

136 FERC ¶ 61,205
FEDERAL ENERGY REGULATORY COMMISSION
WASHINGTON, DC 20426

September 26, 2011

In Reply Refer To:
Michigan Electric Transmission
Company, LLC
Docket No. ER11-4128-000

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 27, 2011, you submitted for filing an Agency Agreement, dated 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 a Facilities Agreement, originally dated November 30, 1994, as amended April 1, 1997, between Consumers Energy and Michigan Power Limited Partnership (Michigan Power), which describes the facilities required to connect Michigan Power's cogeneration plant to Consumers Energy's system and the obligations of the parties with respect to the construction, operation and maintenance of such facilities.¹ 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. As discussed below, we accept the Agency Agreement, effective September 27, 2011, as requested.

¹ On June 30, 2011, as amended on August 4, 2011, Consumers Energy filed the Facilities Agreement in Docket Nos. ER11-3957-000 and ER11-3957-001. Concurrent with this order, the Facilities Agreement is being conditionally accepted by the Director of the Division of Electric Power Regulation-Central.

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.
3. Pursuant to Rule 214 of the Commission's Rules of Practice and Procedure,² 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,³ 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 Facilities Agreement.⁴ As compensation and reimbursement for performing such duties, Consumers Energy pays Michigan Electric an agency fee of \$500 per month. In addition, Michigan Electric is entitled to the payments from Michigan Power under the Facilities Agreement.
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.⁵ Michigan Electric states, however, that the \$500 monthly agency fee 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 while Michigan Electric collects the monthly fee under the Agency Agreement, its transmission customers, in effect, receive a dollar-for-dollar credit to the operation and maintenance expense. Michigan Electric further explains that the operations and maintenance costs recovered under the Facilities Agreement are purely operating expenses and do not include any profit component, and that its formula rate is subject to a true-up to ensure there is no over-recovery of the operation and maintenance and other expenses. Thus, Michigan Electric claims that it would be operating at a loss if

² 18 C.F.R. § 385.214 (2011).

³ 18 C.F.R. § 385.213(a)(2) (2011).

⁴ 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 Facilities Agreement, to Michigan Electric.

⁵ *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).

the Commission required it to make time-value refunds of revenues received. Accordingly, Michigan Electric requests waiver of the Commission's requirement to issue time-value refunds.

6. In its motion to intervene, Consumers Energy states that Michigan Electric fails to note that its Attachment O formula rate and true-up mechanism did not take effect until January 1, 2007, and that prior to that date, Michigan Electric charged its transmission customers a fixed rate that was not subject to true-up. Consumers Energy notes that for the period before 2007, Michigan Electric offers no basis for concluding that the monthly agency fee included no profit.

7. We find that the Agency Agreement is just, reasonable and not unduly discriminatory or preferential. Therefore, we will accept it effective September 27, 2011, as requested. However, as acknowledged by Michigan Electric, the Agency Agreement was not filed with the Commission before service commenced as required by the Commission's *Prior Notice* policy. As Michigan Electric notes, under our precedent, a utility is not required to refund the time-value of monies received under such an agreement if, as a result, the utility would operate at a loss.⁶ Michigan Electric, however, failed to demonstrate that it would operate at a loss. Accordingly, Michigan Electric must make time-value refunds within 30 days of the date of this letter order and file a refund report with the Commission within 30 days thereafter or demonstrate that the time value refunds would result in a loss to Michigan Electric. Therefore, we reject Consumers Energy's comments as premature at this time, and more appropriate for discussion at such time that Michigan Electric submits its refund report.

By direction of the Commission.

Kimberly D. Bose,
Secretary.

⁶ 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)).