

140 FERC ¶ 61,151  
UNITED STATES OF AMERICA  
FEDERAL ENERGY REGULATORY COMMISSION

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

International Transmission Company

Docket No. ER12-2170-000

ORDER CONDITIONALLY ACCEPTING LATE-FILED AGREEMENT

(Issued August 28, 2012)

1. On June 29, 2012, pursuant to section 205 of the Federal Power Act (FPA)<sup>1</sup> and Part 35 of the Commission's Regulations,<sup>2</sup> International Transmission Company (ITC) filed the Belle River Transmission Ownership and Operating Agreement (Belle River Agreement) between ITC and Michigan Public Power Agency (MPPA).<sup>3</sup> As discussed below, we conditionally accept ITC's filing, effective August 29, 2012, subject to a compliance filing due 30 days after the date of this order.

**I. Background and Filing**

2. ITC, a wholly-owned subsidiary of ITC Holdings Corp. (ITC Holdings), states that it and the other operating company subsidiaries of ITC Holdings have undertaken a comprehensive review of all of their contracts to ensure compliance with the Commission's prior notice requirements under section 205. ITC states that, as a result of this review, it has identified agreements that should be, but are not, on file with the Commission or that should have been, but were not, identified as ITC rate schedules. As a product of this review, ITC states that it was unable to find a record of the Belle River

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<sup>1</sup> 16 U.S.C. § 824d (2006).

<sup>2</sup> 18 C.F.R. Part 35 (2012).

<sup>3</sup> International Transmission Company, FERC Electric Tariff, ITC Transmission Agreements, [ITC Transmission RS 16, Belle River Transmission Ownership and Operating Agmt, 0.0.0.](#)

Agreement ever being filed under section 205. Moreover, ITC states that the agreement may not have been filed because it previously was not considered to be jurisdictional.<sup>4</sup>

3. ITC states that it is an independent transmission company and transmission-owning member of Midwest Independent Transmission System Operator, Inc. (MISO). In 2000, DTE Energy Company (DTE), the parent of The Detroit Edison Company (Detroit Edison), created ITC to acquire substantially all of Detroit Edison's integrated transmission facilities with voltage ratings of 120 kV and above, and all related jurisdictional wholesale electric tariffs, contracts, books and records.<sup>5</sup> In 2001, the Commission authorized DTE to divest ITC to an (at that time) undetermined, unaffiliated third party.<sup>6</sup> In 2003, the Commission authorized DTE's sale of ITC to ITC Holdings.<sup>7</sup>

4. Detroit Edison and MPPA entered into the Belle River Agreement on December 1, 1982. ITC states that it was assigned the Belle River Agreement after ITC acquired Detroit Edison's transmission assets in 2000.<sup>8</sup>

5. The Belle River Agreement sets forth the terms pursuant to which ITC and MPPA share joint ownership of certain 120 kV and higher voltage transmission lines (Designated Transmission Lines) that were constructed and placed in commercial operation prior to December 31, 1981. ITC states that the agreement is listed as a grandfathered agreement (GFA) and designated GFA 210 under MISO's Tariff.<sup>9</sup> The Belle River Agreement provides for the sharing of costs of construction of capital improvements by Detroit Edison and MPPA in proportion to their respective ownership interests. In addition, the agreement provides for the allocation to MPPA of a portion of the operation and maintenance (O&M) expenses incurred by Detroit Edison (and now ITC) for operating and maintaining the Designated Transmission Lines and of administrative and general costs in proportion to MPPA's proportion of investment in Detroit Edison's (and now ITC's) transmission system. ITC states that the costs included in the O&M formula include supervision, engineering, employee payroll, sales and use

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<sup>4</sup> ITC June 29 Application at 2.

<sup>5</sup> See *DTE Energy Co.*, 91 FERC ¶ 61,317 (2000).

<sup>6</sup> See *DTE Energy Co. and International Transmission Co.*, 97 FERC ¶ 61,330 (2001).

<sup>7</sup> See *ITC Holdings Corp.*, 102 FERC ¶ 61,182 (2003).

<sup>8</sup> ITC June 29 Application at 3.

<sup>9</sup> See MISO Tariff, Attachment P, List of Grandfathered Agreements, 3.0.0.

taxes, transmission service, operation and maintenance, and administrative and general costs.

6. Though no record exists that the Belle River Agreement was ever filed with the Commission, ITC states that a copy of the agreement was provided to the Commission in the context of the MISO GFA proceedings in 2005.<sup>10</sup>

7. On June 29, 2012, ITC filed the Belle River Agreement as a new rate schedule. ITC states that based on Articles 8.2 and 8.3 of the Belle River Agreement, ITC has charged MPPA for capital improvements, O&M, ownership-related taxes, and insurance based on MPPA's share of certain jointly-owned facilities.<sup>11</sup> ITC acknowledges that, under the Commission's Prior Notice order, it is aware that it must provide its customers with time-value refunds of any amounts it has received under the late-filed agreement.<sup>12</sup> According to ITC, ITC has invoiced MPPA for \$14,402,532.33 since 2003, the time-value of which is \$2,895,023.79.<sup>13</sup> ITC notes that, due to a dispute, MPPA did not pay ITC for any costs incurred under the agreement from 2003, when the agreement was assigned to ITC, until October 31, 2006.<sup>14</sup> ITC states that implementation of the time-value policy would require ITC to operate at a loss and requests waiver of the requirement to make time-value refunds.

8. ITC requests an effective date for the Belle River Agreement of August 29, 2012.

## **II. Notice of Filing and Responsive Pleadings**

9. Notice of the filing was published in the *Federal Register*, 77 Fed. Reg. 41,177 (2012), with interventions and protests due on or before July 20, 2012. Detroit Edison filed a timely motion to intervene, protest and motion to dismiss. MPPA filed a timely motion to intervene and protest. On August 6, 2012, MPPA filed an answer to Detroit Edison's motion to dismiss (August 6 Answer). Also on August 6, 2012, ITC filed a motion for leave to answer and answer in response to MPPA's motion to intervene and protest. On August 13, 2012, Detroit Edison filed a motion for leave to answer in

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<sup>10</sup> ITC June 29 Application at 6.

<sup>11</sup> *Id.* at 2.

<sup>12</sup> *Prior Notice and Filing Requirements Under Part II of the Federal Power Act*, 64 FERC ¶ 61,139 at 61,979, *clarified*, 65 FERC ¶ 61,081 (1993) (Prior Notice order).

<sup>13</sup> ITC June 29 Application at 6-7, Attachment D.

<sup>14</sup> *Id.* at 7 fn. 26.

response to the answers of MPPA and ITC. On August 15, 2012, MPPA filed an answer to ITC's answer (August 15 Answer).

10. In its protest, Detroit Edison requests that the Commission dismiss ITC's filing because the Belle River Agreement is non-jurisdictional, as it neither provides rates or charges for jurisdictional services nor affects or relates to jurisdictional rates or services. Instead, according to Detroit Edison, the agreement provides for the transfer of an ownership interest in the Designated Transmission Lines to MPPA for MPPA's use in transmitting MPPA's entitlements to energy under a separate agreement under which MPPA acquired an ownership interest in Detroit Edison's Belle River electric generating facility. Detroit Edison states that, although Article 6.1 of the Belle River Agreement permits MPPA to use Detroit Edison's bulk transmission system to move power from that generating facility, it specifies that any such use must occur under separate transmission tariffs, not the Belle River Agreement. Detroit Edison further asserts that the non-jurisdictional status of the Belle River Agreement was supported by MPPA in comments made by MPPA during the section 203 proceeding regarding the transfer of Detroit Edison's transmission system to ITC.

11. Detroit Edison goes on to distinguish the Belle River Agreement from an agreement that MPPA entered into with Consumers Energy Company (Consumers Energy) relating to MPPA's ownership interest in and use of Consumers Energy's transmission system. Detroit Edison notes that the Commission found the Consumers Energy agreement to be jurisdictional because, in addition to granting MPPA an ownership interest in Consumers Energy's transmission system, it also provided MPPA with transmission service over Consumers Energy's entire transmission system.<sup>15</sup> In contrast, Detroit Edison argues that the Belle River Agreement grants MPPA sufficient ownership rights to fulfill its contractual purpose of delivering MPPA's Belle River generating facility entitlement to MPPA without utilizing facilities owned by Detroit Edison. Detroit Edison adds that the Consumers Energy agreement does not contain language specifically stating that any transmission service on Consumers Energy's system would be subject to separate transmission service tariffs. For the foregoing reasons, Detroit Edison concludes that the Belle River Agreement does not contain rates or charges for or in connection with transmission or wholesale sales of power, or otherwise affect or relate to jurisdictional transmission service. Finally, Detroit Edison argues that, because MPPA is not a public utility, any services it provides its customers are not subject to the Commission's jurisdiction. Hence, any service provided by MPPA to its customers that related to or was affected by Detroit Edison's operation of the Designated Transmission Lines would not be under the Commission's

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<sup>15</sup> Detroit Edison Protest at 7, citing *Michigan Electric Transmission Co.*, 119 FERC ¶ 61,101 (2007).

jurisdiction. Detroit Edison concludes that, if the Commission nonetheless accepts the Belle River Agreement for filing, it should grant ITC's request for a prospective effective date of August 29, 2012, as well as accept ITC's refund analysis showing that no refunds are due.

12. MPPA asserts in its protest that ITC did not properly compute the time value of all MPPA payments under the Belle River Agreement or demonstrate that paying time-value refunds would cause ITC to not recover its variable O&M expenses (that is, to operate at a loss). MPPA states that the Commission should order ITC to: (1) submit a compliance filing setting forth a full accounting of the revenues received under the Belle River Agreement from 1982 to present and a calculation of the time-value earned on such revenues; and (2) refund such amount to MPPA in accordance with Commission policy.

13. Specifically, MPPA states that ITC does not substantiate that it will suffer a loss if required to issue refunds because it did not provide any documentation to distinguish variable costs from fixed costs under the Belle River Agreement. MPPA contends that ITC charged MPPA for overhead and other costs that do not change based on service to MPPA under the Belle River Agreement. MPPA further claims that ITC's calculation of refunds is in error because the payments are only for the period beginning 2006, even though ITC Holdings acquired ITC in 2003, ITC assumed the Belle River Agreement in 2000, and the Belle River Agreement has been in effect since 1982. Moreover, MPPA asserts that ITC's claim that MPPA did not pay ITC for any costs incurred under the agreement until October 31, 2006 is incorrect because the amount paid by MPPA in 2006 included interest on payments that MPPA withheld from 2003 to 2006 pending settlement of a dispute with ITC, which made ITC whole. MPPA asserts that the time value of refunds should be calculated from 1982 to align with the date the period of violation began. Even though ITC ceased to be affiliated with Detroit Edison in 2003, MPPA asserts that the transfer should not operate to shield ITC from refund liability. MPPA also requests that the Commission find that ITC's late filing of the Belle River Agreement and requested effective date of August 29, 2012 does not alter the fact that the agreement has been valid and in effect since it was ratified in 1982.

14. In its answer, ITC asserts that MPPA's protest lacks merit and should be rejected. ITC states that MPPA ignores Commission precedent which applies a floor for time-value refunds to all directly assignable costs under a transmission construction and operation agreement like the Belle River Agreement. ITC states that in *Florida Power & Light Co.*,<sup>16</sup> the Commission found that the limits on time-value refunds announced in

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<sup>16</sup> *Florida Power & Light Co.*, 98 FERC ¶ 61,276, *reh'g denied*, 99 FERC ¶ 61,320 (2002).

*Carolina Power & Light Co.*<sup>17</sup> should also apply to interconnection and other types of transmission construction and operation agreements as public utilities should not be put in the position of having to construct interconnection and transmission facilities at a loss. ITC states that the Commission has consistently held that the requirement to pay time-value refunds for late filed agreements comes with a floor to ensure that the utility has not operated at a loss under the agreement and that, in the context of a transmission construction and operation agreement such as the Belle River Agreement, the floor for time-value refunds is not merely a utility's variable costs in providing the service. ITC further states that MPPA ignores the fact that waiver of time-value refunds has been granted for other agreements which included administrative and general "overheads" in the calculation of the utility's costs. It also argues that MPPA cites no precedent for its contention that ITC should be required to make time-value refunds for the full period the agreement was unfiled, i.e., dating back to 1982 when MPPA entered into the agreement with ITC's predecessor, Detroit Edison. ITC states that the Commission should disregard MPPA's protest and apply the no-loss policy to ITC and the Belle River Agreement.

15. In its August 6 Answer, MPPA argues that Detroit Edison's motion to dismiss should be denied. First, MPPA states that Article 6.1 of the Belle River Agreement expressly confers upon MPPA utilization rights across Detroit Edison's entire bulk transmission system and does not restrict MPPA's use to the lines it jointly owns with ITC. Second, MPPA disputes Detroit Edison's argument that the Belle River Agreement requires that service over Detroit Edison's bulk transmission system is to be provided pursuant to a separate transmission service agreement. MPPA states that the selected language upon which Detroit Edison relies applies to "additional" service and does not apply to the usage rights of MPPA in Detroit Edison's bulk transmission system up to the amount of MPPA's ownership entitlement in the Belle River generating facility. Third, MPPA argues that the Belle River Agreement would still affect rates and be a jurisdictional agreement even if the service associated with MPPA's ownership entitlement were set forth under a separate transmission agreement. MPPA also asserts that, in any event, it has never had to execute a separate transmission service agreement with Detroit Edison associated with utilization of its ownership entitlement under the Belle River Agreement because the Belle River Agreement already provides the terms, conditions and payment for such use. Fourth, MPPA claims that the Belle River Agreement is jurisdictional because it contains provisions addressing such ongoing responsibilities as operation and maintenance of the Designated Transmission Lines by ITC, loss provisions and payment obligations for such ongoing services by MPPA to ITC. In this regard, MPPA points out that in *PSI Energy, Inc.*,<sup>18</sup> the Commission

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<sup>17</sup> *Carolina Power & Light Co.*, 84 FERC ¶ 61,103 (1998), *on reh'g*, 87 FERC ¶ 61,083 (1999).

<sup>18</sup> *See PSI Energy, Inc.*, 63 FERC ¶ 61,107 (1993).

expressly found agreements containing these services and charges to be jurisdictional and subject to the Commission's section 205 filing requirements. Finally, MPPA contends that the parties considered the Belle River Agreement to be a jurisdictional agreement because it is listed as a GFA in the MISO Tariff.

16. In response to ITC's answer, Detroit Edison states that it does not believe any refunds are appropriate pursuant to the Commission's refund policy. However, it requests that the Commission clarify that any analysis of refunds by ITC includes the period beginning on January 1, 2001, which is the date on which Detroit Edison completed the transfer of its transmission assets to ITC. In addition, Detroit Edison states that the Commission accepted ITC's open access transmission tariff the same day the transfers were completed, designating ITC as a public utility and subject to section 205 filing requirements. Detroit Edison states that the 2003 transaction, in which DTE sold ITC to ITC Holdings, was an upstream transaction and did not affect ITC's ownership of or obligations under the Belle River Agreement.

17. In its response to MPPA's August 6 Answer, Detroit Edison states that MPPA misrepresents Article 6.1 of the Belle River Agreement and ignores the significant differences between the Belle River Agreement and MPPA's transmission ownership and operating agreement with Consumers Energy. Detroit Edison argues that nowhere under the provisions for use of the bulk transmission system by MPPA does the Belle River Agreement limit the application of the use of a separate transmission service tariff to "service for transmission capacity in an amount that exceeds MPPA's ownership entitlement." Furthermore, Detroit Edison asserts that MPPA does not provide any evidence that its use of the ITC system under the Belle River Agreement exceeds its ownership rights. Detroit Edison also claims that MPPA misapplies the Commission's precedent in *PSI Energy*. In that case, according to Detroit Edison, the Commission clarified that where an agreement provides for utilization fees for use of facilities beyond an entity's ownership interest in them, as was the case in the Consumers Energy agreement, the agreement is jurisdictional. On the other hand, where an agreement does not provide utilization fees, then it is not jurisdictional. Detroit Edison also states that the Belle River Agreement does not affect or relate to any jurisdictional services provided by Detroit Edison and that *PSI Energy* was fundamentally different because the Commission concluded that PSI Energy was providing transmission service to Wabash Valley Power Association and Indiana Municipal Power Agency in excess of their ownership interests in the joint transmission system. Detroit Edison further states that the GFA proceeding initiated in 2004 referenced by MPPA is irrelevant to interpreting the Belle River Agreement because the GFA proceeding was not limited to review of pre-existing jurisdictional transmission agreements but also to GFAs, such as the Belle River Agreement, which did not provide for either transmission ownership or transmission service.

18. In its August 15 Answer, MPPA disputes ITC's claim that the services provided to MPPA under the Belle River Agreement are analogous to the services provided under the construction agreements that were before the Commission in *Florida Power & Light Co.*<sup>19</sup> and *Southern California Edison Co.*<sup>20</sup> MPPA states that, unlike *Florida Power & Light Co.* and *Southern California Edison Co.*, where the public utility would not have constructed the underlying facilities but for the customer's request, the Belle River Agreement is not a construction agreement, but instead a transmission facilities ownership and operating agreement covering existing and new network transmission facilities that ITC would have constructed irrespective of MPPA's ownership interest in certain segments of the transmission network. Additionally, MPPA argues that, because ITC did not file the Belle River Agreement for decades after it was entered into, the severity of ITC's violation of the FPA is far greater than was the case in *Florida Power & Light Co.* and *Southern California Edison Co.* MPPA also argues that ITC incorrectly claims that MPPA previously argued in another proceeding that the Belle River Agreement was not Commission-jurisdictional. That proceeding, according to MPPA, concerned an unrelated transmission ownership and operating agreement that, in fact, was already on file. As such, the jurisdictional status of that agreement was never an issue. MPPA further asserts that Commission precedent requires ITC to calculate time-value refunds to MPPA over the entire period a rate was collected under the Belle River Agreement, that is, since 1982. MPPA states that the Commission should not consider changes in ITC's ownership when ordering ITC to calculate the time-value of MPPA payments under the Belle River Agreement.

### **III. Discussion**

#### **A. Procedural Matters**

19. Pursuant to Rule 214 of the Commission's Rules of Practice and Procedure, 18 C.F.R. § 385.214 (2012), the timely, unopposed motions to intervene serve to make the entities that filed them parties to this proceeding.

20. Rule 213(a)(2) of the Commission's Rules of Practice and Procedure, 18 C.F.R. § 385.213(a)(2) (2012), prohibits an answer to a protest or an answer unless otherwise ordered by the decisional authority. We will accept the MPPA, ITC, and Detroit Edison answers because they have provided information that assisted us in our decision-making process.

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<sup>19</sup> *Supra* n.16.

<sup>20</sup> *Southern California Edison Co.*, 98 FERC ¶ 61,304 (2002).



**B. Substantive Matters**

21. We will conditionally accept for filing the Belle River Agreement, effective August 29, 2012, as requested.<sup>21</sup>

22. We find that the Belle River Agreement provides for jurisdictional service and should be on file with the Commission. Under section 201 of the FPA,<sup>22</sup> the Commission has jurisdiction over the transmission of electric energy in interstate commerce, the wholesale sale (or sale for resale) of electric energy in interstate commerce, and all facilities used for such transmission or sale of electric energy. Section 201(e) defines a public utility as “any person who owns or operates facilities subject to the jurisdiction of the Commission.”<sup>23</sup> Sections 205 and 206 of the FPA provide the Commission with jurisdiction over all rates and charges made, demanded, or received by any public utility for or in connection with the transmission or sale of electric energy subject to the jurisdiction of the Commission, as well as jurisdiction over all rules, regulations, practices, or contracts that affect jurisdictional rates, charges, or classifications.<sup>24</sup> Section 205(c) provides:

Under such rules and regulations as the Commission may prescribe, every public utility shall file with the Commission . . . schedules showing all rates and charges for any transmission or sale subject to the jurisdiction of the Commission, and the classification, practices, and regulations affecting such rates and charges, together with all contracts which in any manner affect or relate to such rates, charges, classifications, and services.<sup>25</sup>

23. In *PSI Energy*, the Commission held that its jurisdiction extends to agreements that contain rates and charges for operation and maintenance of jointly-owned

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<sup>21</sup> It appears that, contrary to the requirements of section 35.3 of the Commission’s regulations, 18 C.F.R. § 35.3 (2012), ITC failed to file the Belle River Agreement in a timely manner. We remind ITC that it must submit required filings on a timely basis or face possible sanctions by the Commission.

<sup>22</sup> 16 U.S.C. § 824.

<sup>23</sup> 16 U.S.C. § 824(e).

<sup>24</sup> 16 U.S.C. §§ 824d, 824e.

<sup>25</sup> 16 U.S.C. § 824d(c).

jurisdictional facilities.<sup>26</sup> The agreement at issue in that proceeding provided that one of the joint owners was “responsible for the management, control, maintenance and operation of the [joint transmission system] . . . and shall take all steps necessary and appropriate for such purpose.”<sup>27</sup> The agreement also required the joint owner to “schedule the operation and maintenance of the [joint transmission system] in accordance with prudent utility practices. . . .”<sup>28</sup> Here, the Belle River Agreement provides that ITC has the sole authority to modify, manage, control, operate and maintain the Designated Transmission Lines and shall take all steps it deems necessary or appropriate for that purpose. ITC and MPPA have ownership interests in the Designated Transmission Lines under the Belle River Agreement, and MPPA pays ITC its share of the O&M expenses allocable to its ownership interests.<sup>29</sup> Additionally, ITC’s administrative and general expenses associated with Detroit Edison’s bulk transmission system are included in the formula for calculating the O&M expenses allocable to MPPA’s ownership interest.<sup>30</sup> As MPPA states in its answer, the Belle River Agreement addresses ongoing responsibilities including operation and maintenance of the Designated Transmission Lines by ITC, loss provisions and payment obligations for such ongoing services by MPPA to ITC. We agree with MPPA that these are essentially the same factors that the Commission found relevant in determining that the agreement at issue in *PSI Energy* was jurisdictional.<sup>31</sup> Accordingly, we find that the Belle River Agreement provides for jurisdictional transmission service and thus has been appropriately filed with the Commission.

24. In addition, under the Belle River Agreement, ITC provides MPPA transmission service over ITC’s entire transmission system, which includes facilities that are not jointly-owned with MPPA. The Belle River Agreement states that Detroit Edison shall permit MPPA, without charge or cost, except as specifically set forth in the agreement, to utilize Detroit Edison’s bulk transmission system from Detroit Edison’s Belle River 345 kV Substation to points of interconnection with MPPA (and with another municipal utility) and any points of interconnection between Detroit Edison and any other utility directly connected to the bulk transmission system for the purpose of delivering to MPPA or any other utility all or a portion of MPPA’s capacity and energy entitlement in the

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<sup>26</sup> See *PSI Energy, Inc.*, 63 FERC ¶ 61,107, at 61,753 (1993) (*PSI Energy*).

<sup>27</sup> *Id.* at 61,751.

<sup>28</sup> *Id.*

<sup>29</sup> See Belle River Agreement, Article 8.2.

<sup>30</sup> *Id.*

<sup>31</sup> MPPA Answer at 12.

Belle River generating station.<sup>32</sup> Since the Belle River Agreement allows MPPA to utilize Detroit Edison's bulk transmission system for the purpose of delivering to MPPA all or a portion of MPPA's entitlement in the Belle River generation station, ITC is providing jurisdictional service under the Belle River Agreement. Furthermore, as noted by MPPA, the Belle River Agreement is listed as GFA No. 210 under the MISO Tariff. While the Belle River Agreement's status as a GFA does not by itself provide a conclusive basis to find that the agreement affects or relates to jurisdictional rates or services, it does provide support for this conclusion. For example, in 2004, as part of the Commission proceeding to address how GFAs should be treated once MISO implemented its energy market, ITC, MPPA, and Detroit Edison submitted a Joint Response relating to GFA No. 209 (Belle River Participation Agreement between Detroit Edison and MPPA, dated December 1, 1982) and GFA No. 210 (the Belle River Agreement at issue in the instant proceeding), which stated that "[t]he cumulative maximum number of megawatts transmitted pursuant to both GFA 209 and GFA 210 is 234.486 MW."<sup>33</sup> Thus, Detroit Edison previously agreed that the Belle River Participation Agreement (which Detroit Edison acknowledges it previously submitted for filing with the Commission)<sup>34</sup> and the Belle River Agreement should be considered together to determine what services are being provided under the agreements. The Joint Response also states that the source points applicable to GFA No. 210 are "[a]ll Detroit Edison resources and all ITC Transmission interconnection points" and the sink points are "MPPA designated delivery points and ITC/[Michigan Electric Transmission Company] interconnection points."<sup>35</sup> In addition, Attachment P of the MISO Tariff lists both ITC *and* MPPA as the transmission owners associated with GFA No. 210.<sup>36</sup> These facts appear to contradict Detroit Edison's claim that the Belle River Agreement relates

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<sup>32</sup> See Belle River Agreement at Article 6.1. Article 6.1 also allows MPPA to use Detroit Edison's system to transmit the output of other resources connected to Detroit Edison's system or the systems of MPPA's members connected to Detroit Edison's system, or resources imported from outside of Detroit Edison's system, for delivery to various points of interconnection on the Detroit Edison system.

<sup>33</sup> Joint Response of International Transmission Company, Michigan Power Public Agency, and Detroit Edison Company Concerning Grandfathered Agreement Nos. 209 and 210, Docket Nos. ER04-691-000 and EL04-104-000, at 3 (filed June 25, 2004) (emphasis in original) (Joint Response).

<sup>34</sup> Detroit Edison Protest at 2, n.3, citing *The Detroit Edison Co.*, Docket No. ER91-211-000 (Feb. 20, 1992) (delegated letter order).

<sup>35</sup> *Id.*

<sup>36</sup> In fact, the Belle River Agreement is actually listed twice in Attachment P - GFA No. 210 (as an ITC Agreement) and GFA No. 424 (as an MPPA Agreement).

only to facilities owned by MPPA and not to any facilities owned or services provided by a Commission-jurisdictional entity (i.e., itself and ITC).

25. As to the date from which refunds should be calculated, we note that in 2000 the Commission authorized the disposition to ITC of Detroit Edison's transmission assets, which included substantially all of its integrated transmission facilities with voltage ratings of 120 kV and above.<sup>37</sup> As Detroit Edison states in its answer, it transferred to ITC all of its transmission assets including "all related tariffs, contracts, books and records" under a Separation and Subscription Agreement between Detroit Edison and ITC dated December 5, 2000.<sup>38</sup> As such, we find that the appropriate date from which ITC's responsibility for refunds as discussed below should be calculated is the date on which ITC succeeded Detroit Edison under the Belle River Agreement in 2001.<sup>39</sup> The revised refund report should therefore show costs from 2001 forward.

26. As indicated above, ITC acknowledges that the Belle River Agreement was not filed with the Commission before service commenced as required by Commission policy. Therefore, it states that it is aware it must provide customers with time-value refunds of any monies it has received under the late-filed Belle River Agreement. However, ITC asserts that it will have performed services under the agreement at a loss if it is obligated to make time-value refunds, which ITC has calculated at approximately \$2.9 million. As noted by ITC, the Commission's time-value refund policy for late-filed agreements does not require the utility to operate at a loss; therefore, if the utility is only recovering its out-of-pocket costs incurred to provide the service, there is no requirement to make time-value refunds.<sup>40</sup> ITC states that the O&M expenses only reflect MPPA's allocated share of out-of-pocket expenses incurred by ITC to operate and maintain the Designated Transmission Lines. However, we find that ITC has not demonstrated that providing time-value refunds to MPPA will cause it to operate at a loss under the Belle River Agreement. Therefore, ITC should provide a revised refund report detailing its actual variable out-of-pocket costs (e.g., variable O&M expenses and incremental construction costs) incurred to provide service under the Belle River Agreement from 2001 and

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<sup>37</sup> See *DTE Energy Company*, 91 FERC ¶ 61,317 (2000).

<sup>38</sup> See Detroit Edison Answer at 2, citing *DTE Energy Company*, 91 FERC ¶ 61,317 (2000).

<sup>39</sup> The transfer became effective on January 1, 2001. See *DTE Energy Co.*, Notice of Consummation, Docket No. EC00-86-000 at 4 (Filed Dec. 15, 2000).

<sup>40</sup> See *Carolina Power & Light Company*, 87 FERC ¶ 61,083 (1999); *Southern California Edison Company*, 98 FERC ¶ 61,304 (2002); *Florida Power & Light*, 98 FERC ¶ 61,276, *reh'g denied*, 99 FERC ¶ 61,320 (2002).

demonstrating that it would be operating at a loss as a result of providing time-value refunds. We direct ITC to provide this revised refund report within 30 days of the date of this order.

27. Further, in response to MPPA's request to eliminate any implication that the Belle River Agreement was not effective when the parties ratified it, we confirm that ITC's request for an August 29, 2012 effective date does not affect the validity or effectiveness of the Belle River Agreement since its inception on December 1, 1982.<sup>41</sup>

The Commission orders:

(A) The Belle River Agreement is hereby conditionally accepted effective August 29, 2012, as requested, as discussed in the body of this order.

(B) ITC is hereby directed to file a revised refund report, as discussed in the body of this order.

By the Commission.

( S E A L )

Nathaniel J. Davis, Sr.,  
Deputy Secretary.

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<sup>41</sup> See, e.g., *El Paso Electric Co.*, 105 FERC ¶ 61,131, at P 39 (2003).