

137 FERC ¶ 61,260
UNITED STATES OF AMERICA
FEDERAL ENERGY REGULATORY COMMISSION

Before Commissioners: Jon Wellinghoff, Chairman;
Philip D. Moeller, John R. Norris,
and Cheryl A. LaFleur.

Michigan Electric Transmission Company, LLC Docket Nos. ER11-4219-000
Wolverine Power Supply Cooperative, Inc. ER11-4253-000

ORDER ON AMENDED AND RESTATED WIRES-TO-WIRES
INTERCONNECTION AGREEMENTS AND CERTIFICATES OF CONCURRENCE

(Issued December 30, 2011)

1. On August 4, 2011, pursuant to section 205 of the Federal Power Act (FPA),¹ in Docket No. ER11-4219-000, Michigan Electric Transmission Company, LLC (METC) and Wolverine Power Supply Cooperative, Inc. (Wolverine) (collectively, Filing Parties) jointly submitted three amended and restated wires-to-wires interconnection agreements: (1) the Amended and Restated Pere Marquette Interconnection Facilities Agreement (Amended Pere Marquette Agreement); (2) the Amended and Restated Sternberg Road Interconnection Facilities Agreement (Amended Sternberg Road Agreement); and (3) the Amended and Restated Vestaburg Interconnection Facilities Agreement (Amended Vestaburg Agreement) (collectively, the Amended Agreements).² On August 8, 2011, in Docket No. ER11-4253-000, Wolverine submitted Certificates of Concurrence with respect to the Amended Agreements to indicate that it also is bound by the Amended Agreements.³ In this order, we accept the Amended Pere Marquette Agreement and the

¹ 16 U.S.C. § 824d (2006).

² The Amended Pere Marquette Agreement among METC and Wolverine is designated as METC Rate Schedule No. 16; the Amended Sternberg Road Agreement among METC, the City of Grand Haven, Michigan (Grand Haven) and Wolverine is designated as METC Rate Schedule No. 10; and the Amended Vestaburg Agreement among METC and Wolverine is designated as METC Rate Schedule No. 13.

³ The Amended Pere Marquette Agreement is designated as Wolverine Rate Schedule No. 1; the Amended Sternberg Road Agreement is designated as Wolverine

(continued...)

related Certificate of Concurrence for filing, effective April 21, 2011, as requested. We also conditionally accept for filing the Amended Sternberg Road Agreement and the Amended Vestaburg Agreement, as well as the related Certificates of Concurrence, effective May 6, 2011 and May 26, 2011, respectively, as requested, subject to a compliance filing, as discussed below.

I. Description of the Filings

2. METC (the successor-in-interest to Consumers Energy Company (Consumers Energy) under the original agreements) and Wolverine entered into asset purchase agreements in order to transfer certain facilities between and among the parties.⁴ As a result of these transfers, the parties' respective ownership, operation, and maintenance obligations under the original agreements have changed. METC and Wolverine have amended and restated the original agreements to reflect these changes.

3. The Amended Pere Marquette Agreement governs the interconnection between METC and Wolverine at the Pere Marquette substation. Under the original agreement, Consumers Energy constructed all of the facilities that comprised the interconnection, but conveyed some of those facilities to Wolverine. Consumers Energy then operated and maintained all of the facilities at the Pere Marquette interconnection, including the Wolverine-owned facilities. Wolverine reimbursed Consumers Energy (and METC once METC assumed obligation for the interconnection) for its operation and maintenance (O&M) costs. METC has now acquired the transmission facilities at the Pere Marquette interconnection that were previously owned by Wolverine. As a result, the parties have revised their respective obligations under this agreement.

4. The Amended Sternberg Road Agreement governs the interconnection between METC and Grand Haven at the Sternberg Road substation. Under the original agreement, Consumers Energy and Grand Haven constructed and owned certain facilities related to the interconnection, but Consumers Energy had the responsibility for operating and maintaining both parties' facilities. Grand Haven reimbursed Consumers Energy (and METC once METC assumed obligation for the interconnection) for its O&M costs. METC now has acquired certain facilities from Grand Haven related to the

Rate Schedule No. 2; and the Amended Vestaburg Agreement is designated as Wolverine Rate Schedule No. 3.

⁴ The asset purchase agreements are the subject of separate applications, pursuant to section 203 of the FPA, in Docket No. EC12-6-000 for the Pere Marquette and Vestaburg interconnections and Docket No. EC12-13-000 for the Sternberg Road interconnection.

interconnection, and Grand Haven has acquired a billing meter from METC. The Amended Sternberg Road Agreement also adds Wolverine as a party and notes that Wolverine previously purchased certain equipment at the Sternberg Road substation from Grand Haven. As a result, the parties have revised their respective obligations under the agreement.

5. The Amended Vestaburg Agreement governs the interconnection between METC's transmission system and Wolverine's Vestaburg substation. The pre-existing agreement provided that Wolverine and Consumers Energy would each construct certain interconnection facilities, with Wolverine bearing the construction costs for Consumers Energy's facilities. Consumers Energy would operate and maintain Wolverine's 138 kV facilities under the agreement, subject to Wolverine reimbursing Consumers Energy (and METC once METC assumed obligation for the interconnection) for its costs. METC has now acquired certain transmission facilities that Wolverine constructed under the original agreement, while Wolverine has acquired a remote terminal unit and billing meters from METC. As a result, the Filing Parties have revised their respective obligations under the original agreement to reflect these changes.

II. Notice of Filings and Responsive Pleadings

6. Notice of the Filing Parties' August 4, 2011 filing in Docket No. ER11-4219-000 was published in the *Federal Register*, 76 Fed. Reg. 49,761 (2011), with interventions and protests due on or before August 25, 2011. Consumers Energy filed a timely motion to intervene and comments. Notice of Wolverine's August 8, 2011 filing in Docket No. ER11-4253-000 was published in the *Federal Register*, 76 Fed. Reg. 51,020 (2011), with comments, protests, or interventions due on or before August 29, 2011. Consumers Energy filed a timely motion to intervene and comments, incorporating by reference its comments filed in Docket No. ER11-4219-000.

7. In its comments on the Amended Sternberg Road Agreement, Consumers Energy states that it does not protest or oppose the filing of the proposed rate schedules. But, it states that certain distribution facilities to which it had connected at the Sternberg Road substation in a separate November 21, 2008 Facilities and Interconnection Agreement (November 2008 Agreement)⁵ have been transferred to METC. Consumers Energy argues that the November 2008 Agreement provides that the assignment of that agreement to other parties is subject to prior and mutual consent. Consumers Energy

⁵ According to Consumers Energy, Consumers Energy, Grand Haven, and the Michigan Public Power Agency are parties to the November 2008 Agreement, which the parties amended on February 25, 2009. Consumers Energy August 25, 2011 Motion to Intervene at 3 & n.1.

claims that it has not been contacted by Grand Haven, pursuant to the November 2008 Agreement, or by METC. Consumers Energy argues that the acceptance of the Amended Sternberg Road Agreement should be conditioned on: (1) the termination of the November 2008 Agreement; and (2) placing the Consumers Energy's interconnection to the Sternberg Road substation under the Consumers/METC Distribution/Transmission Interconnection Agreement designated as METC Rate Schedule No. 29.⁶

8. On September 30, 2011, the Director, Division of Electric Power Regulation-Central issued a deficiency letter requesting further information from the Filing Parties. On October 31, 2011, the Filing Parties submitted their response to the deficiency letter. Notice of the Filing Parties' response was published in the *Federal Register*, 76 Fed. Reg. 72,194 (2011), with comments due on or before November 21, 2011. None was filed.

III. Deficiency Letter and Response

9. The deficiency letter advised the Filing Parties that their filing was deficient and directed the Filing Parties to: (1) provide more information regarding changes made to FERC-jurisdictional services and rates; (2) explain apparent discrepancies related to the requested effective dates for the Amended Agreements; and (3) provide more information regarding which asset transfers are subject to a section 203 proceeding.⁷

10. With respect to changes made to Commission-jurisdictional services and rates, the Filing Parties explain in their response to the deficiency letter that under each of the Amended Agreements, METC has acquired the facilities that it had been operating and maintaining for other parties and that there is no longer a need for METC to recover O&M costs from the other parties. Therefore, the Amended Agreements eliminate all of the related O&M charges.⁸

11. The Filing Parties' responses to the issues surrounding the proposed effective dates for the Amended Agreements are discussed in detail below.

12. Finally, in response to the Commission's inquiries regarding the asset transfers and any required section 203 filings, the Filing Parties state that they filed a joint application under section 203 of the FPA, in Docket No. EC12-6-000, pertaining to the

⁶ *Id.* at 3-4.

⁷ *Mich. Elec. Transmission Co., LLC and Wolverine Elec. Supply Coop.*, Docket Nos. ER11-4219-000 and ER11-4253-000, at 2-3 (Sept. 30, 2011) (deficiency letter).

⁸ Filing Parties October 31, 2011 Response to Deficiency Letter at 1.

transactions between METC and Wolverine for assets at the Pere Marquette and Vestaburg substations.⁹ The Filing Parties also state that METC filed a separate application under section 203 of the FPA, in Docket No. EC12-13-000, detailing METC's purchase of certain assets from Grand Haven at the Sternberg Road substation.¹⁰

IV. Discussion

A. Procedural Matters

13. Pursuant to Rule 214 of the Commission's Rules of Practice and Procedure, 18 C.F.R. § 385.214 (2011), the timely, unopposed motion to intervene serve to make Consumers Energy a party to this proceeding.

B. Substantive Matters

14. The Filing Parties request that the Commission grant waiver of the prior notice requirement for each of the Amended Agreements and Certificates of Concurrence to permit effective dates as of the respective dates that the respective Amended Agreements were executed. To support the requested waiver for retroactive effective dates, the Filing Parties state that "good cause exists for such waiver where the FERC-jurisdictional services and rates have been effectively eliminated as a result of the parties' asset transfer"¹¹ and "the proposed amendments only eliminate rates and services, [*i.e.*, the O&M charges]."¹²

⁹ The Filing Parties state in their response to the deficiency letter that the parties entered into asset purchase agreements for each of the transmission facilities subject to this proceeding. In particular, the parties executed and closed the Pere Marquette asset purchase agreement on April 21, 2011, the Vestaburg asset purchase agreement on May 26, 2011, and the Sternberg Road asset purchase agreement on May 6, 2011. *Id.* at 3.

¹⁰ *Id.*

¹¹ Wolverine August 8, 2011 Filing, Transmittal Letter at 1-2; Filing Parties August 4, 2011 Filing, Transmittal Letter at 8-9.

¹² Filing Parties October 31, 2011 Response to Deficiency Letter at 1.

15. With regard to the Amended Pere Marquette Agreement, the Filing Parties contracted to make the agreement effective on the date of execution.¹³ This is consistent with the Filing Parties' request to make the Amended Pere Marquette Agreement effective April 21, 2011, which is the date of execution. We find good cause exists to grant waiver of the prior notice requirement.¹⁴ Therefore, we accept the Amended Pere Marquette Agreement and the related Certificate of Concurrence for filing, effective April 21, 2011, as requested.

16. With regard to the Amended Sternberg Road Agreement and the Amended Vestaburg Agreement, as the Filing Parties acknowledge, the requested effective dates are inconsistent with the terms of these agreements. The Amended Sternberg Road Agreement provides that "[t]his Agreement shall take effect on the day it is approved in writing by the Administrator of the Rural Utility Service"¹⁵ However, the Filing Parties request that the Commission make the Amended Sternberg Road Agreement effective on the date that the agreement was executed, i.e., May 6, 2011. The deficiency letter identified this apparent discrepancy between the requested effective date and terms of the Amended Sternberg Road Agreement and required that the Filing Parties provide clarification. In response, the Filing Parties state that the reference to the Rural Utility Service (RUS) approval is a vestige of the 1990 Sternberg Road Agreement and none of the parties to the agreement are subject to RUS regulation and consequently no RUS approval is required.¹⁶ Based on these representations, it appears that the intent of the parties to the Amended Sternberg Road Agreement was to make the agreement effective on the date of execution, rather than the date of RUS approval. Accordingly, we will accept the Amended Sternberg Road Agreement and the related Certificate of Concurrence for filing, effective May 6, 2011, as requested, conditioned upon the Filing Parties submitting revisions to section 8 of the Amended Sternberg Road Agreement in a compliance filing, due within 30 days of the date of this order, that reflects the Amended

¹³ Filing Parties August 4, 2011 Filing, Attachment A, Amended Pere Marquette Agreement Art. 10.

¹⁴ *Central Hudson Gas & Elec. Corp.*, 60 FERC ¶ 61,106, at 61,338, *order on reh'g*, 61 FERC ¶ 61,089 (1992).

¹⁵ *Id.* at Attachment C, Amended Sternberg Road Agreement § 8.

¹⁶ Filing Parties October 31, 2011 Response to Deficiency Letter at 2.

Sternberg Road Agreement will be effective as of the date of execution. We find good cause exists to grant waiver of the prior notice requirement.¹⁷

17. Similarly, the Amended Vestaburg Agreement provides that “[t]his Agreement shall become effective on the first day of the month following the month in which the Agreement is accepted for filing and designated to become effective in accordance with its terms by the [Commission]”¹⁸ Nonetheless, the Filing Parties request that the Commission make the Amended Vestaburg Agreement effective on the date that the agreement was executed, i.e., May 26, 2011. Once again, the deficiency letter identified this apparent discrepancy between the requested effective date and terms of the Amended Vestaburg Agreement and required that the Filing Parties provide clarification. In response, the Filing Parties acknowledge that the requested date is earlier than section 10 of the Amended Vestaburg Agreement contemplates but we should grant the requested effective date because Wolverine would receive the benefit of eliminating the O&M charges earlier.¹⁹ Based upon these representations, it appears that it was the intent of the Filing Parties to make the Amended Vestaburg Agreement effective on the date of execution; however, due to oversight at the time of amending the agreement, the Filing Parties erroneously omitted revision the effective date section of the Amended Vestaburg Agreement to reflect the parties’ intent that the Amended Vestaburg Agreement was to be effective on the date of execution. Accordingly, we will accept the Amended Vestaburg Agreement and the related Certificate of Concurrence for filing, effective May 26, 2011, as requested, conditioned upon the Filing Parties submitting revisions to section 10 of the Amended Vestaburg Agreement in a compliance filing, due within 30 days of the date of this order, that reflects the Amended Vestaburg Agreement will be effective as of the date of execution. We find good cause exists to grant waiver of the prior notice requirement.²⁰

18. Finally, we reject Consumers Energy’s request to condition our acceptance of the Amended Sternberg Road Agreement based on the November 2008 Agreement. The Amended Sternberg Road Agreement addresses the interconnections between the parties thereto (i.e., METC, Grand Haven, and Wolverine), not the interconnections between Consumers Energy’s facilities and the facilities of any of the parties to the Amended

¹⁷ See *supra* note 14.

¹⁸ Filing Parties August 4, 2011 Filing, Attachment E, Amended Vestaburg Agreement § 10.

¹⁹ Filing Parties October 31, 2011 Response to Deficiency Letter at 2.

²⁰ See *supra* note 14.

Sternberg Agreement. Consumers Energy acknowledges that its interconnection to facilities owned by Grand Haven or METC are addressed in other agreements that are not before us in this proceeding. Therefore, Consumers Energy's concerns are outside the scope of this proceeding.

19. We find the Amended Agreements and the Certificates of Concurrence, as amended, subject to the compliance filing ordered below, to be just and reasonable, and not unduly discriminatory or preferential.

The Commission orders:

(A) The Filing Parties' Amended Pere Marquette Agreement is hereby accepted for filing, effective April 21, 2011, as requested, as discussed in the body of this order.

(B) The Filing Parties' Amended Sternberg Road Agreement and Amended Vestaburg Agreement are hereby conditionally accepted for filing, subject to the compliance filing ordered below, effective May 6, 2011 and May 26, 2011, respectively, as requested, as discussed in the body of this order.

(C) Wolverine's Certificate of Concurrence for the Amended Pere Marquette Agreement is hereby accepted for filing, effective April 21, 2011, as requested, as discussed in the body of this order.

(D) Wolverine's Certificates of Concurrence for the Amended Sternberg Road Agreement and Amended Vestaburg Agreement are hereby conditionally accepted for filing, subject to the compliance filing ordered below, effective May 6, 2011 and May 26, 2011, respectively, as requested, as discussed in the body of this order.

(E) The Filing Parties are hereby directed to submit a compliance filing within 30 days of the date of this order, as discussed in the body of this order.

By the Commission.

(S E A L)

Nathaniel J. Davis, Sr.,
Deputy Secretary.