2001 Filing. For similar reasons, we will deny Michigan Electric's proposal to adopt the 50 basis point ROE adder that the Commission had originally approved for use by all Midwest ISO transmission owners, but which approval the Commission subsequently vacated on remand from the courts.¹⁰ Rejection of the proposal to adopt the 50 basis point adder is without prejudice to Michigan Electric participating in a proposal to adopt an ROE adder for RTO participation in a proceeding addressing the ROE applicable to all Midwest ISO transmission owners.

17. The Commission has consistently recognized the benefits of independent, stand-alone transmission companies or "transcos."¹¹ Accordingly, in approving the formation

⁷ See *supra* note 3.

⁸ See *American Transmission Company, LLC*, 105 FERC ¶ 61,388 (2003).

⁹ See *Midwest Independent Transmission System Operator, Inc.*, 109 FERC ¶ 61,167 (2004) (Union Electric Company and Central Illinois Public Service Company); *Midwest Independent Transmission System Operator, Inc.*, 110 FERC ¶ 61,080 (2005) (American Transmission Systems, Inc.).

¹⁰ See *supra* note 3.

¹¹ See, e.g., *ITC Holdings Corp.*, 102 FERC ¶ 61,182 at P 62 (*ITC Holdings Corp.*), *reh'g denied*, 104 FERC ¶ 61,033 (2003) ("[W]e believe that International Transmission's for-profit, stand-alone transmission business will bring significant benefits through, among other things, improved asset management, development of innovative services, and improved access to capital markets given a more focused

(continued...)

of International Transmission and Michigan Electric as independent transcos, the Commission approved rate treatments in recognition of the benefits of their business model to customers and to encourage their formation, including a 100 basis point adder to their ROE. The Commission has also, more recently, issued a policy statement clarifying the factors it will consider when evaluating the independence of transcos in the context of transmission rate proposals to facilitate the creation of independent transcos and to stimulate investment in transmission infrastructure by independent transcos.¹² It has also issued a Notice of Proposed Rulemaking pursuant to section 1241 of the Energy Policy Act of 2005 and new section 219 of the Federal Power Act, proposing to amend its regulations to establish incentive-based rate treatments, including incentives to encourage the formation of transcos.¹³ The Commission stated in the NOPR that it would permit transcos to receive an ROE that both encourages transco formation and is sufficient to attract investment, and that it would consider the positive impact that transcos have on transmission investment and in turn on the reliable and economically efficient transmission and generation of electricity when it evaluates ROEs proposed by transcos.¹⁴

18. In approving the initial formation of the nation's first independent transcos, the Commission expressed its expectation that independent for-profit, stand-alone transmission companies will bring significant benefits through, among other things, improved asset management, development of innovative services, improved access to capital markets given a more focused business model than that of vertically-integrated utilities, and reduced potential for discrimination. The Commission recognizes the positive record of investment in transmission infrastructure by Michigan Electric, and believes this is related to its stand-alone independent nature. In the NOPR, the

business model than that of vertically-integrated utilities."); *TRANSLink Transmission Co., L.L.C.*, 99 FERC ¶ 61,106 at 61,455 (2002), *order on reh'g*, 101 FERC ¶ 61,140 (2003) ("We have recognized that the ITC business model can bring significant benefits to the industry. Their for-profit nature with a focus on the transmission business is ideally suited to bring about: 1) improved asset management including increased investment; 2) improved access to capital markets given a more focused business model than that of vertically-integrated utilities; 3) development of innovative services; and 4) additional independence from market participants.").

¹² *Policy Statement Regarding Evaluation of Independent Ownership and Operation of Transmission*, 111 FERC ¶ 61,473 (2005).

¹³ *Promoting Transmission Investment through Pricing Reform, Notice of Proposed Rulemaking*, 113 FERC ¶ 61,182 (2005) (NOPR).

¹⁴ *Id.* at P 40.

Commission noted that Michigan Electric plans to double the net book value of its transmission system over a seven year period.¹⁵ In the instant application, Michigan Electric explains how its single-focus business model has resulted in commitments to significant new investment in transmission infrastructure, including systems to improve the management and performance of existing assets. Because it lacks any internal conflicts with other business functions regarding the use of capital, Michigan Electric is able to commit more easily to activities and investments that improve transmission system performance over the long term. This has allowed, and will continue to allow, Michigan Electric to plan and implement projects that have longer time horizons and maintain a commitment of resources to such projects over extended periods of time.¹⁶ This has allowed Michigan Electric to make commitments to new technologies and other system enhancements that have already translated into improved performance and service to customers and promise further improvements in the future as projects are completed.¹⁷

19. Michigan Electric has demonstrated that it is performing and achieving benefits commensurate with the results that we sought to stimulate in our approval of Michigan Electric's initial rate treatments in the orders addressing its formation. In light of these benefits, we find that continuation of the 100 basis point adjustment to Michigan Electric's ROE, to encourage continued pursuit of its independent, single-focus business model, is just and reasonable.¹⁸ A hearing to further assess the benefits of Michigan Electric's proposal, as protestors request, is unnecessary. The protestors do not challenge the validity of the facts presented regarding Michigan Electric's performance, and, consistent with our orders initially approving the 100 basis point adder for International Transmission and Michigan Electric and the approach taken in the NOPR, we will not require a quantified cost/benefit analysis. The evidence presented in Michigan Electric's application is sufficient for our purposes here.

¹⁵ See NOPR at P 39, citing April 22, 2005 Technical Conference, Transmission Independence and Investment, Docket No. AD05-5-000, Tr. 187 (statement of Paul McCoy, Trans-Elect, Inc.).

¹⁶ Exhibit MET-7 at 5-6.

¹⁷ *Id.* at 6-11. For example, Michigan Electric reports that momentary and unplanned outages have decreased by an average of 10 percent over two years.

¹⁸ We note that the zone of reasonable returns for the proxy group used to establish the ROE for the Midwest ISO transmission owners was 8.79 percent to 15.96 percent. Thus, the 13.38 percent ROE we are approving here is well within the zone of reasonableness.

2. Income Tax Allowance

20. Michigan Electric proposes to reflect in its Attachment O formula rate an income tax allowance, based on a 35 percent federal income tax rate, for the equity component of its return. Michigan Electric states that the income tax allowance is consistent with the Commission's *Policy Statement on Income Tax Allowances*¹⁹ and includes affidavits and related information addressing the compliance requirements set forth in the Policy Statement and the recent guidance provided by the Commission relating to Trans-Elect NTD Path 15, LLC (NTD Path 15).²⁰ Michigan Electric also states that the proposed income tax allowance is consistent with the expectations and understandings of Michigan Electric's investors and the decisions they made based on the Commission's policy in effect at the time and that any limitation on the proposed income tax allowance would significantly degrade the business deal Michigan Electric's investors believe they had negotiated.

21. Consumers Energy does not challenge the proposed income tax allowance; however, it states that the Commission should require Michigan Electric to recalculate its income tax allowance each time its rates are reset pursuant to the Attachment O process, reflecting the proportion of its ownership interests that are subject to "actual or potential income tax liability." The Michigan Commission argues that, without the information that has been designated proprietary information by Michigan Electric, it is impossible to determine if the tax adjustment proposed by Michigan Electric is justified under Commission policy. Accordingly, it requests that parties have the opportunity to address Michigan Electric's proposed tax allowance, including the adequacy of the protected information filed by Michigan Electric, at an on-the-record hearing.

22. In the Policy Statement, the Commission stated that an income tax allowance should be permitted on all partnership interests, or similar legal interests, if the owner of that interest has an actual or potential income tax liability on the public utility income earned through the interest. In an order issued on November 17, 2005, the Commission found that the NTD Path 15's rates could include an income tax allowance based on information that NTD Path 15 provided. Specifically, NTD Path 15 provided documentation demonstrating: (1) the equity owner's projected distributive share of

¹⁹ *Inquiry Regarding Income Tax Allowances*, 111 FERC ¶ 61,139 (2005) (Policy Statement).

²⁰ Michigan Electric and Midwest ISO's transmittal letter at 18. *See Trans-Elect NTD Path 15, LLC*, 109 FERC ¶ 61, 249 at P 26-29 (2004), *reh'g denied*, 111 FERC ¶ 61,140, *order on compliance filing*, 112 FERC ¶ 61,202 (2005).

corporate income, (2) the equity owners' projected taxable income levels, and (3) the tax status of the entities that have the ultimate tax liability imputed to the equity owners.²¹ Consistent with the Policy Statement and the NTD Path 15 Order, Michigan Electric has made a prima facie showing that its owners have an actual or potential income tax liability.²² Accordingly, we will permit Michigan Electric to include the proposed income tax allowance in its Attachment O formula rate in the first instance, subject to Michigan Electric filing to notify the Commission within 30 days of any changes in the facts contained in its application regarding the proportion of its ownership interests that are subject to "actual or potential income tax liability" and proposing appropriate changes to its Attachment O formula rate and subject to the hearing and settlement judge procedures ordered below. The requirement to file with the Commission any change in status of the partnership interests addresses Consumers Energy's concerns.

3. Deferral

23. Michigan Electric proposes modifications to the Attachment O formula rate to recover the deferral amounts associated with new transmission plant additions, placed in service between January 2001 and December 2005, as well as the acquisition premium associated with accumulated deferred income taxes. The Attachment O formula provides for rates to be updated beginning each June 1 to reflect Form 1 data for the previous calendar year. Beginning January 1, 2006, through May 31, 2006, Michigan Electric proposes to reflect an estimated year-end 2005 deferral, reflecting actual facility additions through August 2005 and a projection of the remaining transmission plant additions for the four months September through December, as well as an estimated year-end capital structure to calculate the return on the deferred amounts for calendar-year 2005. In order to eliminate the impact of the differences caused by the use of a projected 2005 deferral balance versus an actual balance for rates charged beginning January 1, 2006, Michigan Electric proposes to include a true up in the rates charged beginning June 1, 2006, through May 31, 2007, to reflect the difference between the actual and estimated 2005 transmission plant additions and capital structure, plus interest calculated pursuant to section 35.19a of the Commission's regulations.

24. Michigan Agencies state that Michigan Electric's analysis does not take into account the fact that revenues increased substantially between 2001 and 2005 as a result of increased transmission demand on the Michigan Electric system as well as revenues

²¹ *Trans-Elect NTD Path 15, LLC*, 113 FERC ¶ 61,162 at P 15 (2005) (NTD Path 15 Order).

²² The documentation shows that each of Michigan Electric's equity owners has elected to be taxed as a corporation and must file a Form 1120 with the Internal Revenue Service.

from Midwest ISO. Michigan Agencies argue that the amount of deferred costs should be computed taking into account the difference between total revenue requirements and actual revenues computed for each year between 2001 and 2005. We disagree with Michigan Agencies. Michigan Agencies misunderstand the rate treatments approved for Michigan Electric in the prior orders. The Commission authorized Michigan Electric to recover on a deferred basis, beginning January 1, 2006, the cost of new transmission facilities (depreciation and return on investment) incurred during the period commencing January 1, 2001, through December 31, 2005, without comparison of revenues and revenue requirements.²³

25. Michigan Electric calculates the carrying costs on the deferrals for new transmission facilities and the acquisition premium through December 31, 2005, using a 13.88 percent ROE. Consumers Energy argues that Michigan Electric should adjust that ROE reflected in the deferral to remove the 50 basis point adder for RTO participation consistent with the Commission's action in the Order on Remand. In the November 2003 Order, the Commission approved Michigan Electric's use of a 13.88 percent ROE in the carrying charge. That approval was not made subject to the outcome of the proceeding addressing the ROE applicable to all Midwest ISO transmission owners, and thus, the Order on Remand does not affect the ROE approved for the carrying charges in the November 2003 Order. Accordingly, Michigan Electric appropriately used the 13.88 percent ROE for its deferrals through December 31, 2005.

26. The Michigan Commission points out that Michigan Electric recently received authorization to acquire jurisdictional facilities from Wolverine Power Supply Cooperative, Inc. (Wolverine).²⁴ The Michigan Commission states that the Commission's orders authorizing the deferrals for Michigan Electric specifically refer to "new transmission facilities" but do not address acquisition of existing transmission facilities. The Michigan Commission states that it is unclear how the acquisition of transmission facilities should be treated because existing transmission is already paid for

²³ See February 2002 Order, 98 FERC at 61,422-24 (approving deferral of cost of new facilities through December 31, 2004); May 2004 Order, 107 FERC ¶ 61,206 at P 12 (approving extension of deferral of cost of new facilities through December 31, 2005). In contrast, the deferral mechanism accepted by the Commission for International Transmission provides for International Transmission to recover, on a deferred basis, the difference between the revenue received through its \$1.075 per kW per month rate and the revenue that would have been collected for service under rates computed in accordance with the Attachment O formula. See *ITC Holdings Corp.*, 102 FERC ¶ 61,182 at P 69, 74.

²⁴ *Michigan Electric Transmission Company, LLC*, 113 FERC ¶ 62,094 (2005).

in many instances and it is therefore not characterized by the capital attraction needs that warrant incentives for new transmission. It argues that Michigan Electric has not shown why the costs of existing facilities should be included in its deferral. We find that the cost of facilities purchased from others may be recovered through the deferral mechanism. Michigan Electric purchased Wolverine facilities in order to use those facilities to connect and serve additional customers, thereby obviating the need to construct potentially duplicative facilities.²⁵ As a result, those facilities should be included in Michigan Electric's deferral of the cost of new transmission facilities.

27. Michigan Agencies state that transmission owners cannot reflect 2005 plant and expense data in its zonal transmission rate until June 1, 2006, and that if costs are going to be adjusted, then the load divisor should also reflect actual 2005 transmission peak demands, which are believed to be higher than the 2004 peak demands used in Michigan Electric's proposal. Consumers Energy raises similar concerns that Michigan Electric's proposed start date for recovery of the deferrals is incompatible with other aspects of the Attachment O formula rate. Consumers Energy argues that there should be a final reconciliation or true-up at the end of the recovery period to avoid potential over-recovery.

28. Since our prior orders allow Michigan Electric to begin recovering the deferrals in its rates on January 1, 2006, an effective date for its proposed rate of January 1, 2006, is also appropriate. However, we do share Michigan Agencies' and Consumers Energy's concerns about potential over collection of the deferral amounts due to interaction of the deferral beginning January 1, 2006, with the 18 month lag in test year data reflected in other components of the Attachment O formula rate. In the hearing and settlement procedures ordered below, parties should address what adjustments, if any, are necessary to Michigan Electric's Attachment O formula rate to ensure no over collection of the deferral amounts.

4. Suspension and Hearing

29. Protestors raise numerous other issues. Consumers Energy notes what it claims are numerous anomalies in Michigan Electric's Form 1 data. All three protestors argue that Michigan Electric has not demonstrated that its proposal to include fees for services provided by its affiliate, Trans-Elect, in its revenue requirement is just and reasonable. The Michigan Commission and Consumers Energy argue that Michigan Electric has not provided adequate information to demonstrate that the deferrals are correctly computed, and the Michigan Commission submits that additional information is necessary to ensure

²⁵ See Michigan Electric and Wolverine's Application for Authorization to Transfer Jurisdictional Assets and for Approval of Rates, Terms and Conditions of Transmission Service, Docket No. ER05-1472-000 at 2 (September 12, 2005).

that the adjustment to the equity component of the capital structure was computed correctly. Consumers Energy argues that additional information is needed to ensure that expenses associated with Michigan Electric's operation and maintenance of facilities that are jointly owned with others is not improperly included in the proposed rates.

30. The proposed rates raise issues of material fact that cannot be resolved on the record before us, and are more appropriately addressed in the hearing and settlement judge procedures ordered below. The Commission's preliminary analysis of Michigan Electric and Midwest ISO's filing indicates that it has not been shown to be just and reasonable, and may be unjust, unreasonable, unduly discriminatory or preferential or otherwise unlawful. Accordingly, we will accept Michigan Electric and Midwest ISO's filing, suspend it for a nominal period and make it effective January 1, 2006, subject to refund, and set it for hearing and settlement judge procedures as ordered below.

31. While we are setting these matters for a trial-type evidentiary hearing, we encourage the parties to make every effort to settle their dispute before hearing procedures are commenced. To aid the parties in their settlement efforts, we will hold the hearing in abeyance and direct that a settlement judge be appointed pursuant to Rule 603 of the Commission's Rules of Practice and Procedure.²⁶ If the parties desire they may, by mutual agreement, request a specific judge as the settlement judge in the proceeding; otherwise, the Chief Judge will select a judge for this purpose.²⁷ The settlement judge shall report to the Chief Judge and the Commission within 60 days of the date of this order concerning the status of settlement discussions. Based on this report, the Chief Judge shall provide the parties with additional time to continue their settlement discussions or provide for commencement of a hearing by assigning the case to a presiding judge.

The Commission orders:

(A) Michigan Electric and Midwest ISO's proposed tariff revisions are hereby conditionally accepted for filing, and suspended for a nominal period, to become effective January 1, 2006, as requested, subject to refund.

²⁶ 18 C.F.R. § 385.603 (2005).

²⁷ If the parties decide to request a specific judge, they must make their joint request to the Chief Judge by telephone at (202) 502-8500 within five days of this order. The Commission's website contains a list of Commission judges and a summary of their background and experience (www.ferc.gov - click on Office of Administrative Law Judges).

(B) Pursuant to the authority contained in and subject to the jurisdiction conferred upon the Commission by section 402(a) of the Department of Energy Organization Act and the Federal Power Act, particularly sections 205 and 206 thereof, and pursuant to the Commission's Rules of Practice and Procedure and the regulations under the Federal Power Act (18 C.F.R. Chapter I), a public hearing shall be held concerning Michigan Electric and Midwest ISO's proposed tariff revisions. However, the hearing shall be held in abeyance to provide time for settlement judge procedures, as discussed in Paragraphs (C) and (D) below.

(C) Pursuant to Rule 603 of the Commission's Rules of Practice and Procedure, 18 C.F.R. § 385.603 (2005), the Chief Administrative Law Judge is hereby directed to appoint a settlement judge in this proceeding within fifteen (15) days of the date of this order. Such settlement judge shall have all powers and duties enumerated in Rule 603 and shall convene a settlement conference as soon as practicable after the Chief Judge designates the settlement judge. If the parties decide to request a specific judge, they must make their request to the Chief Judge by telephone within five (5) days of the date of this order.

(D) Within thirty (30) days of the date of this order, the settlement judge shall file a report with the Commission and the Chief Judge on the status of the settlement discussions. Based on this report, the Chief Judge shall provide the parties with additional time to continue their settlement discussions, if appropriate, or assign this case to a presiding judge for a trial-type evidentiary hearing, if appropriate. If settlement discussions continue, the settlement judge shall file a report at least sixty (60) days thereafter, informing the Commission and the Chief Judge of the parties' progress toward settlement.

(E) If settlement judge procedures fail and a trial-type evidentiary hearing is to be held, a presiding judge, to be designated by the Chief Judge, shall, within fifteen (15) days of the date of the presiding judge's designation, convene a prehearing conference in this proceeding in a hearing room of the Commission, 888 First Street, N.E., Washington, D.C. 20426. Such conference shall be held for the purpose of establishing a procedural

schedule. The presiding judge is authorized to establish procedural dates, and to rule on all motions (except motions to dismiss) as provided in the Commission's Rules of Practice and Procedure.

By the Commission.

(S E A L)

Magalie R. Salas,
Secretary.