

136 FERC ¶ 61,203
FEDERAL ENERGY REGULATORY COMMISSION
WASHINGTON, DC 20426

September 23, 2011

In Reply Refer To:
Michigan Electric Transmission
Company, LLC
Docket No. ER11-4118-000

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 filed a Letter Agreement, dated January 31, 2005, between Michigan Electric Transmission Company, LLC (Michigan Electric) and Michigan South Central Power Agency (MSCPA).¹ Michigan Electric states that it is filing the Letter 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 for filing the Letter Agreement, effective September 26, 2011, as requested.

2. Notice of the filing was published in the *Federal Register*, 76 Fed. Reg. 46,791 (2011), with interventions and protests due on or before August 16, 2011. On July 27, 2011, Consumers Energy Company (Consumers Energy) filed a timely motion to intervene. On August 19, 2011, MSCPA filed a motion to intervene out-of-time and comments.

¹ The Letter Agreement is designated as Michigan Electric Rate Schedule No. 56.

3. 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.

4. Under the terms of the Letter Agreement, Michigan Electric agreed to procure and install new billing meters on behalf of MSCPA. Michigan Electric states that, under section 3 of the Letter Agreement, Michigan Electric initially charged MSCPA \$51,600 for services rendered, including \$41,600 to purchase the new meters. However, on July 5, 2005, Michigan Electric submitted to MSCPA a letter showing the final project cost of \$47,087.85, which resulted in a refund to MSCPA.

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.⁴ Michigan Electric claims, however, that it only charged MSCPA the actual cost for procuring and installing the new meters, and, in fact, already refunded the difference between the amounts it collected up front (\$51,600) and the final cost of the work (\$47,087.85). Michigan Electric asserts that, if it were required to make time-value refunds of the amounts it received under the agreement, it would operate at a loss. In this regard, Michigan Electric notes that, under the Commission's *Prior Notice* policy and subsequent cases, time-value refunds are limited to ensure that a utility does not operate at a loss.⁵ Accordingly, Michigan Electric requests waiver of the Commission's requirement to issue time-value refunds.

6. MSCPA does not object to the filing. Rather, MSCPA 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 Letter Agreement has not been valid since the date of its inception.⁶ MSCPA states that Michigan Electric has authorized it to represent that: (1) Michigan Electric intends no such implication; (2) Michigan Electric

² 18 C.F.R. § 385.214 (2011).

³ 18 C.F.R. § 385.214(d) (2011).

⁴ *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).

⁵ Michigan Electric Filing at 6 (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)).

⁶ MSCPA Comments at 1.

agrees that the Letter Agreement has been valid and in effect since its inception date and remains valid and effective in accordance with its terms; and (3) that Michigan Electric agrees that the fact that Michigan Electric did not previously file the Letter Agreement with the Commission does not affect MSCPA's rights under the Letter Agreement.⁷

7. We find that the Letter Agreement is just, reasonable and not unduly discriminatory or preferential. Therefore, we will accept it for filing effective September 26, 2011, as requested. However, as acknowledged by Michigan Electric, the Letter Agreement was not filed with the Commission before service commenced as required by the Commission's *Prior Notice* policy. As Michigan Electric notes, however, 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. However, Michigan Electric failed to provide a refund report supporting its claim 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.

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 Letter Agreement since its inception on January 31, 2005.⁸

By direction of the Commission.

Nathaniel J. Davis, Sr.,
Deputy Secretary.

⁷ *Id.* at 3.

⁸ *See, e.g., El Paso Electric Co.*, 105 FERC ¶ 61,131, at P 39 (2003).