

136 FERC 61,204  
FEDERAL ENERGY REGULATORY COMMISSION  
WASHINGTON, DC 20426

September 26, 2011

In Reply Refer To:  
Michigan Electric Transmission  
Company, LLC  
Docket No. ER11-4131-000

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

Dear Mr. Rubin:

1. On July 27, 2011, you submitted for filing an Agency Agreement, dated as of April 1, 2001, pursuant to which Michigan Electric Transmission Company, LLC (Michigan Electric), as agent for Consumers Energy Company (Consumers Energy), performs certain of Consumers Energy's obligations under an Interconnection Agreement,<sup>1</sup> dated as of January 29, 1975, among Consumers Power Company (now Consumers Energy), The Detroit Edison Company, and Ontario Hydro. Michigan Electric states that it is filing the Agency Agreement 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. However, as discussed below, since the Commission has determined that the Agency Agreement is not required to be on file, Michigan Electric's filing is dismissed.

2. Notice of the filing was published in the *Federal Register*, 76 Fed. Reg. 46,790 (2011), with interventions and protests due on or before August 17, 2011. On August 17, 2011, Consumers Energy filed a timely motion to intervene and comment. On September 1, 2011, Michigan Electric filed a motion for leave to answer and answer.

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<sup>1</sup> The Interconnection Agreement had been designated as Consumers Power Company Export Rate Schedule FPC No. 39.

3. Pursuant to Rule 214 of the Commission's Rules of Practice and Procedure,<sup>2</sup> Consumers Energy's timely, unopposed motion to intervene serves to make it a party to the proceeding. Rule 213(a)(2) of the Commission's Rules of Practice and Procedure<sup>3</sup> prohibits an answer to a protest unless otherwise ordered by the decisional authority. We are not persuaded to accept Michigan Electric's answer and will, therefore, reject it.

4. Under the terms of the Agency Agreement, Michigan Electric, as agent for Consumers Energy, operates and maintains the interconnection facilities as required under the related Interconnection Agreement, provides information to the parties to the Interconnection Agreement, participates in committee work, and provides other administrative services.<sup>4</sup> As compensation for such services, Consumers Energy pays Michigan Electric a \$1,000 monthly agency fee, although Michigan Electric may also bill and collect from Consumers Energy and other parties to the Interconnection Agreement charges and fees provided for by applicable tariffs on file with the Commission. Michigan Electric notes that it is not a party to the related Interconnection Agreement and does not express an opinion as to whether it is or should be on file with the Commission.

5. Michigan Electric acknowledges that when a utility files a jurisdictional agreement with the Commission after service has commenced, the utility is required to refund the time-value of monies it has received under the agreement.<sup>5</sup> Michigan Electric claims, however, that under the Agency Agreement it only recovers the actual costs it incurs to perform the services for Consumers Energy since the \$1,000 per month agency fee it receives is used as a credit to Michigan Electric's annual operation and maintenance expense requirements under its Attachment O formula rate for transmission under Midwest Independent Transmission System Operator, Inc.'s tariff, and that it would operate at a loss if the Commission required it to make time-value refunds of revenues received. In this connection, Michigan Electric argues that, under the Commission's *Prior Notice* policy and subsequent cases, time value refunds are limited to ensuring that

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<sup>2</sup> 18 C.F.R. § 385.214 (2011).

<sup>3</sup> 18 C.F.R. § 385.213(a)(2) (2011).

<sup>4</sup> The Agency Agreement was entered into in April 2001, concurrently with the transfer of Consumers Energy's transmission assets, including the interconnection facilities that are the subject of the Interconnection Agreement, to Michigan Electric.

<sup>5</sup> *Prior Notice and Filing Requirements Under Part II of the Federal Power Act*, 64 FERC ¶ 61,139, at 61,979, *order on reh'g*, 65 FERC ¶ 61,081 (1993).

a utility does not operate at a loss.<sup>6</sup> Accordingly, Michigan Electric requests waiver of the Commission's requirement to issue time-value refunds.

6. In its motion to intervene, Consumers Energy provides background information related to the jurisdictional status of the Interconnection Agreement. Consumers Energy states that it had in fact filed the Interconnection Agreement with the Federal Power Commission in 1975 and continued to make filings related to the agreement. Consumers Energy further states that the Interconnection Agreement deals with international rather than interstate service and that, as the result of the reorganization of the Department of Energy in 1975, jurisdiction over international service agreements, such as the Interconnection Agreement, was transferred from the Federal Power Commission to the Economic Regulatory Administration.<sup>7</sup> Thus, Consumers Energy states that the Interconnection Agreement is no longer on file with the Commission. In addition, Consumers Energy notes that the Attachment O formula rate true-up mechanism that Michigan Electric describes in its application did not take effect until January 1, 2007, and that Michigan Electric should therefore be required to refund the time-value of revenues collected for the period April 1, 2001, through January 1, 2007.

7. In light of the fact that jurisdiction over the Interconnection Agreement had transferred to the Economic Regulatory Administration, the Interconnection Agreement is not required to be on file with the Commission. Because the services provided under the Agency Agreement are not related to jurisdictional service, the Agency Agreement is not required to be on file with this Commission.<sup>8</sup> Accordingly, we dismiss Michigan Electric's filing and find that Michigan Electric is not required to make time-value

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<sup>6</sup> Michigan Electric Filing at 2 (citing *Southern Cal. Edison Co.*, 98 FERC ¶ 61,304 (2002); *Florida Power & Light Co.*, 98 FERC ¶ 61,276, *reh'g denied*, 99 FERC ¶ 61,320 (2002)).

<sup>7</sup> Consumers Energy attached to its comments a copy of the September 18, 1979 letter from the Commission's Secretary stating that the Economic Regulatory Administration is the correct recipient of all future changes to be filed to the Interconnection Agreement.

<sup>8</sup> *Cf. Midwest Indep. Transmission Sys. Operator, Inc.*, 132 FERC ¶ 61,241, at P 27 (2010) (requiring the filing of an agency agreement relating to a jurisdictional facilities agreement).

refunds under the Agency Agreement. Our disposition of the matter makes Consumers Energy's related concern moot.

By direction of the Commission.

Kimberly D. Bose,  
Secretary.