

136 FERC ¶ 61,202
FEDERAL ENERGY REGULATORY COMMISSION
WASHINGTON, DC 20426

September 23, 2011

In Reply Refer To:
Michigan Electric Transmission
Company, LL
Docket Nos. ER11-4116-000
ER11-4117-000

Troutman Sanders LLP
Attention: David B. Rubin
Attorney for Michigan Electric
Transmission Company, LLC
401 9th Street, NW, Suite 1000
Washington, DC 20004

Dear Mr. Rubin:

1. On July 26, 2011, you submitted: (1) the Amended and Restated Coldwater Facilities Agreement, dated May 27, 2010, among Michigan Electric Transmission Company, LLC (Michigan Electric), Michigan South Central Power Agency (MSCPA), and the City of Coldwater, Michigan in Docket No. ER11-4116-000; and (2) the Amended and Restated Marshall Facilities Agreement, dated October 15, 2010, between Michigan Electric and MSCPA in Docket No. ER11-4117-000 (collectively, the Amended Facilities Agreements).¹ Michigan Electric states that it is filing the Amended Facilities Agreements as a result of a comprehensive review that Michigan Electric and its affiliates have undertaken to ensure compliance with the Commission's filing requirements for agreements that affect or relate to Commission-jurisdictional rates, charges, classifications, or services. We accept for filing the Amended Facilities Agreements, effective September 26, 2011, as requested.

2. Michigan Electric explains that Consumers Energy Company (Consumers Energy) entered into both of the original Facilities Agreements and that those Facilities Agreements, along with an entire group of agreements with MSCPA, were designated as supplements to Consumers Energy's Rate Schedule No. 55. Michigan Electric further states that, in 2001, when it succeeded Consumers Energy to the original Facilities Agreements, it designated both of the Facilities Agreements as a part of Michigan Electric Rate Schedule No. 9 and supplements thereto.

¹ The Amended Facilities Agreements are both designated as Michigan Electric Rate Schedule No. 9, which we will address below.

3. The Facilities Agreements govern the interconnections of MSCPA's Coldwater and Marshall 138 kV substations and double circuit lines to the transmission grid formerly owned by Consumers Energy and, since 2001, by Michigan Electric. Michigan Electric states that, in 2010, it exercised its right to acquire certain interconnection facilities located at the Coldwater and Marshall interconnections and that the Amended Facilities Agreements reflect those acquisitions. According to the terms of the Amended Facilities Agreements, Michigan Electric will own, operate and maintain its newly acquired interconnection facilities while MSCPA will own, operate, and maintain the billing meters and the Coldwater and Marshall 138 kV transmission line facilities. The Amended Facilities Agreements do not include compensation for Michigan Electric for any service or performance.

4. Notice of the filings was published in the *Federal Register*, 76 Fed. Reg. 46,792 (2011), with interventions and protests due on or before August 16, 2011. Consumers Energy filed a timely motion to intervene on July 27, 2011, and supplemental comments on August 16, 2011. On August 19, 2011, MSCPA filed a motion to intervene out-of-time and comments.

5. Pursuant to Rule 214 of the Commission's Rules of Practice and Procedure,² the timely, unopposed motion to intervene serves to make Consumers Energy a party to this proceeding. Pursuant to Rule 214(d) of the Commission's Rules of Practice and Procedure,³ the Commission will grant MSCPA's late filed motion to intervene given its interest in the proceeding and the absence of undue prejudice or delay.

6. In its supplemental comments, Consumers Energy states that it does not object to the changes made in the filed versions of the Amended Facilities Agreements. Consumers Energy further states that it uses metering data from the Coldwater and Marshall facilities to calculate its network load and, therefore, has an interest in any future modifications that could affect the ability of Michigan Electric to provide, and Consumers Energy to access, necessary metering information.⁴

7. In its comments, MSCPA states that it also does not object to the filings, but seeks to eliminate any implication that Michigan Electric's request for a September 26, 2011 effective date should or could be construed to suggest that the Amended Facilities Agreements have not been valid and in effect since the dates of their inception.⁵ MSCPA states that Michigan Electric has authorized it to represent that: (1) Michigan Electric intends no such implication; (2) Michigan Electric agrees that the Amended Facilities

² 18 C.F.R. § 385.214 (2011).

³ 18 C.F.R. § 385.214(d) (2011).

⁴ Consumers Comments at 1-2.

⁵ MSCPA Comments at 1.

Agreements have been valid and in effect since their respective effective dates as provided in the agreements and remain valid and effective in accordance with their terms; and (3) Michigan Electric agrees that the fact that Michigan Electric did not previously file the Amended Facilities Agreements with the Commission does not affect MSCPA's rights under the Amended Facilities Agreements.⁶

8. We find that the Amended Facilities Agreements are just, reasonable and not unduly discriminatory or preferential. However, Michigan Electric has incorrectly designated both of the Amended Facilities Agreements as Michigan Electric Rate Schedule No. 9, which is inconsistent with Order No. 614,⁷ which requires a unique designation for each rate schedule. Therefore, we will conditionally accept the Amended Facilities Agreements effective September 26, 2011, as requested, and direct Michigan Electric to submit a compliance filing, within 30 days of the date of this order, properly designating them.⁸ Further, we agree with MSCPA that Michigan Electric's request for a September 26, 2011 effective date does not affect the validity or enforceability of the Amended Facilities Agreements since their respective effective dates as set forth in the agreements.⁹

By direction of the Commission.

Nathaniel J. Davis, Sr.,
Deputy Secretary.

⁶ *Id.* at 3.

⁷ *Designation of Electric Rate Schedule Sheets*, Order No. 614, FERC Stats. & Regs., Regulations Preambles July 1996-December 2000 ¶ 31,096 (2000) and 18 C.F.R. § 35.9 (2011). *See also Electronic Tariff Filings*, Order No. 714, FERC Stats. and Regs. ¶ 31,276, at P 51 & n.37 (2008) which supplanted the formatting and filing requirements of Order No. 614.

⁸ Although the Amended Facilities Agreements were filed after service commenced, no fees were collected by Michigan Electric for performance under the agreements and no time value refunds are due. *See Entergy Services, Inc.*, 76 FERC ¶ 61,034, at 61,185-86 (1996); *see also Virginia Electric and Power Co.*, 76 FERC ¶ 61,005, at 61,016-17 (1996).

⁹ *See, e.g., El Paso Electric Company*, 105 FERC ¶ 61,131, at P 39 (2003).