

136 FERC ¶ 61,206
FEDERAL ENERGY REGULATORY COMMISSION
WASHINGTON, DC 20426

(September 26, 2011)

In Reply Refer To:
Michigan Electric Transmission
Company, LLC
Docket Nos. ER11-4127-000
ER11-4129-000
ER11-4130-000

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: (1) an Agency Agreement, dated April 1, 2001, between Michigan Electric Transmission Company, LLC (Michigan Electric) and Consumers Energy Company (Consumers Energy) regarding a Facilities Agreement between Consumers Energy and Hillman Limited Partners in Docket No. ER11-4127-000; (2) an Agency Agreement, dated April 1, 2001, between Michigan Electric and Consumers Energy regarding a Facilities Agreement between Consumers Energy and Tondou Energy Systems, Inc. in Docket No. ER11-4129-000; and (3) an Agency Agreement, dated April 1, 2001, between Michigan Electric and Consumers Energy regarding a Facilities Agreement between Consumers Energy and Viking Energy of Lincoln, a Limited Partnership in Docket No. ER11-4130-000 (collectively, Agency Agreements).

2. Michigan Electric states that it is filing the Agency Agreements as a result of a comprehensive review that Michigan Electric and its affiliates undertook 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 Agreements are not required to be on file, Michigan Electric's filings are dismissed.

3. Notice of the filings 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 in all three proceedings. On September 1, 2011, Michigan Electric filed a motion for leave to answer and answer in all three proceedings.

4. Pursuant to Rule 214 of the Commission's Rules of Practice and Procedure,¹ Consumers Energy's timely, unopposed motions to intervene serve to make it a party to the proceedings. Rule 213(a)(2) of the Commission's Rules of Practice and Procedure,² prohibits an answer to a protest unless otherwise ordered by the decisional authority. We are not persuaded to accept Michigan Electric's answers and will, therefore, reject them.

5. According to the terms of the Agency Agreements, Michigan Electric as agent for Consumers Energy, operates and maintains the interconnection facilities as required under each of the related Facilities Agreements.³ In exchange for maintaining each of the facilities, Consumers Energy reimburses Michigan Electric for direct and indirect costs, plus a \$500 monthly agency fee. Michigan Electric notes that it is not a party to any of the related Facilities Agreements nor does it express an opinion as to whether they are or should be on file with the Commission.

6. 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 recovers its actual costs associated with its operation and maintenance obligations under the Agency Agreements, with no mark-up or profit, and that it would operate at a loss if the Commission required it to make time-value refunds of revenues received. In addition, Michigan Electric explains that the monthly agency fees collected under the Agency Agreements are used as a credit to Michigan Electric's annual operation and maintenance expense requirements under Michigan Electric's Attachment O formula rate for transmission under the Midwest Independent Transmission System Operator, Inc.'s tariff. Further, Michigan Electric states that the formula rate is subject to true-up to ensure there is no over-recovery of the operation and

¹ 18 C.F.R. § 385.214 (2011).

² 18 C.F.R. § 385.213(a)(2) (2011).

³ Michigan Electric has included copies of each of the Facilities Agreements as Attachment C to each filing.

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).

maintenance and other expenses. Michigan Electric asserts that Commission precedent provides that refunds are limited to ensuring that utilities only return the interest on monies it was never authorized to receive, with a floor to protect it from operating at a loss.⁵ Accordingly, Michigan Electric requests waiver of the Commission's requirement to issue time-value refunds.

7. In its motion to intervene, Consumers Energy states that all three of the Facilities Agreements related to this proceeding are generation interconnection agreements for Qualifying Facilities (QF) under the Public Utility Regulatory Policies Act of 1978.⁶ Consumers Energy further states that, pursuant to three separate Power Purchase Agreements (PPA), it purchases all of the output available at each of the plants.⁷ Thus, Consumers Energy asserts that the related Facilities Agreements are not jurisdictional.

8. In addition, Consumers Energy argues that Michigan Electric should be required to refund time-value of revenues under the Agency Agreements for the time period April 1, 2001, through January 1, 2007, the date that Michigan Electric's Attachment O formula rate went into effect.

9. Commission precedent provides that when an interconnecting electric utility purchases all of a QF's total output, then the relevant state authority exercises authority over the interconnection and the allocation of the interconnection costs.⁸ However, if an electric utility interconnecting with a QF does not purchase all of the QF's output and instead the QF sells (or has a contractual right to sell) any of the QF's output to an entity other than the electric utility directly interconnected to the QF, the Commission then exercises its authority over the rates, terms, and conditions affecting or related to the interconnection.⁹ Here, according to the terms of the PPAs, all three QF owners sell all

⁵ 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)).

⁶ 16 U.S.C. § 2601 *et seq.* (2006).

⁷ See Consumers Energy Comments at 2 (citing Section 1 of the PPAs).

⁸ *Standardization of Generator Interconnection Agreements and Procedures*, Order No. 2003, FERC Stats. & Regs. ¶ 31,146, at P 813 (2003), *order on reh'g*, Order No. 2003-A, FERC Stats. & Regs. ¶ 31,160, *order on reh'g*, Order No. 2003-B, FERC Stats. & Regs. ¶ 31,171 (2004), *order on reh'g*, Order No. 2003-C, FERC Stats. & Regs. ¶ 31,190 (2005), *aff'd sub nom. Nat'l Ass'n of Regulatory Util. Comm'rs v. FERC*, 475 F.3d 1277 (D.C. Cir. 2007), *cert. denied*, 552 U.S. 1230 (2008).

⁹ *Western Massachusetts Elec. Co. vs. FERC*, 165 F.3d 922, 926 (D.C. Cir. 1999).

of the available electric energy to Consumers Energy, the electric utility directly interconnected to each QF. Thus, the Facilities Agreements are subject to the authority of the relevant state authority and are not required to be on file with the Commission. Because the Agency Agreements relate to the Facilities Agreements, the services provided under the Agency Agreements are not related to jurisdictional service and therefore the Agency Agreements are not required to be on file with this Commission.¹⁰ Accordingly, we dismiss Michigan Electric's filing and find that Michigan Electric is not required to make time-value refunds under the Agency Agreements. Our disposition of the matter makes Consumers Energy's related concern moot.

By direction of the Commission

Kimberly D. Bose,
Secretary.

¹⁰ *Cf. Midwest Indep. Transmission Sys. Operator, Inc.*, 132 FERC ¶ 61,241, at P 26-27 (2010) (finding a facilities agreement, and related agency agreement, to be jurisdictional on the date the QF was first authorized to make third-party sales).