146 FERC ¶ 61,172
UNITED STATES OF AMERICA
FEDERAL ENERGY REGULATORY COMMISSION

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

International Transmission Company
Michigan Electric Transmission
Company, LLC
ITC Midwest LLC
ITC Great Plains, LLC

Docket No. IN14-2-000

ORDER APPROVING STIPULATION AND CONSENT AGREEMENT

(Issued March 11, 2014)

1. The Commission approves the attached Stipulation and Consent Agreement (Agreement) between the Office of Enforcement (Enforcement) and International Transmission Company, d/b/a/ ITC*Transmission* (ITC*Transmission*), Michigan Electric Transmission Company, LLC (METC), ITC Midwest LLC (ITC Midwest), and ITC Great Plains, LLC (ITC Great Plains) (collectively, the ITC Companies). This Order is in the public interest and resolves Enforcement's investigation under Part 1b of the Commission's regulations, 18 C.F.R. Part 1b (2013), into: (i) whether each of the ITC Companies violated Section 203(a)(1)(B) of the Federal Power Act (FPA)[1] and Part 33 of the Commission's regulations, 18 C.F.R. Part 33, by acquiring certain Commission-jurisdictional transmission assets without prior Commission approval during the period 2005 to 2011; and (ii) whether ITC*Transmission*, METC, and ITC Midwest each violated Section 205 of the FPA[2] and Part 35 of the Commission's regulations, 18 C.F.R. Part 35, by failing to timely file certain Commission-jurisdictional documents between 2003 and 2011. The ITC Companies agree to pay a civil penalty of $750,000 and to make compliance reporting.

[1] 16 U.S.C. § 824b.

[2] 16 U.S.C. § 824d.

I. Background

2. As described in the Agreement, ITC Holdings Corp. ("ITC") is a Michigan corporation that wholly owns the four ITC Companies. Each of the four operating companies owns and operates Commission-jurisdictional transmission facilities and is regulated by the Commission as a "public utility" under Part II of the FPA.[3] ITC*Transmission*, based in Novi, Michigan, owns, operates and maintains approximately 2,800 circuit miles of transmission lines and associated facilities in southeast Michigan. METC, also based in Novi, owns, operates and maintains approximately 5,500 circuit miles of transmission lines and associated facilities in the western and northern portions of Michigan's Lower Peninsula. ITC Midwest, based in Cedar Rapids, Iowa, owns, operates and maintains approximately 6,600 circuit miles of transmission lines and associated facilities in Iowa, Minnesota, Illinois and Missouri. ITC*Transmission*, METC, and ITC Midwest are each transmission-owning members of the Midcontinent Independent System Operator, Inc. (MISO). Based in Topeka, Kansas, ITC Great Plains owns two transmission substations in Kansas, has completed construction of new transmission line projects in Kansas and Oklahoma, and is currently constructing a third transmission project in Kansas. ITC Great Plains holds transmission-only utility status in Kansas and Oklahoma, with authority to construct, own, operate and maintain a regulated, high-voltage transmission system. ITC Great Plains is a member of the Southwest Power Pool regional transmission organization (SPP).

3. In 2003, ITC*Transmission* was created as an independent transmission company when it was acquired by ITC Holdings Corp. from DTE Energy. ITC*Transmission* owned the electric transmission assets formerly owned by Detroit Edison Company (Detroit Edison). In 2006, ITC acquired METC, which owned the electric transmission assets formerly owned by Consumers Energy Company (Consumers). In 2007, ITC formed ITC Midwest as a subsidiary, which in turn acquired all of the electric transmission assets owned by Interstate Power and Light Company (IPL). ITC formed ITC Great Plains as a subsidiary in 2006 to build, own, and operate electric transmission facilities in the SPP region. ITC currently operates with about 500 employees.

II. Investigation

4. Enforcement opened an investigation of the ITC Companies in July 2011 after receiving a June 2011 preliminary report from the ITC Companies identifying multiple failures to file jurisdictional agreements under FPA Section 205 and multiple failures to obtain prior Commission approvals for the acquisition of jurisdictional assets under

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[3] ITC*Transmission* and ITC Midwest are wholly-owned direct subsidiaries of ITC. METC and ITC Great Plains are wholly-owned indirect subsidiaries of ITC.

FPA Section 203. After ongoing communications with Commission staff, the ITC Companies submitted a more extensive written report in December 2011.

5. In 2010, the Commission instructed METC to submit an agency agreement between Consumers and METC that was never filed with the Commission as required by FPA Section 205.[4] ITC subsequently conducted an internal audit, which eventually identified 174 jurisdictional agreements to which ITC*Transmission*, METC, or ITC Midwest was a party that had not been filed with the Commission. ITC also discovered that the ITC Companies had completed 20 jurisdictional transmission asset transactions without receiving the prior Commission authorization required under FPA Section 203(a)(1)(B).

6. Enforcement determined in its investigation that each of the ITC Companies violated FPA Section 203(a)(1)(B) and Part 33 of the Commission's regulations by merging or consolidating facilities subject to the Commission's jurisdiction without obtaining prior Commission authorization. Specifically, the ITC Companies engaged in 20 unauthorized transactions between 2005 and 2011, which included transactions valued from $0 to approximately $6.7 million. In 2011, the ITC Companies untimely filed and requested authorization for each of these 20 asset transfers. The Commission approved each of these applications on a prospective basis.

7. Enforcement also determined in its investigation that ITC*Transmission*, METC and ITC Midwest each violated FPA Section 205 and Part 35 of the Commission's regulations by: (a) commencing jurisdictional service without providing the requisite notice; (b) terminating jurisdictional contracts without providing the required notice; (c) succeeding to other public utilities' FERC-jurisdictional contracts without notifying the Commission within 30 days after the succession as required by 18 C.F.R. § 35.16; and/or (d) failing to submit complete information on their Electric Quarterly Reports (EQRs). Specifically, between 2003 and 2011, ITC*Transmission*, METC, and ITC Midwest inherited from predecessors-in-interest or executed and failed to timely file 174 documents under FPA Section 205 and Part 35 of the Commission's regulations. Of these 174 agreements and documents, 86 were jurisdictional agreements that ITC's predecessors-in-interest had not filed with the Commission prior to assigning them to an ITC Company. Of the remaining late-filed documents, 32 were jurisdictional agreements the ITC Companies entered into, 44 were notices of succession to predecessor agreements on file with the Commission, and 12 were notices of termination of jurisdictional agreements. As further described in the Agreement, ITC*Transmission*, METC, and ITC Midwest have submitted 171 of these 174 documents, and the

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[4] *See Midwest Independent Transmission System Operator, Inc.*, 132 FERC ¶ 61,241 (2010).

Commission has accepted 165 of the previously unfiled documents.[5] In connection with these late-filings and the related Commission orders accepting the late filings, ITC*Transmission*, METC, and ITC Midwest have paid a total of $29,909.61 in time-value refunds to customers.

III. Stipulation and Consent Agreement

8. Enforcement and the ITC Companies resolved Enforcement's investigation by means of the attached Agreement.

9. As set forth in the Agreement, the ITC Companies stipulate to the facts and admit their 20 violations of FPA Section 203 and Part 33 of the Commission's regulations and their 174 violations of FPA Section 205 and Part 35 of the Commission's regulations.

10. The ITC Companies agree to pay a civil penalty of $750,000 and submit to at least one year of compliance monitoring, with another year of monitoring at Enforcement's discretion.

IV. Determination of the Appropriate Sanctions and Remedies

11. Pursuant to Section 316A(b) of the FPA, the Commission may assess a civil penalty of up to $1,000,000 for each day that a violation continues.[6] In determining the appropriate remedy for the ITC Companies' violations, Enforcement considered the factors described in the Revised Policy Statement on Penalty Guidelines.[7]

12. The ITC Companies' violations created a lack of transparency in the market by failing to have all of the ITC Companies' jurisdictional agreements on file with the Commission, and by consummating purchases of Commission-jurisdictional assets without requesting and receiving prior Commission authorization.

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[5] Six notices of termination are currently pending before the Commission and three filings await required third-party consents before they can be filed.

[6] 16 U.S.C. § 825o-1(b) (2012).

[7] *Enforcement of Statutes, Orders, Rules and Regulations*, 132 FERC ¶ 61,216 (2010).

13. Enforcement determined that the ITC Companies' violations, although not willful, were the direct result of their failure to maintain a compliance program capable of identifying and ensuring compliance with their FPA Section 203 and 205 obligations, including providing for adequate regulatory due diligence in reviewing agreements inherited from predecessors in interest.

14. Other factors considered in reaching the proposed penalty include: the significant volume of transactions and documents that were not timely submitted to the Commission (194 filings); the multi-year duration of the violations (more than eight years); the fact that one of the METC Section 205 late-filings violated a Commission order[8]; the ITC Companies' self-report of their Section 203 violations; the ITC Companies' failure to self-report their Section 205 violations; the absence of direct market harm caused by these filings; the ITC Companies' cooperation and admission of their violations; and the ITC Companies' resolution of this investigation without a trial.

15. The Commission concludes that the Agreement is a fair and equitable resolution of the matters concerned and is in the public interest, as it reflects the nature and seriousness of the ITC Companies' conduct. In particular, the Commission notes this case does not involve limited instances of missed filings, which are frequently self-reported to Enforcement and often closed with no action depending on the particular facts and circumstances of the case.[9] Rather, the ITC Companies' failure to make nearly 200 filings—including failure to seek authorization of 20 jurisdictional transactions—reflects a systemic neglect of statutory responsibilities and a serious shortfall in compliance efforts. The Commission finds that the civil penalty contained in the Agreement is warranted and consistent with the Revised Policy Statement on Penalty Guidelines.[10] We remind market participants of the importance of the obligation to file with the Commission all required agreements and other documents under FPA Section 205 and to obtain authorization for all transactions subject to FPA Section 203(a)(1)(B). Absent such filings, the Commission cannot perform its necessary regulatory oversight responsibilities under the FPA. We further urge market participants to include in their compliance programs processes that will enable them to fulfill their FPA Section 203 and 205 obligations.

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[8] METC violated the Commission's directive in *Michigan Electric Transmission Company, LLC*, 139 FERC ¶ 62,003 (2012) to file a notice of consummation within 10 days after closing of the authorized transaction.

[9] *See, e.g.*, 2013 Staff Report on Enforcement, Dkt. No. AD07-13-006, at 19 (2013).

[10] *Revised Policy Statement on Penalty Guidelines*, 132 FERC ¶ 61,216 (2010).

The Commission orders:

The attached Stipulation and Consent Agreement is hereby approved without modification.

By the Commission. Commissioner Moeller is dissenting with a separate statement attached.

(S E A L)

Kimberly D. Bose,
Secretary.

UNITED STATES OF AMERICA
FEDERAL ENERGY REGULATORY COMMISSION

International Transmission Company	)	
Michigan Electric Transmission	)	
Company, LLC	)	Docket No. IN14-2-000
ITC Midwest LLC	)	
ITC Great Plains, LLC	)	

STIPULATION AND CONSENT AGREEMENT

I. INTRODUCTION

1. The staff of the Office of Enforcement (Enforcement) of the Federal Energy Regulatory Commission (Commission) and International Transmission Company, d/b/a/ ITC*Transmission* (ITC*Transmission*), Michigan Electric Transmission Company, LLC (METC), ITC Midwest LLC (ITC Midwest), and ITC Great Plains, LLC (ITC Great Plains) (collectively, the ITC Companies), enter into this Stipulation and Consent Agreement (Agreement) to resolve Enforcement's investigation under Part 1b of the Commission's regulations, 18 C.F.R. Part 1b (2013). Enforcement determined that each of the ITC Companies violated Section 203(a)(1)(B) of the Federal Power Act (FPA)[11] and Part 33 of the Commission's regulations, 18 C.F.R. Part 33, by acquiring certain Commission-jurisdictional transmission assets without prior Commission approval. Enforcement further determined that ITC*Transmission*, METC, and ITC Midwest violated Section 205 of the FPA[12] and Part 35 of the Commission's regulations, 18 C.F.R. Part 35, by failing to timely file certain Commission-jurisdictional documents. ITC has agreed to pay a civil penalty of $750,000 to settle this investigation.

II. STIPULATIONS

Enforcement and the ITC Companies hereby stipulate to the following:

A. Factual Background

2. ITC Holdings Corp. ("ITC") is a Michigan corporation that wholly owns the four ITC Companies. Each of the four operating companies owns and operates

[11] 16 U.S.C. § 824b.

[12] 16 U.S.C. § 824d.

Commission-jurisdictional transmission facilities and is regulated by the Commission as a "public utility" under Part II of the FPA.[13] ITC*Transmission*, based in Novi, Michigan, owns, operates and maintains approximately 2,800 circuit miles of transmission lines and associated facilities in southeast Michigan. METC, also based in Novi, owns, operates and maintains approximately 5,500 circuit miles of transmission lines and associated facilities in the western and northern portions of Michigan's Lower Peninsula. ITC Midwest, based in Cedar Rapids, Iowa, owns, operates and maintains approximately 6,600 circuit miles of transmission lines and associated facilities in Iowa, Minnesota, Illinois and Missouri. ITC*Transmission*, METC, and ITC Midwest are each transmission-owning members of the Midcontinent Independent System Operator, Inc. (MISO). Based in Topeka, Kansas, ITC Great Plains owns two transmission substations in Kansas, has completed construction of new transmission line projects in Kansas and Oklahoma, and is currently constructing a third transmission project in Kansas. ITC Great Plains holds transmission-only utility status in Kansas and Oklahoma, with authority to construct, own, operate and maintain a regulated, high-voltage transmission system. ITC Great Plains is a member of the Southwest Power Pool regional transmission organization (SPP).

3. In 2003, ITC*Transmission* was created as an independent transmission company, and began operations with 38 employees, when it was acquired by ITC Holdings Corp. from DTE Energy. ITC*Transmission* owned the electric transmission assets formerly owned by Detroit Edison Company (Detroit Edison). In 2006, ITC acquired METC, which owned the electric transmission assets formerly owned by Consumers Energy Company (Consumers). In 2007, ITC formed ITC Midwest as a subsidiary, which in turn acquired all of the electric transmission assets owned by Interstate Power and Light Company (IPL). ITC formed ITC Great Plains as a subsidiary in 2006 to build, own, and operate electric transmission facilities in the SPP region. ITC currently operates with about 500 employees.

4. FPA Section 203(a)(1)(B) and the Commission's implementing regulations, 18 C.F.R. Part 33, require public utilities to obtain authorization from the Commission prior to acquiring, merging, or consolidating facilities subject to the Commission's jurisdiction.[14] Under that section of the FPA, prior Commission authorization is required for the acquisition of jurisdictional assets, regardless of the monetary value of the transferred facilities. FPA Section 203 was amended by the Energy Policy Act of 2005; the effect of those amendments removed a previous $50,000 monetary threshold for

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[13] ITC*Transmission* and ITC Midwest are wholly-owned direct subsidiaries of ITC. METC and ITC Great Plains are wholly-owned indirect subsidiaries of ITC.

[14] *See International Transmission Company*, 139 FERC ¶ 61,003, P 10 (2012).

seeking Commission authorization prior to acquiring jurisdictional assets. *Transactions Subject to FPA Section 203*, Order No. 669, 113 FERC ¶ 61,315 at P 32 (2006).

5. FPA Section 205 and the Commission's implementing regulations, 18 C.F.R. Part 35, require public utilities to file rates and charges for jurisdictional service, and all contracts and agreements relating to such service, at least 60 days in advance of the commencement of jurisdictional service.[15] In addition, 18 C.F.R. § 35.3(a)(2) requires service agreements "authorizing a customer to take electric service under the terms of a tariff, or any part thereof" to be filed "not more than 30 days after electric service has commenced. . . ." Further, Section 35.15 of the Commission's regulations, 18 C.F.R. § 35.15, requires that notices of cancellation or termination of a rate schedule, tariff or service agreement, or part thereof be filed "at least 60 days . . . prior to the date such cancellation or termination is proposed to take effect" for agreements that were entered into or filed with the Commission prior to July 9, 1996, or otherwise within 30 days after such termination takes place. Public utilities are required under 18 C.F.R. § 35.16 to file notices of succession within 30 days after, among other things, the operating control of a public utility is transferred to another public utility in whole or in part. Finally, 18 C.F.R. § 35.10b requires that public utilities file accurate Electric Quarterly Reports (EQRs) including information about the services they provide under Part 35, and, as specified by Order No. 2001, summaries of the contractual terms and conditions in all their jurisdictional service agreements.[16]

6. In 2010, METC became aware that an agency agreement between Consumers and METC (that had been executed prior to METC's acquisition by ITC) was never filed with the Commission for approval as required by FPA Section 205.[17] METC then filed that agreement with the Commission for approval.[18] The ITC Companies then initiated a self-audit process to review all of their operating company agreements and to identify any other agreements that were required to be, but had not been, filed with the Commission under FPA Section 205. Through this review process, the ITC Companies identified additional agreements to which ITC*Transmission*, METC, or ITC Midwest was

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[15] *See Prior Notice and Filing Requirements Under Part II of the Federal Power Act*, 64 FERC ¶ 61,139 (1993), *order on reh'g*, 65 FERC ¶ 61,081 (1993).

[16] *See Revised Public Utility Filing Requirements*, Order No. 2001, 99 FERC ¶ 61,107 (2002).

[17] *See Midwest Independent Transmission System Operator, Inc.*, 132 FERC ¶ 61,241 (2010).

[18] *Michigan Electric Transmission Company, LLC*, 133 FERC ¶ 61,238 (2010), *on reh'g* 138 FERC ¶ 61,203 (2012).

a party, which should have been, but were not, on file with the Commission.

7. In June 2011, during the course of the ongoing FPA Section 205 contract review process, the ITC Companies became aware that they had each completed certain transmission asset acquisitions of a value of less than $10 million without receiving Commission authorization. Later that month, the ITC Companies contacted Enforcement to begin the self-report process for these violations, and submitted a written self-report in December 2011. Enforcement then commenced its investigation of the ITC Companies. Each of the ITC Companies also has filed with the Commission each agreement or document that it found in its review process that needed approval.

B. ITC Companies' Violations

1. FPA Section 203

8. Each of the four ITC Companies has acquired Commission-jurisdictional assets without the prior Commission authorization required under FPA Section 203(a)(1)(B). In total, the ITC Companies engaged in 20 unauthorized transactions between 2005 and 2011, which included transactions ranging from $0 to approximately $6.7 million.[19] In 2011, the ITC Companies untimely filed and requested authorization for each of these 20 asset transfers. The Commission approved each of these applications on a prospective basis.

9. Enforcement finds that each of the ITC Companies violated FPA Section 203(a)(1)(B) and Part 33 of the Commission's regulations by merging or consolidating facilities subject to the Commission's jurisdiction without obtaining prior Commission authorization.

2. FPA Section 205

10. ITC*Transmission*, METC, and ITC Midwest have operated under jurisdictional agreements that should have been but were not filed with the Commission 60 days in advance of service commencement. These agreements include: agency agreements, revenue distribution agreements, facilities agreements, interconnection agreements, switching station agreements, operation and maintenance agreements, pole attachment agreements, contribution in aid of construction agreements, facilities upgrade agreements, joint use agreements, common use agreements, transmission line switch agreements, and project design and construction service agreements. ITC*Transmission*, METC, and ITC Midwest also provided service under service agreements that were not filed with the Commission within 30 days of the commencement of service, cancelled or

[19] Each late-filed transaction is listed in Appendix A.

terminated jurisdictional agreements without providing at least 60 days' advance notice to the Commission, and/or succeeded to operational agreements without notifying the Commission within 30 days after such succession.

11. In total, between 2003 and 2011, ITC*Transmission*, METC, and ITC Midwest inherited from predecessors-in-interest or executed and failed to timely file 174 documents under FPA Section 205 and Part 35 of the Commission's regulations.[20] Of these 174 documents, 86 were jurisdictional agreements that ITC's predecessors-in-interest had not filed with the Commission prior to assigning them to an ITC Company. ITC alone was responsible for the remaining late-filed documents, which included 32 agreements the ITC Companies entered into, 44 notices of succession to predecessor agreements on file with the Commission, and 12 notices of termination.

12. As of the date of this Agreement, ITC*Transmission*, METC, and ITC Midwest have submitted 171 and the Commission has accepted 165 of the previously unfiled documents to the Commission.[21] Three documents must be re-filed, because ITC Companies must also first complete necessary coordination with counterparties. These three documents are agreements that ITC previously submitted and withdrew and/or the Commission rejected. The companies still must make four compliance filings related to its late-filed documents, specifically filing versions of the late-filed agreements that have been signed by the counterparties. To date ITC*Transmission*, METC, and ITC Midwest have, consistent with Commission precedent, paid a total of $29,909.61 in time-value refunds to customers. The Commission is currently reviewing whether ITC may be required to pay additional time-value refunds.

13. In addition, ITC*Transmission*, METC and ITC Midwest have not included in EQR filings the agreements described above. The ITC Companies have re-submitted EQRs to accurately reflect all of their jurisdictional contracts.

14. Enforcement finds that ITC*Transmission*, METC and ITC Midwest each have violated FPA Section 205 and Part 35 of the Commission's regulations by: (a) commencing jurisdictional service without providing the requisite notice; (b) terminating jurisdictional contracts without providing the requisite notice; (c) succeeding to other public utilities' FERC-jurisdictional contracts without notifying the Commission within 30 days after the succession as required by 18 C.F.R. § 35.16; and/or (d) failing to submit complete information on their EQRs.

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[20] Each untimely filed document is listed in Appendix B.

[21] Six notices of termination are currently pending before the Commission.

III. Additional Factors

15. One of METC's FPA Section 203 violations constituted the violation of a Commission order directed to METC, specifically where one notice of consummation was filed with the Commission more than 10 days after closing of a transaction.[22]

16. Enforcement determined that the ITC Companies' violations created a lack of transparency in the market by failing to have all of the ITC Companies' jurisdictional agreements on file with the Commission, and by consummating purchases of Commission-jurisdictional assets without requesting and receiving prior Commission authorization.

17. Enforcement determined that the ITC Companies should not receive credit under the Guidelines for having in place an effective FERC compliance program at the time of the violations.

18. Enforcement determined that the ITC Companies' violations were not willful, fraudulent, intentional, or manipulative but were instead the result of failing to properly evaluate and meet FPA Section 203 and 205 filing requirements, as well as not having adequate compliance procedures in place at the time of the violations to ensure timely filings and recognition of jurisdictional agreements inherited from third parties. Approximately half of the late FPA Section 205 filings were inherited by ITC subsidiaries from their predecessors-in-interest.

19. Upon learning of one unfiled jurisdictional agreement it possessed, the ITC Companies initiated an omnibus review process to determine whether any of them was a party to any other unfiled jurisdictional agreements. This involved the review of over 2,000 agreements and related documents. Similarly, the ITC Companies also reviewed all of their various asset purchase and sale agreements to determine whether they were a party to any asset purchase agreements that were not previously filed with the Commission. After identifying jurisdictional agreements that were not previously submitted to the Commission, the ITC Companies filed each of those agreements with the Commission for approval.

20. Since the commencement of Enforcement's investigation, the ITC Companies have taken steps to strengthen their compliance policies and procedures and to prevent non-compliance in the future regarding jurisdictional agreements. Specifically, the ITC Companies implemented a Contract Review, Approval, Execution

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[22] *Michigan Electric Transmission Company, LLC*, 139 FERC ¶ 62,003 (2012). The transaction closed on September 14, 2012, and METC submitted a notice of consummation on October 12, 2012.

and Administration Policy, which includes detailed procedures related to the negotiation, review, and internal approval of contracts. The ITC Companies also provided, and will continue to provide on an annual basis, mandatory training to relevant personnel regarding FERC filing obligations and requirements related to Commission-jurisdictional agreements. Finally, the ITC Companies have adopted a formal written FERC compliance program manual.

IV. REMEDIES AND SANCTIONS

21. For purposes of settling any and all civil and administrative disputes arising out of, related to, or connected with Enforcement's investigation, the ITC Companies accept the factual background as stipulated in Section II.A of this Agreement and admit the violations described in Section II.B of this Agreement. In resolution hereof, the ITC Companies further agree to take the following actions:

A. Civil Penalty

22. The ITC Companies shall pay a civil penalty of $750,000 to the United States Treasury, by wire transfer, within ten days after the Effective Date of this Agreement, as defined below. The ITC Companies shall not pass through the civil penalty, directly or indirectly, to any present or future customers or ratepayers or any customers or ratepayers of their affiliates.

B. Refunds

23. To the extent they have not already done so, the ITC Companies shall complete issuance of all Commission-ordered time-value refunds, calculated pursuant to the Commission's regulations at 18 C.F.R. § 35.19a, consistent with the directives included in the relevant Commission orders. The ITC Companies shall promptly pay any additional time-value refunds as may be required in forthcoming Commission orders. The ITC Companies shall submit quarterly updates to Enforcement staff regarding the status of any outstanding refund proceedings, including whether any payments have been ordered and/or paid.

C. Outstanding Curative and Compliance Filings

24. To the extent they can do so unilaterally, the ITC Companies shall promptly file all outstanding curative and compliance filings. To the extent an ITC Company requires actions by third parties to make any such filings, such company shall use best efforts to complete such filings. The ITC Companies shall inform Enforcement staff of each such filing within ten days of filing.

D. Compliance Program and Training

25. The ITC Companies shall maintain an effective written FERC compliance program with a strong emphasis on compliance with applicable Commission filing requirements.

26. The ITC Companies shall hold annual employee training on its filing obligations and other applicable Commission regulations. This training shall be mandatory for all ITC employees who negotiate, execute, or administer rate schedules, service agreements, or asset transfer agreements, or who are involved in filing EQRs.

E. Compliance Monitoring

28. The ITC Companies shall make two semi-annual compliance monitoring reports to Enforcement for one year following the Effective Date of this Agreement. The first semi-annual report shall be submitted no later than six months after the Effective Date of this Agreement and the second report shall be submitted no later than one year after the Effective Date of this Agreement. Each compliance report shall: (a) describe any additional curative filings submitted by the ITC Companies, including compliance filings, EQR corrections, and notices of termination; (b) detail the ITC Companies' compliance with FERC filing requirements; (c) provide a detailed update of all compliance training administered and compliance measures instituted in the applicable period, including the dates of the training and a list of the personnel in attendance; (d) describe any further changes to the ITC Company's processes, procedures, or systems involved in the preparation and submission of FPA Section 203 or 205 filings (including EQRs); (e) advise Enforcement whether any additional violations of Commission regulations have occurred; and (f) include an affidavit executed by an officer of ITC that the compliance report is true and accurate. The first semi-annual report shall also include confirmation that the civil penalty and refunds (with interest) have been paid. At Enforcement's request, the ITC Companies shall provide documentation supporting its reports. After the receipt of the second semi-annual report, Enforcement may, at its sole discretion, require the ITC Companies to submit semi-annual reports for one additional year.

V. TERMS

29. The Effective Date of this Agreement shall be the date on which the Commission issues an order approving this Agreement without material modification. When effective, this Agreement shall resolve the matters specifically addressed herein as to the ITC Companies and any affiliated entity, and their agents, officers, directors and employees, both past and present.

30. Commission approval of this Agreement in its entirety and without material modification shall release the ITC Companies and forever bar the Commission from holding the ITC Companies, their affiliates, agents, officers, directors and employees,

both past and present, liable for any and all administrative or civil claims arising out of, related to, or connected with the investigation addressed in this Agreement.

31. Failure to make a timely civil penalty payments or refund payments or to comply with the compliance program improvements and monitoring agreed to herein, or any other provisions of this Agreement shall be deemed a violation of a final order of the Commission issued pursuant to the FPA and may subject the ITC Companies to additional action under the enforcement and penalty provisions of the FPA.

32. If the ITC Companies do not timely make the civil penalty payment, interest payable to the United States Treasury will begin to accrue pursuant to the Commission's regulations at 18 C.F.R. § 35.19a from the date those payments are due, in addition to any other enforcement action or penalty that the Commission may take or impose.

33. The Agreement binds the ITC Companies and their agents, successors, and assigns. The Agreement does not create any additional or independent obligations on the ITC Companies, or any affiliated entity, its agents, officers, directors, or employees, other than the obligations identified in this Agreement.

34. The signatories to this Agreement agree that they enter into the Agreement voluntarily and that, other than the recitations set forth herein, no tender, offer, or promise of any kind by any member, employee, officer, director, agent, or representative of Enforcement or the ITC Companies has been made to induce the signatories or any other party to enter into the Agreement.

35. Unless the Commission issues an order approving the Agreement in its entirety and without material modification, the Agreement shall be null and void and of no effect whatsoever, and neither Enforcement nor the ITC Companies shall be bound by any provision or term of the Agreement, unless otherwise agreed to in writing by Enforcement and the ITC Companies.

36. In connection with the payment of the civil penalty provided for herein, the ITC Companies agree that the Commission's order approving the Agreement without material modification shall be a final and unappealable order assessing a civil penalty under section 316(a) of the FPA. The ITC Companies waive findings of fact and conclusions of law, rehearing of any Commission order approving the Agreement without material modification, and judicial review by any court of any Commission order approving the Agreement without material modification.

37. Each of the undersigned warrants that he or she is an authorized representative of the entity designated, is authorized to bind such entity, and accepts the Agreement on the entity's behalf.

38. The undersigned representative of the ITC Companies affirms that he or she has read the Agreement, that all of the matters set forth in the Agreement are true and correct to the best of his knowledge, information and belief, and that he understands that the Agreement is entered into by Enforcement in express reliance on those representations.

39. This Agreement is executed in duplicate, each of which so executed shall be deemed to be an original.

Agreed to and accepted:

Norman C. Bay, Director
Office of Enforcement
Federal Energy Regulatory Commission

2.6.14
Date

Daniel J. Ogrinsky
Senior Vice President and General Counsel

2/5/2014
Date

APPENDIX A

Appendix A – Section 203 Filings of International Transmission Company d/b/a ITC Transmission

Docket Number	**Type of Agreement**	**Counterparty**	12/11/2011
EC12-48	Agreement over matters in dispute (Augusta Line, Spencer Substation, Alpha, Jewell, Tower Drops, Various Breakers, Disconnects)	DTE Energy Company	12/12/2011
EC12-48	Bill of Sale-Prizm Tap	DTE Energy Company	12/13/2011
EC12-48	Bill of Sale-Cosmo	DTE Energy Company	12/14/2011

Appendix A – Section 203 Filings of Michigan Electric Transmission Company, LLC

Docket Number	Type of Agreement	Counterparty	Date of Late Filing
EC12-10	Asset Purchase - Marshall Substation	Michigan South Central Power Agency	10/20/2011
EC12-10	Asset Purchase - Litchfield Substation	Michigan South Central Power Agency	10/20/2011
EC12-11	Asset Purchase - Coldwater Substation	City of Coldwater	10/20/2011
EC12-15	Bill of Sale- partial interests in substations	Consumers Energy Company	10/21/2011
EC12-15	Bill of Sale- HSC Substation	Consumers Energy Company	10/21/2011
EC12-15	Bill of Sale- Iosco Substation	Consumers Energy Company	10/21/2011
EC12-15	Bill of Sale-Gray Road Substation	Consumers Energy Company	10/21/2011
EC12-15	Bill of Sale-118 Air Break Switches	Consumers Energy Company	10/21/2011
EC12-15	Bill of Sale-Group 2 Assets	Consumers Energy Company	10/21/2011
EC12-13	Asset Purchase Agreement- Sternberg Road Substation	City of Grand Haven	10/20/2011
EC12-6	Asset Purchase Agreement- Pere Marquette Substation	Wolverine Electric Power Cooperative	10/11/2011
EC12-6	Asset Purchase Agreement- Vestaburg Substation	Wolverine Electric Power Cooperative	10/11/2011

Appendix A – Section 203 Filings of ITC Midwest, LLC

Docket Number	**Type of Agreement**	**Counterparty**	**Date of Late Filing**
EC12-12	Bill of Sale- Truro Line	Central Iowa Power Cooperative	10/20/2011
EC12-44	Bill of Sale- Grand Mound Substation	Central Iowa Power Cooperative	12/6/2011
EC12-21	Bill of Sale- Huxley Substation Assets	Interstate Power & Light Company	11/2/2011

Appendix A – Section 203 Filings of ITC Great Plains, LLC

Docket Number	**Type of Agreement**	**Counterparty**	**Date of Late Filing**
EC11-108	Asset Purchase Agreement-Elm Creek Substation Agreement	Mid-Kansas Electric Company	8/23/2011
EC11-108	Asset Purchase Agreement-Flat Ridge Substation	Mid-Kansas Electric Company	8/23/2011

APPENDIX B

Docket Number	Type of Agreement	Predecessor Utility	Counterparty (ies)	Date of Late Filing
ER11-4017	Early Energy Letter Agreement	n/a	Harvest Windfarm	7/8/2011
ER11-4494	Notice of Cancellation of Early Energy Letter Agreement		Harvest Windfarm	9/9/2011
ER11-4019	Engineering and Procurement Letter Agreement	n/a	Harvest Windfarm	7/8/2011
ER11-4496	Notice of Cancellation of Engineering and Procurement Letter Agreement		Harvest Windfarm	9/9/2011
ER11-4018	Trial Operations Letter Agreement	n/a	Harvest Windfarm	7/8/2011
ER11-4495	Notice of Cancellation of Trial Operations Letter Agreement		Harvest Windfarm	9/9/2011
ER11-4020	Revenue Distribution Agreement	n/a	Michigan Public Power Agency	7/8/2011
ER12-1113	Notice of Succession for Interconnection and Operating Agreement	The Detroit Edison Company	DTE River Rouge No. 1, LLC	2/17/2012
ER12-1687	Notice of Succession for Operating Agreement	The Detroit Edison Company	Northern Indiana Public Service Company and METC	5/1/2012
ER12-1742	Notice of Succession for Facilities Agreement	The Detroit Edison Company	METC and American Transmission Systems, Inc. (ATSI)	5/8/2012

Docket Number	Type of Agreement	Predecessor Utility	Counterparty (ies)	Date of Late Filing
ER12-1749	Notice of Succession for Operating Agreement	The Detroit Edison Company	METC and ATSI	5/9/2012
ER12-1757	Notice of Succession for Facilities Agreement	The Detroit Edison Company	METC, ATSI, and AEP	5/10/2012
ER12-1765	Notice of Succession for Operating Agreement	The Detroit Edison Company	METC and AEP	5/11/2012
ER12-2170	Agreement for Engineering Design and Procurement of Materials	The Detroit Edison Company	Michigan Public Power Agency	6/29/2012
ER11-4199				

Docket Number	Type of Agreement	Predecessor Utility	Counterparty	Date of Late Filing
ER11-4128	Agency Agreement related to Facilities Agreement with MPPA	n/a	Consumers Energy	7/27/2011
ER11-4219	Amended and Restated Pere Marquette Interconnection Agreement	Consumers Energy Company	Wolverine Electric Power Cooperative	8/4/2011
ER11-4219	Amended and Restated Sternberg Road Interconnection Agreement	Consumers Energy Company	Wolverine Electric Power Cooperative	8/4/2011
ER11-4219	Amended and Restated Vestaburg Interconnection Agreement	Consumers Energy Company	Wolverine Electric Power Cooperative	8/4/2011
ER11-4117	Amended and Restated Marshall Facilities Agreement	Consumers Energy Company	Michigan South Central Power Agency	7/26/2011
ER11-4116	Amended and Restated Coldwater Facilities Agreement	Consumers Energy Company	Michigan South Central Power Agency, City of Coldwater	7/26/2011
ER11-4196	Engineering and Procurement Agreement	n/a	Gratiot County Wind, LLC	8/3/2011
ER12-172	Notice of Cancellation of Engineering and Procurement Agreement		Gratiot County Wind, LLC	10/24/2011

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Docket Number	Type of Agreement	Predecessor Utility	Counterparty	Date of Late Filing
ER11-4287	Facilities Upgrade Agreement	n/a	Midland Cogeneration Venture Limited Partnership	8/12/2011
ER11-4197	Interconection Facilities Agreement	n/a	Lowell Light & Power	8/3/2011
ER11-4118	Letter Agreement	n/a	Michigan South Central Power Agency	7/26/2011
ER11-4119	Letter Agreement	n/a	Presque Isle County	7/26/2011
ER12-2104	Moore Road-Batavia Agreement	Consumers Energy Company	Michigan South Central Power Agency	6/25/2012
ER11-4124	Wolverine Service Agreement	n/a	Wolverine Electric Power Cooperative	7/27/2011
ER13-555	Notice of Succession of Antrim Transmission Agreement	Consumers Energy Company	County of Antrim	12/14/2012
ER11-136	Agency Agreement	Consumers Energy Company	Midland Cogeneration Venture Limited Partnership	10/27/2011

Docket Number	Type of Agreement	Counterparty	Date of Late Filing
ER11-2715	Amended & Restated Operation & Transmission Agreement	IPL	1/20/2011
ER11-4149	Contribution in Aid of Construction Agreement	City of Elmore	7/29/2011
ER11-4145	Equipment Removal Agreement	City of Luverne	7/29/2011
ER11-4144	Joint Pole Use Agreement	CIPCO	7/29/2011
ER11-4154	Transmission Adjustment Agreement	Redwood County Minnesota	7/29/2011
ER11-4146	Transmission Facilities Upgrade Agreement	Interstate Power and Light	7/29/2011
ER11-4147	Transmission Facilities Upgrade Agreement	Blue Earth Light and Water	7/29/2011
ER11-4152	Transmission Facilities Upgrade Agreement	MidAmerican	7/29/2011
ER11-4153	Transmission Facilities Upgrade Agreement	MidAmerican	7/29/2011
ER11-4159	Transmission Facilities Upgrade Agreement	Story Wind LLC	7/29/2011
ER11-4160	Transmission Facilities Upgrade Agreement	Story Wind LLC	7/29/2011
ER11-4156	Transmission Relocation Agreement	Interstate Power and Light	7/29/2011
ER11-4169	Notice of Succession to Transmission Interconnection and Operating Agreement	City of Luverne, Minnesota	8/1/2011
ER11-4198	Agreement for Engineering Design and Procurement of Materials	Lost Lakes Windfarm LLC	8/3/2011
ER11-4199	Interconnection Agreement	City of Jackson, MN	8/3/2011
ER11-4230	Notice of Succession to Interconnection Agreement	MISO and Traer Municipal Utilities	8/4/2011

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Docket Number	Type of Agreement	Counterparty	Date of Late Filing
ER11-4224	Notice of Succession to Interconnection and Operating Agreement	IPL and FPL Energy Hancock County Wind, LLC	8/4/2011
ER11-4229	Notice of Succession to Interconnection and Operating Agreement	MISO and Flying Cloud Power Partners, LLC	8/4/2011
ER11-4231	Notice of Succession to Interconnection and Operating Agreement	MISO and Maquoketa Municipal Utilities	8/4/2011
ER11-4232	Notice of Succession to Interconnection and Operating Agreement	MISO and New London Municipal Utilities	8/4/2011
ER11-4237	Notice of Succession to Interconnection and Operating Agreement	MISO and Coggon Municipal Light Plant Board	8/5/2011
ER11-4238	Notice of Succession to Interconnection and Operating Agreement	MISO and Anita Municipal Utilities	8/5/2011
ER11-4239	Notice of Succession to Interconnection and Operating Agreement	MISO and LJ Trust, LLC	8/5/2011
ER11-4241	Notice of Succession to Interconnection and Operating Agreement	MISO and Northern Iowa Windpower LLC	8/5/2011
ER11-4242	Notice of Succession to Interconnection and Operating Agreement	MISO and GM Transmission, LLC	8/5/2011
ER11-4248	Notice of Succession to Interconnection and Operating Agreement	MISO and Adrian Public Utilities	8/8/2011

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Docket Number	Type of Agreement	Counterparty	Date of Late Filing
ER11-4249	Notice of Succession to Interconnection and Operating Agreement	MISO and City of West Liberty, Iowa	8/8/2011
ER11-4250	Notice of Succession to Interconnection and Operating Agreement	MISO and Truman Municipal	8/8/2011
ER11-4251	Notice of Succession to Interconnection and Operating Agreement	MISO and Hawkeye Power Partners, LLC	8/8/2011
ER11-4259	Notice of Succession to Interconnection and Operating Agreement	MISO and City of Dike, Iowa	8/8/2011
ER11-4261	Notice of Succession to Interconnection and Operating Agreement	MISO and Windom Transmission Project, LLC	8/8/2011
ER11-4252	Notice of Succession to the LGIA	MISO and Okoboji Wind Farm, LLC	8/8/2011
ER11-4265	Notice of Succession to the LGIA	MISO and High Prairie Wind Farm I, LLC	8/9/2011
ER11-4273	Notice of Succession to Small Generator Inerconnection Agreement	MISO and Hardin Hilltop Wind, LLC	8/10/2011
ER11-4272	Notice of Succession to the Revised and Restated Agreement for Integrated Transmission Area	MISO, IPL and CIPCO	8/10/2011
ER11-4301	Facilities Agreement	Maquoketa Municipal Utilities	8/12/2011

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Docket Number	Type of Agreement	Counterparty	Date of Late Filing
ER11-4302	Interconnection Agreement	Blue Earth Light & Water	8/12/2011
ER11-4298	Operation and Mainentance Agreement	Southern Minnesota Municipal Power Agency	8/12/2011
ER11-4347	Distribution-Transmission Interconnection Agreement	Jo-Carroll Energy, Inc.	8/22/2011
ER11-4346	Interconnection Agreement	Worthington Public Utilities	8/22/2011
ER11-4486	69 kV Poweshiek to Pella O&M Agreement	CIPCO	9/9/2011
ER11-4486	Agreement for Common Use of Facilities	CIPCO and IPL	9/9/2011
ER11-4486	Agreement for Interconnection of Transmission Facilities	CIPCO and MidAmerican	9/9/2011
ER11-4486	Common Use Agreement	Central Iowa Power Cooperative	9/9/2011
ER11-4486	Common Use Agreement	CIPCO and IPL	9/9/2011
ER11-4486	Common Use Agreement	Central Iowa Power Cooperative ("CIPCO")	9/9/2011
ER11-4486	Common Use Agreement	CIPCO and IPL	9/9/2011
ER11-4486	Common Use Agreement	CIPCO	9/9/2011
ER11-4486	Common Use Agreement	CIPCO	9/9/2011
ER11-4486	Common Use of Poles Agreement	CIPCO and IPL	9/9/2011

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Docket Number	Type of Agreement	Counterparty	Date of Late Filing
ER11-4486	Contract	CIPCO and IPL	9/9/2011
ER11-4486	Interconnection and Joint Construction Agreement	CIPCO and IPL	9/9/2011
ER11-4486	Interconnection and Joint Construction Agreement	CIPCO and IPL	9/9/2011
ER11-4486	Joint Use Contract	CIPCO	9/9/2011
ER11-4486	Operating Agreement	CIPCO and IPL	9/9/2011
ER11-4486	Transmission Line Switch Agreement	CIPCO	9/9/2011
ER11-4486	Transmission Line Switch Agreement	CIPCO	9/9/2011
ER11-4486	Transmission Line Switch Agreement	CIPCO	9/9/2011
ER11-4486	Transmission Line Switch Agreement	CIPCO	9/9/2011
ER11-4486	Transmission Line Switch Agreement	CIPCO	9/9/2011
ER11-4486	Transmission Line Switch Agreement	CIPCO	9/9/2011
ER11-4486	Transmission Line Switch Agreement	CIPCO	9/9/2011
ER11-4486	Transmission Line Switch Agreement	CIPCO	9/9/2011
ER11-4486	Transmission Line Switch Agreement	CIPCO	9/9/2011
ER11-4486	Transmission Line Switch Agreement	CIPCO	9/9/2011
ER11-4486	Transmission Line Switch Agreement	CIPCO	9/9/2011
ER11-4486	Transmission Line Switch Agreement	CIPCO	9/9/2011
ER11-4486	Transmission Line Switch Agreement	CIPCO	9/9/2011
ER11-4486	Transmission Line Switch Agreement	CIPCO	9/9/2011

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Docket Number	Type of Agreement	Counterparty	Date of Late Filing
ER11-4486	Transmission Line Switch Agreement	CIPCO	9/9/2011
ER11-4486	Transmission Line Switch Agreement	CIPCO	9/9/2011
ER11-4486	Transmission Line Switch Agreement	CIPCO	9/9/2011
ER11-4486	Transmission Line Switch Agreement	CIPCO	9/9/2011
ER11-4486	Transmission Line Switch Agreement	CIPCO	9/9/2011
ER11-4679	Pole Attachment Agreement	Archer Daniels Midland	9/29/2011
ER12-41	Joint Pole Use Agreement	Midland Power Cooperative	10/7/2011
ER12-41	Joint Pole Use Agreement	Midland Power Cooperative	10/7/2011
ER12-41	Joint Pole Use Agreement	Garden Wind, LLC	10/7/2011
ER12-41	Joint Pole Use Agreement	Linn County Rural Electric Cooperative	10/7/2011
ER12-207	Notice of Cancellation of Engineering Design and Procurement of Materials Agreement	Lost Lakes Windfarm LLC	10/28/2011
ER12-368	Amended Transmission Facilities Upgrade Agreement	Story Wind	11/9/2011
ER12-372	CIAC Agreement	Elk Wind Energy	11/9/2011
ER12-345	Notice of Cancellation of Transmission Facilities Upgrade Agreement	Interstate Power and Light	11/13/2011
ER12-574	Contribution in Aid of Construction Agreement	Story Wind LLC	12/7/2011
ER12-593	Construction, Interconnection and Operating Agreement	GRE	12/12/2011

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Docket Number	Type of Agreement	Counterparty	Date of Late Filing
ER12-592	Interconnection Memorandum	Corn Belt Power Cooperative	12/12/2011
ER12-592	Interconnection Memorandum	Corn Belt Power Cooperative	12/12/2011
ER12-593	Letter Agreement	GRE	12/12/2011
ER12-591	Succession Agreement	IPL and Dairyland Power Cooperative	12/12/2011
ER12-592	Succession Agreement	IPL and Corn Belt Power Cooperative	12/12/2011
ER12-593	Succession Agreement	GRE and IPL	12/12/2011
ER12-591	Transmission Facilities Installation Agreement	Dairyland Power Cooperative	12/12/2011
ER12-665	Common Use Agreement	MidAmerican	12/22/2011
ER12-667	Emergency Switching Agreement	NSP	12/22/2011
ER12-665	Joint Use Agreement	MidAmerican	12/22/2011
ER12-677	Joint Use Agreement	Storm Lake Power Partners	12/22/2011
ER12-667	Letter Agreement for Adams Substation	NSP	12/22/2011
ER12-667	Madelia Switching Station Agreement	NSP	12/22/2011
ER12-667	Operation and Maintenance Agreement- Lakefield Junction Substation, Fox Lake Substation, Double-Circuit Transmission Line	NSP	12/22/2011
ER12-667	Project Design/Construction Service Agreement	NSP	12/22/2011

METC

Docket Number	Type of Agreement	Counterparty	Date of Late Filing
ER12-667	Project Design/Construction Service Agreement	NSP	12/22/2011
ER12-665	Succession Agreement	IPL and MidAmerican	12/22/2011
ER12-667	Succession Agreement	Interstate Power Company, Northern States Power Company ("NSP")	12/22/2011
ER12-677	Succession Agreement	Storm Lake Power Partners	12/22/2011
ER12-684	Elk Substation Facilities Agreement	GRE and IPL	12/23/2011
ER12-684	Emergency Service Agreement	GRE and IPL	12/23/2011
ER12-684	Fox Lake Substation Facilities Agreement	GRE and IPL	12/23/2011
ER12-684	Heron Lake Substation Facilities Agreement	GRE and IPL	12/23/2011
ER12-705	Notice of Succession to Facilities Agreement	MidAmerican	12/28/2011
ER12-944	Agreement for participation in construction	MidAmerican Energy Company ("MidAmerican"), Corn Belt Power Cooperative ("Corn Belt"), Xcel Energy, and IPL	1/31/2012
ER12-943	Agreement for Sheldon Connection	MidAmerican and IPL	1/31/2012
ER12-1089	Notice of Succession to Amended and Restated Interconnection Agreement	Storm Lake Power Partners II, LLC and IPL	2/14/2012

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Docket Number	Type of Agreement	Counterparty	Date of Late Filing
ER12-1120	Interconnection Agreement and amendments	Corn Belt Power Cooperative	2/17/2012
ER12-1114	Succession Agreement	ITC Midwest, Interstate Power and Light Company and Northeast Power Electric Cooperative	2/17/2012
ER12-1114	Transmission Agreement	Northeast Electric Power Cooperative and IPL	2/17/2012
ER12-1165	Unit 1 Transmission Agreement	MidAmerican and IPL	2/27/2012
ER12-1645	Interconnection Agreement	Board of Water and Light Trustees of the City of Muscatine, Iowa and IPL Company	4/30/2012
ER12-1712	Notice of Succession to Facilities Agreement	MidAmerican and IPL	5/3/2012
ER12-1712	Notice of Succession to Hills Substation Agreement	MidAmerican and IPL	5/3/2012
ER12-1708	Notice of Succession to Interconnection Agreement	Northern Iowa Windpower, LLC	5/3/2012

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Docket Number	Type of Agreement	Counterparty	Date of Late Filing
ER12-1712	Notice of Succession to Interconnection Agreement	MidAmerican, IPL, ITC Midwest, Northwestern Public Service Company, Corn Belt Power Cooperative, Northwest Iowa Power Cooperative, Algona Municipal Utilities, Bancroft Municipal Utilities, Coon Rapids Municipal Utilities, Graettinger Municipal Light Plant	5/3/2012
ER12-1712	Notice of Succession to Interconnection, Interchange and Joint Construction Agreement	MidAmerican and IPL	5/3/2012
ER12-1712	Notice of Succession to Louisa Facilities Agreement	MidAmerican, CIPCO, Cities of Tipton, Harlan, and Waverly	5/3/2012
ER12-1712	Notice of Succession to Louisa Transmission Operating Agreement	Cities of Tipton, Harlan, and Waverly and MidAmerican	5/3/2012

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Docket Number	Type of Agreement	Counterparty	Date of Late Filing
ER12-1712	Notice of Succession to Tranmission Facilities and Operating Agreement- George Neal 4 Operating Agreement	MidAmerican, IPL, ITC Midwest, Northwestern Public Service Company, Corn Belt Power Cooperative, Northwest Iowa Power Cooperative, Algona Municipal Utilities, Bancroft Municipal Utilities, Coon Rapids Municipal Utilities, Graettinger Municipal Light Plant, Laurens Municipal Light & Power Plant, Milford Municipal Utilities, Spencer Municipal Utilities, and City of Webster City, Iowa	5/3/2012
ER12-1736	Interchange and Interconnection Agreement	Dairyland Power Cooperative	5/8/2012
ER12-2070	Notice of Succession to Utilization Agreement	GRE	6/19/2012
ER12-2095	CIPCO Common Use Agreement	CIPCO	6/25/2012
ER12-2132	Agreement for Transformation, Swtiching and Related Facilities	CIPCO and Corn Belt Power Cooperative	6/28/2012

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Docket Number	Type of Agreement	Counterparty	Date of Late Filing
ER12-2127	Interchange Agreement	CIPCO	6/28/2012
ER12-2123	Notice of Succession to Interchange and Interconnection Agreement	Associated Electric Cooperative, Inc. ("AECI")	6/28/2012
ER12-2148	Interconnection Agreement	Archer-Daniels-Midland Company	6/29/2012
ER12-2144	Notice of Succession to Substation Agreement	MidAmerican and IPL	6/29/2012
ER12-2156	Notice of Succession to Transmission Interconnection Agreement	Northern States Power Company	6/29/2012
Originally filed in ER11-4486	Agreement for Interconnection of Transmission Faclities	CIPCO	To be re-filed
Originally filed in ER11-4168	Interchange and Joint Construction Agreement	AECI	To be re-filed
Originally filed in ER12-593	Joint Use Agreement	GRE	To be re-filed
ER13-2418	Notice of Termination of Facilities Upgrade Agreement	MidAmerican	9/23/2013
ER13-2420	Notice of Termination of Facilities Agreement	MidAmerican	9/23/2013
ER13-2423	Notice of Termination of Project Design and Construction Services Agreement	NSP	9/23/2013
ER13-2423	Notice of Termination of Project Design and Construction Services Agreement	NSP	9/23/2013

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Docket Number	Type of Agreement	Counterparty	Date of Late Filing
ER13-2421	Notice of Termination of Facilities Upgrade Agreement	Story Wind	9/23/2013
ER13-2422	Notice of Termination of Facilities Upgrade Agreement	Story Wind	9/23/2013

UNITED STATES OF AMERICA
FEDERAL ENERGY REGULATORY COMMISSION

International Transmission Company	)	
Michigan Electric Transmission	)	
Company, LLC	)	Docket No. IN14-2-000
ITC Midwest LLC	)	
ITC Great Plains, LLC	)	

(Issued March 11, 2014)

MOELLER, Commissioner, *dissenting*:

In 1993, the Commission issued a policy establishing consequences for utilities that fail to make timely filings under the Federal Power Act (FPA).[1] Today, the Commission has, without addressing that policy, imposed a penalty equal to twenty-five times the remedy that has been consistently imposed over the last twenty years. In so doing, it discourages any utility from voluntarily reviewing its archives with an eye towards enhancing compliance with our filing requirements.

Specifically, the Commission is imposing a $750,000 penalty on four different utilities for their failure to make timely requests for Commission approval of various documents. All of these utilities are affiliated with International Transmission Company (ITC). Under the policy that has been used continuously by the Commission since 1993, instead of a $750,000 penalty, these four utilities would have been required to pay nothing more than a $30,000 refund.[2] While harsh penalties for violating the FPA discourage violations, when the Commission finds that the violations were inadvertent administrative errors, and if the violations appear to be typical of errors made by utilities, a harsh penalty will have limited deterrence. In this case, the Commission finds that the

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[1] *Prior Notice and Filing Requirements Under Part II of the Federal Power Act*, 64 FERC ¶ 61,139 (1993) ("Prior Notice"), *order on reh'g*, 65 FERC ¶ 61,081 (1993).

[2] Order at P 7, Stipulation and Consent Agreement at P 12. Twenty-five multiplied by $30,000 is equal to $750,000. According to P 12, the Commission is currently reviewing whether ITC may be required to pay additional time-value refunds. I have no information to suggest that the final amount of refunds will be materially different from $30,000.

FPA violations were inadvertent,[3] and the Commission cites to no evidence that these inadvertent errors are unusual when compared with errors made by similarly-sized groups of public utilities.

In 1993, as electricity markets were becoming complex and competitive, the Commission needed to decide how to handle the large number of utilities that failed to make timely rate and tariff filings under the FPA. The Commission considered adopting a policy that could result in million-dollar refunds, but it rejected that approach, finding that it would not impose a remedy which "can have harsh effects, amounting in some cases to millions of dollars, as to rates to which customers have consented and which we may have found to be just and reasonable had they been filed timely."[4] Looking at this ITC matter under the same standard, this Commission has made no finding that the rates were unjust and unreasonable prior to being filed with the Commission.

In crafting its 1993 policy, the Commission appropriately viewed its policy for non-compliance in the light of the justness and reasonableness of the utility's rates, where commenters argued that the FPA does not distinguish between a filing which is timely and a filing which is untimely. In other words, the FPA does not permit this Commission to reduce rates to an amount that is lower than the just and reasonable rate solely because the submission of those rates was late.[5] Further, when the Commission first decided this issue, it was well aware of the severe problems related to untimely filings under the FPA. As stated by the Commission:

> [I]n addition to violating the FPA and our implementing regulations, the failure to file a rate in a timely manner undermines the right of a utility's customers to protection from excessive rates. Moreover, the passage of time makes it often difficult (and particularly so in the case of a market-based rate) to determine accurately the justness and reasonableness of a rate which is not timely filed. Thus, true rate protection for customers in cases of untimely filings may be impossible.[6]

So with full understanding of the consequences that can arise from untimely filings, the Commission established a remedy that has served it for more than twenty years.

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[3] Order at P 13, Consent Agreement at P18.

[4] *Prior Notice,* at p. 61,979.

[5] *Id.*

[6] *Id.*

This longstanding remedy consists of the time value of money. That is, if a utility is late in making a required filing, it must refund to customers the time value of funds received prior to obtaining FERC's permission to collect those funds.[7] The Commission has recently emphasized its continued adherence to this remedy. In January 2014, the Commission recognized that, "its policy is to encourage compliance with the prior notice and filing requirements while still ensuring that a utility may collect bargained-for rates, even prior to the filing of those rates, when the utility has, in fact, rendered service."[8] That same day, the Commission held in another proceeding that "[i]f no monies were collected, as [the utility] asserts is the case here, then no refunds are necessary."[9]

Even in this proceeding, the Commission is apparently attempting to continue its longstanding policy on time-value refunds, as both the order and consent agreement recognize that "ITCTransmission, METC, and ITC Midwest have paid a total of $29,909.61 in time-value refunds to customers."[10]

But despite the fact that the Commission's time-value remedy already recognizes the severe problems associated with untimely filings, this Commission imposes a penalty equal to some twenty-five times its usual remedy. Were I to support a penalty greater than the usual remedy, such a remedy would need to be applied equally to all utilities that failed to make timely filings, and not just against ITC. But imposition of a greater penalty should first be preceded by public input, in the same way that this Commission sought public input via comments and a technical conference when it fashioned its time-value remedy twenty years ago.[11]

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[7] *Id.*, at p. 61,980.

[8] *Midwest Independent Transmission System Operator, Inc.*, 146 FERC ¶ 61,008 at P 20 (2014).

[9] *Northern States Power Co.*, 146 FERC ¶ 61,007 at P 9 (2014). These sorts of findings are both frequent and routine. For another order issued last month, *see, Lake Benton Power Partners LLC*, 146 FERC ¶ 61,095 at P 7 (2014) ("Given that [the utility] will not have collected any revenues other than those previously authorized by the Commission when the original agreement was approved, time value refunds are not required.")

[10] *Infra*, at footnote 2.

[11] *Prior Notice*, at p. 61,972 ("[A]fter approximately two years' experience, a technical conference, and review of numerous comments, we make a number of modifications to our existing policy in an effort to promote clarity and consistency, and to balance respect for the statutory requirement of prior notice and filing with the market realities of the public utilities we regulate under the FPA.")

Given the views of the majority in this matter, ITC clearly is making a good decision in sending a check for $750,000 to the United States Treasury to close this docket, as that cost is likely small in comparison to its costs of continuing to litigate. As described by ITC, the four ITC operating companies ordered their respective contracting departments to catalog more than 2,000 documents in a comprehensive search for any document that needed to be filed with FERC. The costs of undertaking this voluntary compliance review could easily have exceeded the penalty accepted today.

These internal costs are described in some detail by an ITC company that filed one of the untimely documents:

> The ITC OpCos conducted a comprehensive contract review process in order to determine which contracts need to be filed with the Commission. First, the ITC OpCos cataloged any and all contracts in their files. This included all vendor contracts, leases, real estate agreements, confidentiality agreements, service agreements under old open access transmission tariffs, historical agreements entered into by predecessor companies, study agreements, Midwest ISO service agreements, and more. In all, the ITC OpCos cataloged over 2,000 documents.
>
> Next, the ITC OpCos needed to determine which agreements were jurisdictional and needed to be filed at FERC. For this process, the ITC OpCos engaged outside counsel, who reviewed both the companies' electronic files and their on-site hard copy files. Each of the over 2,000 agreements was reviewed and identified as either jurisdictional or non-jurisdictional.
>
> Once a document was identified as jurisdictional, the ITC OpCos needed to determine whether it had been filed at FERC and/or was reflected on either the companies' Electric Quarterly Reports ("EQRs") or an RTO's EQR. This required review of the Commission's notebooks for each of the ITC OpCos and their predecessor companies, RATIS reports, eLibrary filings, and multiple EQRs. If the agreement was not on file with the Commission as an ITC OpCos' rate schedule, or if it was not reflected in any relevant EQR, then the companies determined that the jurisdictional agreement needed to be filed.[12]

The record contains no evidence to suggest that any other group of public utilities in the nation has conducted such an extensive review of its internal records.

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[12] *Tender of Joint Use Agreement by ITC Midwest LLC*, Docket No. ER11-4144 (July 29, 2011).

So of the four utilities that have conducted a comprehensive review and reported their results to the Commission, all four have discovered numerous documents that should have been filed at the Commission earlier. How many other groups of utilities across the nation didn't file at least 44 notices of succession to predecessor agreements? How many others failed to file 12 or more notices of termination? Were any of the untimely documents subject to the "de minimis" exception recognized by FERC for these matters?[13]

Over time, most utilities will accumulate a vast array of documents that should have been filed but were not.[14] How many pole attachment agreements are filed at FERC on an annual basis?[15] In 1993, the Commission stated that, "public utilities need not file such agreements with us."[16] For every jurisdictional agreement that has been terminated by a utility, has the required notice been filed at FERC? Given the size and complexity of the industry, utilities nationwide may have made errors similar to those of the four ITC companies.[17]

The Commission's 1993 policy balanced the obligations of the Commission to provide guidance against the need for those utilities to comply with their obligations. In part, the Commission stated:

> Public utilities and their customers now inform us that our efforts at providing further guidance as to the filing obligations of public utilities … have not been

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[13] *Prior Notice*, at p. 61,994-95. *See also, Philip Moeller, dissenting in, Midwest Independent Transmission System Operator, Inc.*, 124 FERC ¶ 61,277 ("According to the courts, a *de minimis* exception under the Federal Power Act is a matter of 'common sense.' *Pacific Gas & Elec. Co. v. F.E.R.C*, 720 F.2d 778, 89 (D.C. Cir. 1983); *Fall River Rural Elec. Coop. v. F.E.R.C.*, [543 F.3d 519] (9th Cir. 2008)").

[14] Just as any large organization will make administrative errors, utilities also make administrative errors. As stated in the consent agreement, the Office of Enforcement "determined that the ITC Companies' violations were not willful, fraudulent, intentional, or manipulative." (P 18.)

[15] Consent Agreement at P 10.

[16] *Prior Notice*, at p. 61,992-93. (Perhaps this finding has been modified by later FERC precedent.)

[17] Only days ago, the Commission accepted and granted waivers for 31 untimely agreements filed by a pipeline. *Paiute Pipeline Co.*, 146 FERC ¶ 61,128 (2014)

> successful. … public utilities are less clear now than they were prior … the utility industry remains unclear as to whether various types of agreements need to be filed for Commission review … difficult to understand … regulatory minefield … business opportunities for the legally clever … Our hope is that this analysis will assist utilities in searching their files for agreements that now need to be filed.[18]

In contrast with twenty years ago, today the Commission exclusively considers the failures of the four utilities, without any discussion of the Commission's success in providing guidance. But since the types of agreements entered today differ from those that were typically entered in 1993, perhaps the Commission should consider issuing new guidance on this topic? As I have stated on several occasions, "[t]hose who are subject to Commission penalties need to know, in advance, what they must do to avoid a penalty."[19]

The majority claims that ITC's review of 2,000 documents distinguishes this matter from the limited circumstance where a utility alerts the Commission that it failed to timely file a single document. As stated by the majority:

> [T]his case does not involve limited instances of missed filings, which are frequently self-reported to Enforcement and often closed with no action depending on the particular facts and circumstances of the case. Rather, the ITC Companies' failure to make nearly 200 filings – including failure to seek authorization of 20 jurisdictional transactions – reflects a systemic neglect of statutory responsibilities and a serious shortfall in compliance efforts.[20]

Yet if these four utilities failed to make 200 filings after reviewing more than 2,000 records, then how many filings have been missed across the nation among the hundreds of other public utilities and their thousands of records?

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[18] *Prior Notice*, at p. 61,977.

[19] Concurring opinions of Commissioner Moeller in *Enforcement of Statutes, Regulations, and Orders*, 123 FERC ¶ 61,156 (2008) and *Compliance with Statutes, Regulations, and Orders*, 125 FERC ¶ 61,058 (2008). This statement was repeated in the dissenting opinions of Commissioner Moeller in *Seminole Energy Services, LLC, et al.*, 126 FERC ¶ 61,041 (2009) and *National Fuel Marketing Co., LLC, et al.*, 126 FERC ¶ 61,042 (2009), and also repeated in the concurring opinion in *Florida Blackout*, 129 FERC ¶ 61,016 (2009).

[20] Order at P 15.

While the Commission can claim that ITC failed to maintain[21] an adequate compliance plan, the Commission fails to explain how ITC's compliance was not adequate.[22] Perhaps the very existence of unintentional errors by the four utilities is supposed to show inadequacy, but on that standard, every utility would be inadequate. Compliance with FERC obligations is not routine, and compliance is not as simple as answering the question of whether the utility had a "written" compliance plan for FERC submittals.[23] Compliance with FERC is rather part of a utility's ongoing compliance with all law and regulation.

Twenty years ago we held a technical conference and invited comments, learning that the problem was widespread and nationwide. We then fixed the problem by creating a policy that encouraged companies to examine their old records. Transparency of the industry was improved, and customers were better assured of the justness and reasonableness of their rates. Today, the types of contracts entered by utilities are radically different from those entered twenty years ago. Yet this Commission is imposing a penalty equal to twenty-five times on the dollar compared with its policy on untimely filings. The punishment does not fit the crime. No rational utility will ever undergo a comprehensive analysis of old documents again, unless it is forced by compulsion to conduct such a review.

Because the Commission has not addressed its 1993 policy, we cannot know if today's order reflects a change in policy regarding late filings, but I suspect that, over time, the Commission's decision today will be understood to be anomalous.

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[21] Order at P 13 ("Enforcement determined that the ITC Companies' violations, although not willful, were the direct result of their failure to maintain a compliance program capable of identifying and ensuring compliance with their FPA Section 203 and 205 obligations, including providing for adequate regulatory due diligence in reviewing agreements inherited from predecessors in interest.").

[22] For example, when counsel will already be engaged to determine what prior approvals are necessary in a merger or acquisition of assets, the Commission has not explained how an improved compliance plan can be expected to result in a different action by counsel regarding the necessary prior approvals. In other words, how is it materially different when a compliance officer asks the lawyers to determine which prior approvals are needed compared with one of the other executives asking the lawyers to determine which prior approvals are needed?

[23] The Consent Agreement at P 25 requires a "written FERC compliance program with a strong emphasis on compliance with applicable Commission filing requirements."

Accordingly, I respectfully dissent.

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Philip D. Moeller
Commissioner