

153 FERC ¶ 61,166  
UNITED STATES OF AMERICA  
FEDERAL ENERGY REGULATORY COMMISSION

Before Commissioners: Norman C. Bay, Chairman;  
Cheryl A. LaFleur, Tony Clark,  
and Colette D. Honorable.

Michigan Electric Transmission Company, LLC

Docket No. ER11-4118-000

ORDER ACCEPTING COMPLIANCE FILING

(Issued November 12, 2015)

1. On October 24, 2011, in compliance with a Commission directive,<sup>1</sup> Michigan Electric Transmission Company, LLC (Michigan Electric) filed a refund report<sup>2</sup> regarding monies that Michigan Electric received from Michigan South Central Power Agency (MSCPA) pursuant to a late-filed letter agreement (Letter Agreement). As discussed below, we accept Michigan Electric's Compliance Filing.

**I. Background**

2. Michigan Electric is a wholly-owned subsidiary of ITC Holdings Corp. (ITC Holdings) and a transmission-owning member of the Midcontinent Independent System Operator, Inc. (MISO). In 2001, Consumers Energy Company transferred its transmission assets into a newly-formed, wholly-owned affiliate company, Michigan Electric Transmission Company. In 2002, Consumers Energy Company sold Michigan Electric Transmission Company to Trans-Elect Inc. (Trans-Elect). Trans-Elect then converted Michigan Electric Transmission Company, through a series of transactions, into the limited liability company known as Michigan Electric. ITC Holdings acquired Michigan Electric in 2006.<sup>3</sup>

---

<sup>1</sup> *Michigan Electric Transmission Company, LLC*, 136 FERC ¶ 61,203 (2011) (September 2011 Order).

<sup>2</sup> Michigan Electric, Compliance Filing, Docket No. ER11-4118-000 (filed Oct. 24, 2011) (Compliance Filing).

<sup>3</sup> Michigan Electric, Docket No. ER11-4118-000, Transmittal Letter at 1 (filed July 26, 2011).

3. Michigan Electric stated 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 of the Federal Power Act (FPA).<sup>4</sup> Michigan Electric stated that, as a result of this review, it identified agreements that should have been, but are not, on file with the Commission or that should have been, but were not, identified as Michigan Electric rate schedules. In order to fully comply with the Commission's requirements, Michigan Electric began filing these agreements. The Letter Agreement is one such agreement.<sup>5</sup>

4. On July 26, 2011, pursuant to section 205 of the FPA and Part 35 of the Commission's regulations,<sup>6</sup> Michigan Electric filed the Letter Agreement between Michigan Electric and MSCPA, dated January 31, 2005, with the Commission. Under the terms of the Letter Agreement, Michigan Electric agreed to procure and install new billing meters on behalf of MSCPA. Michigan Electric stated that, under section 3 of the Letter Agreement, Michigan Electric initially charged MSCPA \$51,600 for services rendered, including \$41,600 to purchase the new meters. However, on July 5, 2005, Michigan Electric submitted to MSCPA a letter showing the final project cost of \$47,087.85, which resulted in a refund to MSCPA. Michigan Electric acknowledged that when a utility files a jurisdictional agreement with the Commission after service has commenced, the utility is required to refund the time-value of monies it has received under the agreement.<sup>7</sup> Michigan Electric claimed, however, that it only charged MSCPA the actual cost for procuring and installing the new meters, and, in fact, already refunded the difference between the amounts it collected up front (\$51,600) and the final cost of the work (\$47,087.85). Michigan Electric asserted that, if it were required to make time-value refunds of the amounts it received under the Letter Agreement, it would operate at a loss. In this regard, Michigan Electric noted that Commission precedent provides that time-value refunds are limited to ensure that a utility does not operate at a loss.<sup>8</sup>

---

<sup>4</sup> 16 U.S.C. § 824d (2012).

<sup>5</sup> Michigan Electric, Transmittal Letter at 1-2 (filed July 26, 2011).

<sup>6</sup> 18 C.F.R. pt. 35 (2015).

<sup>7</sup> Michigan Electric, Transmittal Letter at 6 (filed July 26, 2011) (citing *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>8</sup> *Id.* (citing *Southern Cal. Edison Co.*, 98 FERC ¶ 61,304 (2002) (*Southern California*); *Florida Power & Light Co.*, 98 FERC ¶ 61,276, *reh'g denied*, 99 FERC ¶ 61,320 (2002) (*FP&L*)).

Accordingly, Michigan Electric requested waiver of the Commission's requirement to issue time-value refunds and an effective date of September 26, 2011 for the Letter Agreement.<sup>9</sup>

5. In its comments on the filing of the Letter Agreement, MSCPA stated that it does not object to the filing. Rather, MSCPA sought to eliminate any implication that Michigan Electric's request for a September 26, 2011 effective date should or could be construed to suggest that the Letter Agreement has not been valid since the date of its inception.<sup>10</sup> MSCPA stated that Michigan Electric has authorized it to represent that: (1) Michigan Electric intends no such implication; (2) Michigan Electric agrees that the Letter Agreement has been valid and in effect since its inception date and remains valid and effective in accordance with its terms; and (3) that Michigan Electric agrees that the fact that Michigan Electric did not previously file the Letter Agreement with the Commission does not affect MSCPA's rights under the Letter Agreement.<sup>11</sup>

6. The Commission accepted the Letter Agreement effective September 26, 2011 as requested, and, although it agreed with Michigan Electric's interpretation of the precedent, the Commission stated that Michigan Electric had failed to provide a refund report supporting its claim that it would operate at a loss if required to make time-value refunds. Accordingly, the Commission directed Michigan Electric to either make time-value refunds within 30 days and file a refund report with the Commission within 30 days thereafter, or demonstrate that the time-value refunds would result in a loss to Michigan Electric.<sup>12</sup> The Commission also agreed with MSCPA that Michigan Electric's request for a September 26, 2011 effective date does not affect the validity or enforceability of the Letter Agreement since its inception on January 31, 2005.<sup>13</sup>

7. Consistent with the September 2011 Letter, Michigan Electric filed its refund report on October 24, 2011. In its Compliance Filing, Michigan Electric requests a waiver from the requirement to pay time-value refunds under the Letter Agreement because, according to Michigan Electric, all work was performed and payment was received prior to October 10, 2006, the date that ITC Holdings acquired Michigan

---

<sup>9</sup> Michigan Electric, Transmittal Letter at 5-6 (filed July 26, 2011).

<sup>10</sup> MSCPA Comments at 1.

<sup>11</sup> *Id.* at 3.

<sup>12</sup> September 2011 Order, 136 FERC ¶ 61,203 at P 7.

<sup>13</sup> *Id.* P 8 (citing *El Paso Electric Co.*, 105 FERC ¶ 61,131, at P 39 (2003)).

Electric. Michigan Electric asserts that, before this date, the benefit of MSCPA's payments accrued to a Trans-Elect subsidiary.<sup>14</sup> Michigan Electric states that the parties executed the Letter Agreement on January 31, 2005, and all work was complete and all payment received prior to July 5, 2005 – well before ITC Holdings acquired Michigan Electric in October 2006. In addition, Michigan Electric submits that waiver is appropriate because the requirement to pay refunds would mean it had provided service at a loss. Michigan Electric states that it charged MSCPA \$51,600.00 for services rendered, including \$41,600 necessary to purchase the new meters; however Michigan Electric ultimately charged MSCPA only \$47,087.85 for the work, including \$44,904.00 for engineering and installation of all of the meters, an additional engineering labor cost for one meter of \$107.99, and \$2,075.86 in total administrative and general. Michigan Electric states that the time-value of MSCPA's payments under the Letter Agreement is \$17,452.04. According to Michigan Electric, if it is required to make time-value refunds to MSCPA, Michigan Electric will have received less from MSCPA than its costs in providing the service, resulting in a loss to the utility under the Letter Agreement.<sup>15</sup>

## II. Responsive Pleadings

8. MSCPA filed a protest on November 8, 2011. Michigan Electric filed an answer on November 23, 2011. MSCPA filed an answer to Michigan Electric's answer on December 7, 2011.

9. In its protest, MSCPA argues that the Commission should require Michigan Electric to make time-value refunds consistent with Commission policy and precedent. MSCPA asserts that when the Commission announced the current Prior Notice policy to ensure timely filing of jurisdictional contracts and agreements, the Commission stated that it would "lessen the severity" of the refund policy by requiring a "utility to refund to its customers the time-value of the revenues collected" for the period during which the rate was collected without Commission authorization.<sup>16</sup> Further, MSCPA states that the Commission applies an "extraordinary circumstances" standard to waive the payment of a penalty under its Prior Notice policy for late-filed agreements, but the Commission would "relax the grounds for finding waiver for service agreements implementing tariff service that are filed less than 60 days in advance of the proposed effective date."<sup>17</sup>

---

<sup>14</sup> See *supra* P 2.

<sup>15</sup> Compliance Filing at 2-4.

<sup>16</sup> MSCPA Protest at 2-3 (citing *Prior Notice Order*, 64 FERC ¶ 61,139 at 61,979).

<sup>17</sup> *Id.* at 3 (citing *Prior Notice Order*, 64 FERC ¶ 61,139 at 61,983-61,984).

10. MSCPA observes that in *Carolina Power*, the Commission found that the utility submitted service agreements more than 30 days after sales, which were part of an ongoing contractual relationship between Carolina Power and its counterparties, commenced.<sup>18</sup> MSCPA states that on rehearing, the Commission limited “the application of the time-value formula to an amount that permits a public utility to recover its variable costs” and clarified that this would establish “a floor to protect the company from operating at a loss.”<sup>19</sup> Applying these principles to interconnection construction-related agreements, MSCPA states that the Commission in *Southern California* reiterated that these agreements must be filed on a timely basis, but that the Commission would reduce or eliminate time-value refunds if such a penalty would result in construction at a loss.<sup>20</sup> In *Southern California* and *FP&L*, MSCPA asserts that the Commission applied “a floor to protect [public utilities] from constructing such facilities at a loss.”<sup>21</sup> Nonetheless, MSCPA avers, the Commission still retains its “established discretion to remedy violations of the FPA.”<sup>22</sup>

11. MSCPA argues that Michigan Electric should not benefit from its violation of the Commission’s Prior Notice policy. According to MSCPA, the Commission accepted the Letter Agreement for filing on July 26, 2011 with an effective date of September 26, 2011, 60 days after Michigan Electric gave notice by filing the Letter Agreement with the Commission. MSCPA argues that since the Letter Agreement was not effective until September 26, 2011, Michigan Electric could not lawfully charge MSCPA pursuant to the Letter Agreement until September 26, 2011. MSCPA continues, however, that Michigan Electric had already charged MSCPA pursuant to the Letter Agreement, which is dated as of January 31, 2005, and under which the subject work was performed in 2005. Since MSCPA made timely payment to Michigan Electric in 2005, MSCPA asserts that Michigan Electric has held MSCPA monies for more than six years prior to

---

<sup>18</sup> *Id.* at 4 (citing *Carolina Power & Light Co.*, 84 FERC ¶ 61,103, at 61,522 (1998) (*Carolina Power*), order on reh’g, 87 FERC ¶ 61,083 (1999) (*Carolina Power Rehearing*)).

<sup>19</sup> *Id.* (citing *Carolina Power Rehearing*, 87 FERC ¶ 61,083 at 61,357).

<sup>20</sup> *Id.* (citing *Southern California*, 98 FERC ¶ 61,304 at 62,302, n.10).

<sup>21</sup> *Id.* (citing *Southern California*, 98 FERC ¶ 61,304 at 62,302; *FP&L*, 98 FERC ¶ 61,276 at 62,151).

<sup>22</sup> *Id.* (citing *Carolina Power Rehearing*, 87 FERC ¶ 61,083 at 61,357 (citing *Towns of Concord, Norwood & Wellesley, Massachusetts v. FERC*, 955 F.2d 67, 76 (D.C. Cir. 1992))).

filing of the Agreement and benefitted from the time-value of the monies during this time.<sup>23</sup>

12. When analyzing whether a time-value refund would result in a loss to Michigan Electric, MSCPA states that the Commission must first account for the time-value Michigan Electric gained from all collections under the Letter Agreement. MSCPA asserts that by accepting the Letter Agreement effective September 26, 2011, the Commission found that the Letter Agreement was worth \$47,087.85 to Michigan Electric on September 26, 2011. Since Michigan Electric collected and held monies prior to September 26, 2011, MSCPA maintains that Michigan Electric also accrued \$17,452.04 in time-value of the monies, thus resulting in a total of \$64,539.89 that Michigan Electric collected as of September 26, 2011. Therefore, MSCPA concludes, making a time-value refund would not result in a loss to Michigan Electric any greater than the time-value that it illegally gained as a result of its violation of the FPA, Commission regulations and Prior Notice policy.<sup>24</sup>

13. In the alternative, MSCPA argues that the Commission should exercise its discretion by requiring Michigan Electric to make time-value refunds as a remedial action for violating the Commission's Prior Notice policy. First, MSCPA states that Michigan Electric admits that it neglected to file the Letter Agreement with MSCPA and then tried to mitigate its negligence by suggesting that a change in ownership should excuse its delay in filing the Letter Agreement with the Commission. MSCPA asserts that neither Michigan Electric nor the Commission have found that these would constitute "extraordinary circumstances" as contemplated in the Prior Notice policy, and add that "the Commission has already ruled that administrative oversight does not constitute extraordinary circumstances."<sup>25</sup> Similarly, in *Southern California* and *FP&L*, MSCPA observes that the Commission found that neither public utility identified extraordinary circumstances that would justify waiving its Prior Notice requirement and ordered the public utilities to make time-value refunds.<sup>26</sup> MSCPA adds that the Commission should reject Michigan Electric's theory that the period for calculating time-value refunds begins with the most recent change in a public utility's ownership rather than with the 60-day

---

<sup>23</sup> *Id.* at 5.

<sup>24</sup> *Id.* at 6.

<sup>25</sup> *Id.* at 7-8 (citing *Carolina Power*, 84 FERC ¶ 61,103 at 61,521 (citing *Illinois Power Co.*, 75 FERC ¶ 61,269 (1996))).

<sup>26</sup> *Id.* at 8 (citing *Southern California*, 98 FERC ¶ 61,304 at 62,301; *FP&L*, 98 FERC ¶ 61,276 at 62,150-62,151).

prior notice period because utility ownership is not part of the analysis under the Prior Notice policy.<sup>27</sup>

14. Second, MSCPA argues that, although Michigan Electric cites to *Southern California* and *FP&L* to argue that the Commission should not require Michigan Electric to make time-value refunds because such refunds would cause Michigan Electric to operate at a loss, Michigan Electric's Prior Notice policy violations are materially distinct from those cases. In those cases, the utilities' Prior Notice policy violations occurred for either less than three years<sup>28</sup> or less than one year,<sup>29</sup> whereas here, the violation occurred for over six years. According to MSCPA, the Commission has held that a utility's failure to make a timely filing is not a "minor infraction,"<sup>30</sup> Michigan Electric's failure to file was illegal "not only at the moment service commence[d] but every day thereafter."<sup>31</sup> MSCPA further asserts that Michigan Electric inflicted "injury to 'the Commission's ability to ensure that all rates for jurisdictional service . . . are just and reasonable *at the time they are being charged.*'"<sup>32</sup> MSCPA claims that allowing Michigan Electric to escape sanction would not encourage compliance with the FPA and Commission regulations and would undermine the goals of the Prior Notice policy.<sup>33</sup>

15. Michigan Electric answers that it did not benefit from monies received under the agreement. While the Prior Notice policy does require time-value refunds for late-filed agreements, Michigan Electric observes that the Commission has clarified on numerous occasions that the operation of its time-value refund policy does not require a utility to operate at a loss. Michigan Electric explains that the Letter Agreement was executed on

---

<sup>27</sup> *Id.* at 8.

<sup>28</sup> *Id.* at 9 (citing *Carolina Power*, 84 FERC ¶ 61,103 at 61,522).

<sup>29</sup> *Id.* (citing *Southern California*, 98 FERC ¶ 61,304 at 62,301; *FP&L*, 98 FERC ¶ 61,276 at 62,150).

<sup>30</sup> *Id.* (citing *Carolina Power Rehearing*, 87 FERC ¶ 61,083 at 61,356).

<sup>31</sup> *Id.* (citing *Carolina Power Rehearing*, 87 FERC ¶ 61,083 at 61,356 (citing 16 U.S.C. § 824d (2006))).

<sup>32</sup> *Id.* (citing *Carolina Power Rehearing*, 87 FERC ¶ 61,083 at 61,356 (emphasis in original) (quoting *PacifiCorp Electric Operations*, 60 FERC ¶ 61,292, at 62,039 (1992), *reh'g granted on other grounds*, 64 FERC ¶ 61,325)).

<sup>33</sup> *Id.* at 10.

January 31, 2005 with all payments and work completed prior to July 5, 2005. Further, Michigan Electric only received the cost of work it performed under the Letter Agreement without profit. Michigan Electric argues that without a net profit from MSCPA, there is no money from which it could earn any interest, investment or any other type of time-value profits as alleged by MSCPA. Accordingly, if Michigan Electric was required to pay time-value refunds based on the payments made by MSCPA pursuant to the Letter Agreement, Michigan Electric will be forced to operate at a loss.<sup>34</sup>

16. Michigan Electric adds that MSCPA itself treated the Letter Agreement as effective in 2005. According to Michigan Electric, each party was expected to perform its obligations under the Letter Agreement in 2005, and MSCPA's compensation under the Letter Agreement made Michigan Electric whole for the costs it had incurred pursuant to the Interconnection Agreement. In addition, Michigan Electric argues that the cost-based payments made by MSCPA in 2005 benefitted, if anyone, Trans-Elect and its subsidiary since ITC Holdings did not acquire Michigan Electric from Trans-Elect until 2006. Michigan Electric avers that the payments did not benefit ITC Holdings or Michigan Electric in its current form, and it would be unjust and unreasonable to require it to make time-value refunds now.<sup>35</sup>

17. In addition, Michigan Electric contends that MSCPA has not demonstrated why Michigan Electric should make refunds even if it means it would be forced to operate at a loss. Michigan Electric asserts that MSCPA misconstrues Commission precedent in ordering time-value refunds by arguing that only extraordinary circumstances can prevent the Commission from ordering time-value refunds. According to Michigan Electric, however, Commission precedent specifically states that, absent extraordinary circumstances, the Commission will not waive the 60-day prior notice requirement, and the utility may be required to pay time-value refunds.<sup>36</sup> Michigan Electric adds, however, that the Commission has a long-standing exception to this requirement when such a refund would require the utility to operate at a loss. Therefore Michigan Electric argues that the Commission does not have to find extraordinary circumstances to waive the payment of refunds but only has to find that requiring refunds would require the utility to operate at a loss.<sup>37</sup>

---

<sup>34</sup> Michigan Electric Answer at 4-5.

<sup>35</sup> *Id.* at 5-6.

<sup>36</sup> *Id.* at 7 (citing *Carolina Power Light Co.* 84 FERC ¶ 61,103; *Carolina Power Rehearing*, 87 FERC ¶ 61,083).

<sup>37</sup> *Id.*

18. Finally, Michigan Electric maintains that MSCPA ignores recent Commission precedent and has failed to cite any Commission precedent when it asserts that the time-value refunds be ordered based on the length of the violation alone. Michigan Electric argues that MSCPA fails to note recent Commission precedent where the Commission protected a utility from operating at a loss even when the utility failed to file the agreement with the Commission for almost eleven years. Michigan Electric states that MSCPA failed to mention any other material distinctions between the instant proceeding and the relevant precedent. Specifically, Michigan Electric argues that while the agreements at issue in *Southern California, FP&L*, and *Carolina Power* all involved service agreements with ongoing obligations, the Letter Agreement was a short-lived construction agreement whose obligations were met quickly, and did not contain any future, ongoing obligations. Therefore, Michigan Electric asserts, both parties here were unlikely to review, amend, modify or revisit the Letter Agreement after both parties met all of their obligations pursuant to the agreement before July 5, 2005, and both parties assumed that the contract was fulfilled. Michigan Electric adds while ITC Holdings and Michigan Electric admittedly failed to file the Letter Agreement in a timely fashion, their actions do not amount to the continuous, irresponsible and illegal deeds that should automatically require time-value refunds regardless of having to operate at a loss.<sup>38</sup>

19. In its answer, MSCPA argues that the Commission ordered Michigan Electric to make time-value refunds absent a demonstration that time-value refunds would result in a loss to Michigan Electric, and since it has not made this demonstration, Michigan Electric must refund the value of the time during which it held MSCPA's monies before the Commission authorized Michigan Electric to collect those monies. According to MSCPA, Michigan Electric's claim that it was merely made whole and did not earn any net profit under the Letter Agreement is only partially complete and therefore incorrect. MSCPA adds that Michigan Electric improperly conflates two steps of the Commission's analysis regarding time-value refunds which, according to MSCPA, are to first determine whether a public utility failed to meet its filing obligations under the Prior Notice policy, and second, to determine whether the payment of time-value refunds would result in a loss. Here, MSCPA argues, the Commission has already found that Michigan Electric violated the Prior Notice policy, but Michigan Electric still argues that the change in ownership absolves these violations.<sup>39</sup>

20. MSCPA also asserts that, as a public utility, Michigan Electric is obligated to file the Letter Agreement with the Commission. According to MSCPA, Michigan Electric is solely responsible for any delay regardless of who its shareholders are from time to time.

---

<sup>38</sup> *Id.* at 8.

<sup>39</sup> MSCPA Answer at 3-5.

Additionally, MSCPA argues that the Prior Notice policy does not seem to contemplate that extended violation will result in a penalty of zero dollars. MSCPA points out that the Commission stated from the outset of the Prior Notice policy that public utilities should face some sanction in order for them to appreciate the “respect for and compliance with the prior notice and filing requirement.”<sup>40</sup> MSCPA believes that the Commission should reconsider its practice of capping time-value refunds when the resulting penalty will be for zero dollars, regardless of the severity prior notice violation.<sup>41</sup>

### **III. Discussion**

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

21. Rule 213(a)(2) of the Commission’s Rules of Practice and Procedure, 18 C.F.R. § 385.213(a)(2) (2015), prohibits an answer to a protest or an answer unless otherwise ordered by the decisional authority. We accept the answers filed by MSCPA and Michigan Electric because they have provided information that assisted us in our decision-making process.

#### **B. Substantive Matters**

22. We accept Michigan Electric’s Compliance Filing. Our review of the Letter Agreement and the Compliance Filing indicates that Michigan Electric received only the cost of work it performed under the Letter Agreement without profit. In this regard, the Commission has recently clarified in *International Transmission Co.*,<sup>42</sup> that, in cases involving late-filed agreements governing the construction, ownership, operation, and maintenance of transmission facilities to serve a specific customer, where the utility’s costs of providing the service are passed through with no profit component, the utility would necessarily operate at a loss, contrary to Commission policy, if required to make time-value refunds. The Commission further clarified that, for purposes of determining the “floor” for time-value refunds, costs are not limited to usage-based variable operation and maintenance costs, but also include other costs, whether fixed and variable.<sup>43</sup> The

---

<sup>40</sup> *Id.* at 6 (citing *Prior Notice Order*, 64 FERC ¶ 61,139 at 61,980).

<sup>41</sup> *Id.*

<sup>42</sup> *See International Transmission Co.*, 152 FERC ¶ 61,043, at PP 34-38 (2015). *See also CED Corcoran Solar, LLC and CED Corcoran Solar 2, LLC*, 152 FERC ¶ 61,075, at P 10 (2015).

<sup>43</sup> *International Transmission Co.*, 152 FERC ¶ 61,043 at P 29.

Letter Agreement falls within this category of agreement. Thus, because Michigan Electric only recovered its costs of performing its obligations under the Letter Agreement, as they were incurred, without any profit, Michigan Electric would operate at a loss if required to refund time-value of amounts collected prior to filing the Letter Agreement. Accordingly, we will accept Michigan Electric's refund report and find that no time-value refunds are warranted here.

23. Having determined that no that time-value refunds are warranted with respect to unauthorized collections under the Letter Agreement, it is unnecessary to address Michigan Electric's alternative argument that it should have no liability for time-value refunds on amounts collected prior to becoming a subsidiary of ITC Holdings in 2006, since the benefit of collections before 2006 accrued to a prior subsidiary of Trans-Elect.<sup>44</sup> We note, however, that this is essentially the same argument that International Transmission Company made, and the Commission rejected, in *International Transmission Co.* described above.<sup>45</sup>

24. We reject the arguments raised by MSCPA in its protest and answer asserting that when the Commission considers Michigan Electric's time-value gain on the time-value of the monies Michigan Electric collected in violation of the Prior Notice policy, Michigan Electric cannot demonstrate that making a time-value refund would result in a loss, and therefore, consistent with the Prior Notice policy, it must provide time-value refunds. While the Prior Notice policy does require time-value refunds to be paid on amounts collected under jurisdictional agreements prior to their filing,<sup>46</sup> the Commission has consistently found, as MSCPA acknowledges,<sup>47</sup> that this requirement to make time-value refunds does not apply where the utility demonstrates that doing so would force it to operate at a loss.<sup>48</sup> Here, we have determined that Michigan Electric recovered its costs of providing service as those were incurred, and there was no profit or return reflected in the rates Michigan Electric charged; therefore, there is no opportunity for it to have

---

<sup>44</sup> Compliance Filing at 1.

<sup>45</sup> *International Transmission Co.*, 152 FERC ¶ 61,043 at P 16 (citing ITC Request for Rehearing, Docket No. ER12-2170-001, at 16).

<sup>46</sup> *Prior Notice Order*, 64 FERC ¶ 61,139 at 61,979.

<sup>47</sup> MSCPA Protest at 4.

<sup>48</sup> *FP&L*, 98 FERC ¶ 61,276; *Southern California*, 98 FERC ¶ 61,304; *Florida Power & Light Co.*, 133 FERC ¶ 61,120 (2010); *International Transmission Co.*, 152 FERC ¶ 61,043; *International Transmission Co.*, 152 FERC ¶ 61,042 (2015).

earned any sort of time-value profit that Michigan Electric could refund without it operating at a loss, contrary to MSCPA's assertions; Michigan Electric was simply made whole for the work it performed under the Letter Agreement. We also reject MSCPA's arguments that Michigan Electric is required to show "extraordinary circumstances" to justify waiving the Prior Notice requirement because, as Michigan Electric properly observes, "the Commission does not have to find extraordinary circumstances to waive the payment of time-value refunds."<sup>49</sup> We are similarly unpersuaded by MSCPA's arguments that the length of time during which a utility fails to file a jurisdictional agreement should be considered by the Commission in deciding whether to require that utility to issue time-value refunds. Whether to require time-value refunds is a function of whether the utility can demonstrate that doing so would require it to operate at a loss and does not have a remedial component once such a demonstration is made, as MSCPA implies.

25. We disagree with MSCPA that not requiring refunds in this case would sanction disregard for the Prior Notice policy. In the *Prior Notice Order*, as MSCPA partially quotes, the Commission stated that requiring a utility "to refund to its customers the time-value of the revenues collected . . . for the entire period that the rate was collected without Commission authorization"<sup>50</sup> properly balances the competing concerns; it would "encourage respect for and compliance with the [FPA's] prior notice and filing requirements, yet not impose . . . a severe financial burden on the utility filing rates that otherwise are just and reasonable."<sup>51</sup> Therefore, there is an interest in the Prior Notice policy to not impose a severe financial burden on a utility, which would indeed result should that utility be required to operate at a loss as a result of issuing such refunds. Not requiring time-value refunds in instances where the utility can demonstrate that doing so would require it to operate at a loss is therefore consistent with the intent of the Prior Notice policy.

---

<sup>49</sup> Michigan Electric Answer at 7.

<sup>50</sup> *Prior Notice Order*, 64 FERC ¶ 61,139 at 61,979.

<sup>51</sup> *Id.* at 61,980.

The Commission orders:

Michigan Electric's Compliance Filing is hereby accepted, as discussed in the body of this order.

By the Commission.

( S E A L )

Nathaniel J. Davis, Sr.,  
Deputy Secretary.