

UNITED STATES OF AMERICA
FEDERAL ENERGY REGULATORY COMMISSION

Before Commissioners: Joseph T. Kelliher, Chairman;
Sudeen G. Kelly, Marc Spitzer,
Philip D. Moeller, and Jon Wellinghoff.

Michigan Electric Transmission Company, LLC and Docket No. ER06-56-001
Midwest Independent Transmission System
Operator, Inc.

ORDER GRANTING IN PART AND DENYING IN PART REHEARING

(Issued August 22, 2006)

1. In this order, we grant in part and deny in part requests for rehearing of the Commission's December 30, 2005 Order in this proceeding.¹

Background

2. By orders dated February 13, 2002, and March 29, 2002, the Commission approved a proposal by Michigan Electric Transmission Company, LLC (Michigan Electric) to establish Michigan Electric as an independent transmission company,² and authorized Michigan Electric to: (1) use a \$0.98 per kilowatt per month rate for network and point-to-point transmission service, and a \$.056 per kilowatt per month rate for scheduling, system control and dispatch service, for the Michigan Electric pricing zone of the Midwest Independent Transmission System Operator, Inc. (Midwest ISO) for the duration of a rate moratorium that lasted through December 31, 2004; (2) defer recovery of depreciation and return on investment in new transmission facilities incurred between January 1, 2001, and December 31, 2004, and to amortize those amounts over a five-year

¹ *Michigan Electric Transmission Co., LLC*, 113 FERC ¶ 61,343 (2005) (December 30 Order).

² 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.

period beginning January 1, 2006; (3) 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) 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.³ 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 owners⁴), 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.⁵ By 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 deferred recovery of depreciation and return on investment in new transmission facilities.⁶

3. In Docket No. ER06-56-000, Michigan Electric and Midwest ISO filed revised tariff sheets containing a proposed rate increase to take effect once the rate moratorium expired on December 31, 2005.⁷ Michigan Electric proposed to generally follow the

³ *Trans-Elect, Inc.*, 98 FERC ¶ 61,142 (February 2002 Order), *order on reh'g*, 98 FERC ¶ 61,368 (2002).

⁴ *Midwest Independent Transmission System Operator, Inc.*, 100 FERC ¶ 61,262 (2002), *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) (Remand Order).

⁵ *Michigan Electric Transmission Co., LLC*, 105 FERC ¶ 61,214 (2003) (November 2003 Order).

⁶ *Michigan Electric Transmission Co., LLC*, 107 FERC ¶ 61,206 (2004) (May 2004 Order).

⁷ The applicants stated that Midwest ISO participated in the filing because it involved proposed rates for the Michigan Electric pricing zone under the Midwest ISO Open Access Transmission and Energy Markets Tariff (TEMT) and related changes to the TEMT. For purposes of this order, we refer to the proposed rates as Michigan Electric's proposal.

formula rate contained in Attachment O of the TEMT to establish its revenue requirement and rates for the Michigan Electric pricing zone, effective January 1, 2006. Michigan Electric proposed modifications to the Attachment O formula rate to reflect recovery of the deferral amounts described above, to reduce the equity component of the capital structure eliminating the accounting treatment of goodwill associated with the sale of limited partner interests, to reflect the addition of a 150 basis-point ROE incentive to the 12.38 percent ROE currently approved for use by all Midwest ISO transmission owners,⁸ and to reflect an income tax allowance for the ROE associated with partnership interests. Michigan Electric also proposed to adopt the formula rate in Schedule 1 of the Midwest ISO TEMT for scheduling, system control and dispatch service.

4. In the December 30 Order, the Commission rejected the proposed 50 basis point incentive without prejudice but otherwise conditionally accepted Michigan Electric's proposed tariff revisions for filing, suspended them for a nominal period, to become effective January 1, 2006, subject to refund, and established hearing and settlement judge procedures.

5. The Michigan Public Service Commission (Michigan Commission) filed a timely request for rehearing of the December 30 Order. Consumers Energy Company (Consumers Energy) filed a timely request for rehearing and/or clarification. Michigan Electric filed a timely request for clarification, or in the alternative, rehearing. On February 14, 2006, Consumers Energy filed an answer to Michigan Electric's request for clarification. On August 14, 2006, Michigan Electric filed a motion to supplement its request for clarification or, in the alternative, rehearing.

Discussion

A. Procedural Matters

6. We consider Michigan Electric's and Consumers Energy's pleadings, while styled as requests for clarification and/or rehearing, to be requests for rehearing of the December 30 Order. We thus deny Consumers Energy's motion for leave to file an answer to Michigan Electric's request for rehearing as an impermissible answer to a request for rehearing.⁹ In addition, the Commission does not permit supplements or

⁸ Michigan Electric filed for the first time to adopt the Attachment O formula rate and therefore, as required in that formula, Michigan Electric had to file and support an ROE. *See* note P to the Attachment O formula rate.

⁹ *See* 18 C.F.R. § 385.713(d)(1) (2006) (prohibiting answers to requests for rehearing).

amendments to requests for rehearing filed more than 30 days after the date of the order.¹⁰ Accordingly, we reject Michigan Electric's supplement to its request for rehearing.

B. Baseline ROE of 12.38 Percent

7. When Michigan Electric filed its proposal, protestors argued that it had not demonstrated that 12.38 percent represents an appropriate baseline cost-based ROE for Michigan Electric under current market conditions. The Commission, in the December 30 Order, allowed the 12.38 percent baseline ROE, noting that it was the same ROE that the Commission approved in 2001 for all Midwest ISO transmission owners to use and that it had approved the adoption of that ROE by other transmission owners that subsequently joined Midwest ISO.¹¹

8. On rehearing, the Michigan Commission and Consumers Energy assert that the Commission did not provide a sufficient rationale for approving a baseline ROE of 12.38 percent. The Michigan Commission argues that relying on the Commission's prior approval for certain Midwest ISO transmission owners to use a 12.38 percent ROE from a different proceeding does not justify using the same ROE for Michigan Electric since Michigan Electric was not a party to that proceeding. The Michigan Commission argues that approving an ROE for a public utility based on the ROE approved for a different utility in a separate proceeding is inconsistent with the Commission's ratemaking policy.

9. The Michigan Commission and Consumers Energy again argue that Michigan Electric failed to provide sufficient evidence that its proposed ROE is warranted under current market conditions. They contend that, by simply adopting a nominally cost-based ROE based on 2001 data and market conditions used in another case, the Commission failed to provide a reasoned analysis of the ROE level necessary to maintain Michigan Electric's credit and attract capital without charging excessive rates to consumers. The Michigan Commission also argues that parties did not have notice that the ROE findings in the prior proceedings in which the baseline ROE was adopted for the

¹⁰ See, e.g., *Commonwealth Edison Co.*, 116 FERC ¶ 61,133, at P 22 (2006); *CMS Midland, Inc.*, 56 FERC ¶ 61,177, at 61,623 (1991); *Public Service Co. of New Hampshire*, 56 FERC ¶ 61,105, at 61,403 (1991); *Houlton Water Co. v. Maine Public Service Co.*, 60 FERC ¶ 61,141, at 61,511 & n.8 (1992).

¹¹ December 30 Order, 113 FERC ¶ 61,343 at P 15-16.

Midwest ISO transmission owners would be binding in future proceedings involving Michigan Electric and would preclude parties from litigating the appropriate cost-based ROE for Michigan Electric.

10. The Michigan Commission further argues that, if Michigan Electric is unable to support a 12.38 percent ROE using the Commission's discounted cash flow methodology, then the Commission should approve an ROE that Michigan Electric can support under current conditions and open an investigation under section 206 of the Federal Power Act (FPA)¹² to determine if the 12.38 percent charged by other Midwest ISO transmission owners is unjust and unreasonable.

Commission Determination

11. We deny the Michigan Commission's and Consumers Energy's requests for rehearing on this issue. As noted above, the Commission has found it appropriate to apply the baseline 12.38 percent ROE to transmission owners under Attachment O of the Midwest ISO TEMT, including those that were not parties to the initial Midwest ISO request for such ROE. For instance, in a March 5, 2004 Order that conditionally approved a settlement that established a new joint pricing zone for Wolverine Power Supply Cooperative, Inc., under the Midwest ISO's OATT, the Commission stated:

The Commission established the 12.88 percent ROE [the 12.38 percent baseline ROE plus a 50 basis point incentive for RTO participation] in a proceeding where a group of Midwest ISO transmission owners . . . proposed an ROE that would apply to all pricing zones under the Midwest ISO OATT except the American Transmission Company zone. We find that the 12.88 percent ROE approved in that proceeding applies to the transmission rates for all transmission owners under Attachment O of the Midwest ISO OATT, unless those transmission owners have received approval for a different ROE.^[13]

Because the Commission has previously determined that the existing baseline ROE is just and reasonable and should apply to all Midwest ISO transmission owners unless a

¹² 16 U.S.C. § 824e (2000).

¹³ *Midwest Independent Transmission System Operator, Inc.*, 106 FERC ¶ 61,219, at P 30, *order on reh'g*, 112 FERC ¶ 61,351 (2005) (*Midwest ISO*).

different ROE is approved, and because Michigan Electric proposes to recover the same baseline ROE, Michigan Electric's proposal to recover the 12.38 percent ROE is just and reasonable.¹⁴

12. We also reject the Michigan Commission's assertion here that the Commission should initiate an investigation of the baseline ROE of the other Midwest ISO transmission owners. Michigan Electric does not propose to change the Commission-authorized baseline ROE for Midwest ISO transmission owners under the Attachment O formula rate. As such, as the proponents of a change in an unchanged component of rates, the protestors bear the burden under section 206 of the FPA to show that the existing ROE is unjust and unreasonable and that a specific replacement ROE and capital structure are just and reasonable. The Commission has discretion in deciding whether to initiate investigations pursuant to section 206 of the FPA and whether to set the issue for a formal hearing.¹⁵ In our judgment, the protestors' assertions that updated analyses could suggest a lower baseline ROE for Michigan Electric are too general and unsupported to warrant initiation of a section 206 investigation into the existing baseline ROE.¹⁶ If the Michigan Commission (or Consumers Energy) wishes to challenge the

¹⁴ Further, as noted above, Michigan Electric has previously been authorized to recover the 12.38 percent baseline ROE for its deferral amounts. Thus, its proposed ROE here is consistent with what it has been authorized to recover on its deferral amounts.

¹⁵ See, e.g., *International Transmission Co.*, 116 FERC ¶ 61,036, at P 35 & n.21 (2006).

¹⁶ Indeed, in a pleading in a recent proceeding concerning International Transmission Company, the Michigan Commission said:

In [Michigan Commission's] view, the existing Attachment O recovery mechanism, which allows [International Transmission] to adjust its rates annually without any regulatory review to reflect its actual costs, including a 13.88 [percent] incentive adjusted return on equity, strikes a proper balance between the need to provide adequate incentives to attract capital for new construction and to provide ratepayers with the assurance that all costs reflected in rates are actual costs as reported by the company in its Form 1 Annual Financial Report filed with the Commission. [Michigan Commission's Notice of Intervention and Protest, Docket No. ER06-1006-000 (June 7, 2006).]

currently authorized baseline ROE for Midwest ISO transmission owners as a group, it should not do so in a proceeding where, as here, the ROE is not proposed to be changed, but instead should file a complaint under section 206 of the FPA.¹⁷

C. 50 Basis Point ROE Incentive for RTO Participation

13. Michigan Electric proposed to recover a 50 basis point incentive for RTO participation, for its participation in Midwest ISO. Protestors argued that the 50 basis point ROE incentive should be excluded, because the Commission, on remand from the court, vacated its authorization of the 50 basis point ROE incentive that it had previously approved for use by all Midwest ISO transmission owners. The December 30 Order rejected the proposed 50 basis point ROE incentive without prejudice to Michigan Electric participating in a proposal to adopt an ROE incentive for RTO participation in a proceeding addressing the ROE applicable to all Midwest ISO transmission owners.¹⁸

14. Michigan Electric requests clarification, or in the alternative, rehearing, concerning the Commission's denial, without prejudice, of Michigan Electric's proposed 50 basis point ROE incentive for RTO participation, to the extent such denial would preclude Michigan Electric from ultimately reflecting such an incentive in rates effective January 1, 2006. Michigan Electric states that, while it believes it has justified the full amount of its proposed ROE, it does not necessarily object to having the 50 basis point ROE incentive considered in a broader proceeding involving all Midwest ISO transmission owners. Michigan Electric states that it has no control over, or authority to compel, other transmission owners to initiate any such generic proceeding. However, Michigan Electric requests that, if the Commission withholds approval of its requested 50 basis point ROE incentive pending the initiation and outcome of a broader generic proceeding, then the Commission should recognize Michigan Electric's January 1, 2006 effective date, if a generic ROE incentive is ultimately approved for all Midwest ISO transmission owners.

Commission Determination

15. We deny Michigan Electric's request for reconsideration of the rejection of the 50 basis point ROE incentive. Michigan Electric cannot rely on the Commission's approval of the baseline 12.38 percent ROE for use by Midwest ISO transmission owners as a

¹⁷ *Aquila Power Corp.*, 76 FERC ¶ 61,192, at 62,037 n.1 (1996); *Yankee Atomic Electric Co.*, 60 FERC ¶ 61,316, at 62,096-97 n.19 (1992).

¹⁸ December 30 Order, 113 FERC ¶ 61,343 at P 15-16.

basis to support its adoption of the same ROE, but then request a different, higher ROE-based on an ROE-based incentive that was at one time part of the Midwest ISO ROE but that was ultimately rejected. The Commission made clear that for those Midwest ISO transmission owners that adopt the baseline 12.38 percent ROE, any request for an ROE-based incentive for RTO participation should be made by the Midwest ISO or the Midwest ISO transmission owners under section 205 of the FPA.¹⁹ Accordingly, if Michigan Electric wishes to adopt the baseline 12.38 percent ROE, the proper venue to increase that ROE to include an RTO incentive is a proceeding where Midwest ISO or the transmission owners request that incentive. Alternatively, if Michigan Electric does not want to adopt the ROE that the Commission has approved for use by all Midwest ISO transmission owners and instead propose an individual ROE that includes an incentive for RTO participation, it can choose to not adopt the 12.38 percent ROE and file support to demonstrate that its individual ROE that includes such an incentive is just and reasonable.

16. We also deny Michigan Electric's alternative request to grant a January 1, 2006 effective date for a 50 basis point ROE incentive if the Commission approves such an incentive for Midwest ISO transmission owners at some time in the future. It is inappropriate to grant Michigan Electric what amounts to a retroactive effective date to receive an incentive that, as discussed above, must be filed by Midwest ISO or the Midwest ISO transmission owners but that has not been filed, let alone approved, and where the circumstances surrounding such an incentive filing are unknown.²⁰

D. 100 Basis Point ROE Incentive for Being a Stand-alone Transmission Company

17. Michigan Electric proposed to recover a 100 basis point incentive for being a stand-alone transmission company. Protestors argued that Michigan Electric had not demonstrated that an incentive for independence is needed. The December 30 Order noted that the Commission has recognized the benefits of independent, stand-alone transmission companies or transcos in Commission orders, a policy statement and a

¹⁹ See, e.g., Remand Order, 111 FERC ¶ 61,355 at P 5.

²⁰ In addition, as the Commission recently reiterated in Order No. 679, incentive-based ROEs are to be filed with the Commission for approval *before* rates that reflect such incentives can be charged. See *Promoting Transmission Investment through Pricing Reform*, Order No. 679, 71 Fed. Reg. 43,294 (Jul. 31, 2006), 116 FERC ¶ 61,057, at P 93 (2006).

Notice of Proposed Rulemaking.²¹ The December 30 Order recognized Michigan Electric's positive record of investment in transmission infrastructure and expressed the belief that its positive record was related to its stand-alone nature. The Commission determined that Michigan Electric had demonstrated that it is performing and achieving benefits commensurate with the results that the Commission sought to stimulate in approving Michigan Electric's initial rate treatments in the orders addressing its formation. Thus, the Commission allowed Michigan Electric to continue the 100 basis point incentive to its ROE, to encourage continued pursuit of its independent, single-focus business model.²²

18. On rehearing, the Michigan Commission contends that Michigan Electric provided little detail in its filing demonstrating that its status as a stand-alone transmission company has prompted it to undertake projects that would not have been carried out by a traditional transmission-owning utility. The Michigan Commission also asserts that Michigan Electric did not provide any type of quantitative analysis to reasonably support a conclusion that customers receive benefits from its status as a stand-alone transmission owner commensurate with the costs imposed through a 100 basis point incentive to its ROE, such as lower cost of delivered power, or construction of facilities included in the Midwest ISO's transmission expansion plan or a state's capacity needs assessment. The Michigan Commission argues that, absent such analysis, a 100 basis point incentive to encourage Michigan Electric's continued pursuit of its independent, single-focus business model does not appear necessary.

19. On rehearing, Consumers Energy argues that granting a 100 basis point incentive to a transmission owner that is already independent is unnecessary. Consumers Energy contends that the Commission should reverse its decision in the December 30 Order to approve a 13.38 percent ROE and require Michigan Electric to present a discounted cash flow analysis to determine an appropriate ROE.

²¹ *Id.*, 113 FERC ¶ 61,343, at P 17, citing *ITC Holdings Corp.*, 102 FERC ¶ 61,182, at P 62, *reh'g denied*, 104 FERC ¶ 61,033 (2003); *TRANSLink Transmission Co. L.L.C.*, 99 FERC ¶ 61,106, at 61,455 (2002), *order on reh'g*, 101 FERC ¶ 61,140 (2003); *Policy Statement Regarding Evaluation of Independent Ownership and Operation of Transmission*, 111 FERC ¶ 61,473 (2005); *Promoting Transmission Investment through Pricing Reform, Notice of Proposed Rulemaking*, 70 Fed. Reg. 71,409 (Nov. 29, 2005), FERC Stats. & Regs., Proposed Regs. ¶ 32,593 (2005). On July 20, 2006, the Commission issued the Final Rule, Order No. 679.

²² December 30 Order, 113 FERC ¶ 61,343 at P 18-19.

Commission Determination

20. The parties' requests for rehearing reiterate policy arguments raised in their protests. However, as noted in the December 30 Order, and summarized above, the Commission has identified valid policy reasons that justify allowing such incentive-based rates for stand-alone transmission companies. Further, in denying a challenge to a similar RTO incentive involving a New England RTO, the court reaffirmed well-established precedent that the Commission may consider non-cost factors, such as policy considerations, in setting a just and reasonable ROE.²³ Therefore, we reaffirm the December 30 Order and deny the requests for rehearing on this issue.

21. Our acceptance of Michigan Electric's proposed ROE-based incentive for independence is distinguishable from our rejection of the 50 basis point incentive. The only basis for Michigan Electric to receive the 50 basis points for RTO participation related to the previous approval of that incentive for all transmission owners that adopted the 12.38 percent ROE, but which the Commission ultimately rejected on remand from the courts. For the independent transmission company ROE-based incentive, Michigan Electric supported and the Commission explained the basis for accepting the incentive. In addition, unlike an incentive for RTO participation, this incentive is not one that would be applicable to all the transmission owners that have adopted the baseline 12.38 percent ROE and would not apply to the transmission owners who are not independent transmission companies.

E. Timing of Recovery of Deferrals

22. Michigan Electric proposed 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 No. 1 data for the previous calendar year. Beginning January 1, 2006, through May 31, 2006, Michigan Electric proposed 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 2005, as well 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

²³ See *Maine Public Utilities Commission v. FERC*, No. 05-1001, slip op. at 19 (D.C. Cir., Jun. 30, 2006).

January 1, 2006, Michigan Electric proposed 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.

23. Among other things, protestors argued that Michigan Electric's analysis did 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 from Midwest ISO. They argued that the amount of deferred costs should be computed taking into account the difference between total revenue requirements and higher actual revenues computed for each year between 2001 and 2005.

24. The Commission was concerned about potential over-collection, but it allowed Michigan Electric to begin recovering the deferrals in its rates on January 1, 2006. The Commission stated, though, that the parties should address any necessary adjustments to the Attachment O formula rate through the Commission-ordered hearing and settlement judge procedures to ensure that Michigan Electric did not over-collect any deferral amounts.²⁴

25. On rehearing, Consumers Energy argues that beginning the deferral recovery on January 1, 2006 is not compatible with the Attachment O ratemaking process. Consumers Energy states that it would have been appropriate for Michigan Electric to begin recovering its deferrals in rates beginning January 1, 2006, if Michigan Electric would have proposed traditional cost-based ratemaking instead of using an Attachment O formula rate as the vehicle to recover these deferrals. Consumers Energy states that the Form No. 1 reflecting Michigan Electric's amortization of the deferrals will not be filed until 2007 and therefore the Commission should require that Michigan Electric recover the deferrals in its Attachment O rate beginning June 1, 2007, rather than January 1, 2006.

Commission Determination

26. The Commission disagrees with Consumers Energy that Michigan Electric must begin recovering its deferrals in its Attachment O rate beginning June 1, 2007 and reaffirms the decisions in the December 30 Order. When 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 between

²⁴ December 30 Order, 113 FERC ¶ 61,343 at P 28.

January 1, 2001 and December 31, 2005,²⁵ Michigan Electric was still subject to a rate freeze, and the Commission did not prohibit Michigan Electric from switching to an Attachment O formula rate once the rate freeze ended. Further, Michigan Electric's proposed true-up mechanism, for the rates charged between June 1, 2006 and May 31, 2007, reflected the difference between actual and estimated 2005 transmission plant additions and capital structure, plus interest calculated pursuant to section 35.19a of the Commission's regulations. With this true-up mechanism in place, the net result for consumers over time would be no different if Michigan Electric begins recovering the deferrals on January 1, 2006 or on June 1, 2007. Therefore, it is appropriate to allow Michigan Electric to begin recovering the deferrals in its rates on January 1, 2006.

F. Recordkeeping Related to Push-Down Accounting

27. Among other modifications to its Attachment O formula rate, Michigan Electric proposed to adjust its 2004 common equity balance to remove the effect of push-down accounting²⁶ treatment, required under Generally Accepted Accounting Principles (GAAP), relating to the sale of the limited partners' interest in Michigan Electric. Michigan Electric stated that its rates would be unaffected by the proposed change other than the minor impact of the elimination of a portion of the accumulated deferred tax balances. Protestors argued that the Commission should require Michigan Electric to keep accounting records sufficient to allow for necessary adjustments in future rate determinations to be made. The Commission noted that protestors had raised numerous other issues of material fact that could not be resolved on the record and that they were more appropriately addressed in hearing and settlement judge proceedings.²⁷

28. On rehearing, Consumers Energy argues that the December 30 Order did not address its argument that Michigan Electric should be required to keep accounting records sufficient to allow necessary adjustments to its capital account to be made. It points out that the Commission has required such records in connection with the use of

²⁵ 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).

²⁶ In the context of mergers, under "push down" accounting, the difference between the purchase and the book value of the company acquired would be "pushed down" to the books of the acquired company. See, e.g., *Ohio Edison Co.*, 80 FERC ¶ 61,039, at 61,108 (1997).

²⁷ December 30 Order, 113 FERC ¶ 61,343 at P 30.

push-down accounting by other public utilities.²⁸ Consumers Energy presumes that the Commission, by its silence on this particular issue, intended to leave this issue open for resolution at the hearing or in settlement. However, Consumers Energy argues that no hearing record is required for the Commission to require Michigan Electric keep additional records related to its push-down accounting consistent with the Commission's policy on such accounting.

Commission Determination

29. Accounting requirements associated with a disposition of jurisdictional facilities, such as ordering a utility to keep records, are normally imposed when authorization is granted pursuant to section 203 for the disposition that led to the push-down accounting. However, Michigan Electric did not previously raise the issue of push-down accounting in its related section 203 filing.

30. The Commission has previously required detailed accounting records to be kept by other public utilities using push-down accounting. Michigan Electric similarly should keep appropriate records that demonstrate any adjustments made to its equity balance. This will facilitate future period ratemaking evaluations. Accordingly, we grant rehearing on this issue.

The Commission orders:

The requests for rehearing of the December 30 Order are hereby granted in part and denied in part, as discussed in the body of this order.

By the Commission.

(S E A L)

Magalie R. Salas,
Secretary.

²⁸ *Citing, Niagara Mohawk Holdings Inc.*, 95 FERC ¶ 61,381, at 62,415, *reh'g denied*, 96 FERC ¶ 61,144 (2001).