

110 FERC ¶ 61,389  
UNITED STATES OF AMERICA  
FEDERAL ENERGY REGULATORY COMMISSION

Before Commissioners: Pat Wood, III, Chairman;  
Nora Mead Brownell, Joseph T. Kelliher,  
and Suedeen G. Kelly.

Trans-Elect, Inc.  
Michigan Electric Transmission Company, LLC  
Trans-Elect NTD Path 15, LLC

Docket No. EC05-52-000

ORDER AUTHORIZING DISPOSITION  
OF JURISDICTIONAL FACILITIES

(Issued March 30, 2005)

1. On February 16, 2005, Trans-Elect, Inc. (Trans-Elect), on behalf of Michigan Electric Transmission Company (METC) and Trans-Elect NTD Path 15, LLC (NTD Path 15) (collectively, Applicants), filed an application under section 203 of the Federal Power Act (FPA)<sup>1</sup> requesting Commission authorization for the disposition of jurisdictional facilities related to the acquisition of all of the capital stock of Trans-Elect by Trans-Elect Holding Company (Trans-Elect Holding).<sup>2</sup> The jurisdictional facilities indirectly affected

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<sup>1</sup> 16 U.S.C. § 824b (2000).

<sup>2</sup> Applicants also request that the Commission make a determination that the transaction will not cause Applicants to lose their status as transmission companies that are independent of “market participants”, as defined in 18 C.F.R. § 35.34(b)(2) of the Commission’s regulations. Under the Commission’s regulations, a market participant is any entity that directly, or indirectly through an affiliate, sells or brokers electric energy, or provides ancillary services to the relevant Regional Transmission Organization (RTO), unless the Commission finds that the entity does not have economic or commercial interests that would be significantly affected by the RTO’s actions and decisions; and any other entity who has economic or commercial interests that would be significantly affected by the RTO.

by the transaction include transmission facilities or transmission related rights, contracts, books or records owned by MTEC and NTD Path 15.

2. The Commission has reviewed the proposed transaction under the Commission's Merger Policy Statement<sup>3</sup> and will authorize the transaction as consistent with the public interest. This order benefits the public interest because it facilitates investment in transmission infrastructure, improving the functioning of power markets.

## **I. Background**

### **A. Description of the Parties**

3. METC, a wholly-owned subsidiary of Michigan Transco Holdings, Limited Partnership (MTH), is a transmission-only company serving customers and load located in the lower peninsula of Michigan. As a transmission-owner member of the Midwest Independent System Operator, Inc. (Midwest ISO), METC has transferred operational control of its transmission facilities to the Midwest ISO.<sup>4</sup> Pursuant to Commission approval, MTH acquired METC from Consumers Energy Company (Consumers), effective May 1, 2002.<sup>5</sup> In approving this transaction, the Commission found that METC would be an independent transmission company not affiliated with any market participant.

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<sup>3</sup> See *Inquiry Concerning the Commission's Merger Policy Under the Federal Power Act: Policy Statement*, Order No. 592, 61 Fed. Reg. 68,595 (1996); FERC Stats. & Regs. ¶ 31,044 (1996), *reconsideration denied*, Order No. 592-A, 62 Fed. Reg. 33,341 (1997), 79 FERC ¶ 61,321 (1997) (Merger Policy Statement); see also *Revised Filing Requirements Under Part 33 of the Commission's Regulations*, Order No. 642, 65 Fed. Reg. 70,983 (2000), FERC Stats. & Regs., Regulations Preambles July 1996-Dec. 2000 ¶ 31,111 (2000), *order on reh'g*, Order No. 642-A, 66 Fed. Reg. 16,121 (2001), 94 FERC ¶ 61,289 (2001) (Merger Filing Requirements).

<sup>4</sup> *Trans-Elect, Inc., et al.*, 99 FERC ¶ 61,068 (2002).

<sup>5</sup> *Trans-Elect, Inc.*, 98 FERC ¶ 61,142 (2002) and *order on r'hg*, 98 FERC ¶ 61,368 (2002).

4. MTH is owned in part by Trans-Elect Michigan, LLC (TEM), a wholly-owned subsidiary of Trans-Elect, and in part by limited partners (Limited Partners).<sup>6</sup> As the general partner of MTH, TEM is responsible for managing and operating MTH's business. The Limited Partners collectively hold 85 percent of the preferred limited equity interest in MTH and have limited consent rights regarding extraordinary and other major transactions that might affect their investment. None of the Limited Partners is a market participant (as defined above).

5. NTD Path 15, an indirect, partially-owned operating subsidiary of Trans-Elect, was created to raise funds for the development and construction of the transmission line upgrade of the Path 15 transmission corridor in central California (Path 15 Upgrade Project). NTD Path 15 received contractual entitlements to a portion of the transmission system rights (TSR) resulting from the Path 15 Upgrade Project and has transferred its share of the TSRs to the California Independent System Operator (CAISO). All of the membership interests in NTD Path 15 are held by Trans-Elect NTD Holdings Path 15, LLC (NTD Holdings). In turn, all of the common membership interests and a preferred membership interest in NTD Holdings are held by New Transmission Development Company (NTD), a wholly-owned subsidiary of Trans-Elect. All other preferred membership interests in NTD Holdings are collectively owned by three companies.<sup>7</sup>

6. Through its subsidiaries, Trans-Elect is an owner and operator of transmission systems in North America. Apart from its interests in METC and NTD Path 15, Trans-Elect also has a general partner interest in the consortium that formed AltaLink, which owns the 7,000-mile transmission system formerly owned by Trans-Alta in Calgary, Alberta Canada. The common and preferred stock of Trans-Elect is currently owned by individuals and companies. Among the current owners are certain existing shareholders or options holders of Trans-Elect stock who are also current officers of Trans-Elect or its subsidiaries (Management Shareholders). None of the Management Shareholders are market participants. Trans-Elect is an exempt holding company pursuant to Section 3(a)(1) of the Public Utility Holding Company Act of 1935 (PUHCA). Applicants state that Trans-Elect does not directly or indirectly own any interests in market participants.

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<sup>6</sup> Evercore METC Investment Inc. and Evercore METC Coinvestment Inc. (Evercore Investors), Macquarie Transmission Michigan Inc., NA Capital Holdings Inc. and Mich. 1400 Corp.

<sup>7</sup> EIF Path 15 Funding LLC, Cardinal Power Funding LLC and KB Transmission LLC.

7. Other newly-created companies, although not applicants under section 203 of the FPA, have been formed to effectuate the transaction. These companies include Trans-Elect Holding and TE Acquisition Company (formed as a subsidiary of Trans-Elect Holding). Neither Trans-Elect Holding nor TE Acquisition Co. is or will be a market participant.

8. In addition, TE Power Opportunities Investors, LP (TE Investors) has been formed for the sole purpose of investing in and holding Trans-Elect Holding preferred stock. TE Investors is owned by a general partner, GFI Transmission Opportunities GP, LLC (GFI Transmission) and two limited partners, OCM/GFI Power Opportunities Fund II, LP and OCM/GFI Power Opportunities Fund II, LP (Cayman) L.P (collectively, GFI Companies). The GFI Companies do not own or operate electric generation, transmission or distribution facilities and are not and will not be market participants. Additionally, they do not own interests in companies that own or operate gas supply, transportation or distribution assets.

#### **B. Description of the Transaction**

9. Applicants state that pursuant to the Agreement and Plan of Merger by and among Trans-Elect, TE Acquisition Co., and Trans-Elect Holding (Merger Agreement), the transaction will consist of the sale and transfer of the common stock in Trans-Elect to TE Acquisition Co. Upon closing of the transaction, TE Acquisition Co. will be merged into Trans-Elect, with Trans-Elect to be the surviving corporation and to continue its corporate existence as Trans-Elect, Inc. At the time the transaction is consummated, the Management Shareholders will acquire 100 percent of the voting common stock of Trans-Elect Holding and/or a portion of the non-voting preferred stock and options to acquire preferred stock of Trans-Elect Holding. The Management Shareholders will be the active owners of Trans-Elect Holding and will control the management and operations of Trans-Elect Holding and its subsidiaries.<sup>8</sup> The Management Shareholders will also continue to manage Trans-Elect and NTD after the transaction is consummated. As before the transaction, none of the Management Shareholders will be a market participant. Applicants further state that there will be no change in the ownership structure, function or business of NTD Path 15 or METC, the entities that own the

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<sup>8</sup> The Management Shareholders include the following current officers of Trans-Elect: Chairman and CEO, Executive Vice President, Executive Vice President of Transmission System Operations, Senior Vice President and Chief Financial Officer, Vice President of Acquisitions, Rates and Regulation, Vice President and Controller and Director of Operations. The Management Shareholders will own approximately 11.9 percent of the equity of Trans-Elect Holding.

jurisdictional facilities, as a result of the transaction. Applicants state that at the time Trans-Elect Holding acquires ownership of Trans-Elect, Trans-Elect Holding will be an exempt holding company under PUHCA.

10. Simultaneously with the closing of the transaction, Trans-Elect Holding will issue, and TE Investors will acquire, non-voting preferred stock of Trans-Elect Holding. TE Investors will own approximately 85 percent of the equity of Trans-Elect Holding, but will not hold any voting securities of Trans-Elect Holding. As a passive investor in Trans-Elect Holding, TE Investors will have limited consent rights as are customary for the protection of a passive owner's investment. However, TE Investors will have no rights to direct or control the management of day-to-day operations of Trans-Elect Holding and will not have any seats on the Board of Directors of Trans-Elect Holding or any of its subsidiaries. Applicants further state that TE Investors will not be an affiliate, as defined in 18 C.F.R. § 35.34(b)(3) of the Commission's regulations regarding market participants,<sup>9</sup> of Trans-Elect Holding or its subsidiaries because TE Investors will not own any voting securities of such companies.

## **II. Notice of the Filing and Interventions**

11. Notice of the filing was published in the *Federal Register*, 70 Fed. Reg. 9942 (2005), with comments, protests, or interventions due on or before March 9, 2005. On March 9, 2005, Consumers filed a timely motion to intervene. As explained further below, Consumers requested that Applicants be required to file for Commission review under section 205 of the FPA for approval of any accounting journal entries that may result from the proposed transaction. On March 14, 2005, in reply to Consumers' motion to intervene, Applicants stated that METC would commit to file for Commission review under section 205 of the FPA the noted accounting journal entries that Consumers had requested. On March 14, 2005, Consumers filed a response, indicating that it accepts the resolution proposed by Applicants.

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<sup>9</sup> Under § 35.34(b)(3) of the Commission's regulations, "affiliate" means the definition given in section 2(a)(11) of the Public Utility Holding Company Act (15 U.S.C. 79b(a)(11)).

### **III. Discussion**

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

12. Pursuant to Rule 214 of the Commission's Rules of Practice and Procedure, 18 C.F.R. § 385.214 (2004), the timely, unopposed motion of Consumers to intervene serves to make it a party to this proceeding.

13. Rule 213(a)(2) of the Commission's Rules of Practice and procedure, 18 C.F.R. § 385.213(a)(2) (2004), prohibits an answer to a protest unless otherwise ordered by the decisional authority. We will accept Applicants' answer to Consumer's motion to intervene because it has provided information that assisted us in our decision-making process.

#### **B. Section 203 Analysis**

14. Section 203(a) of the FPA provides that the Commission must approve a disposition of facilities if it finds that the disposition "will be consistent with the public interest."<sup>10</sup> The Commission's analysis under the Merger Policy Statement of whether a disposition is consistent with the public interest generally involves consideration of three factors: (1) the effect on competition; (2) the effect on rates; and (3) the effect on regulation. As discussed below, we will approve the proposed disposition of jurisdictional facilities as consistent with the public interest.

##### **1. Effect on Competition**

15. Applicants assert that the transaction will not adversely affect competition. They state that the transaction does not involve the sale or transfer of generation assets and thus does not present horizontal market power concerns associated with transactions that consolidate ownership of generation. Applicants also contend that the transaction does not present vertical market power concerns, as it does not combine transmission systems and or other inputs into electric generation. They note that the transmission systems of METC and NTD Path 15 will remain subject to the Midwest ISO and CAISO, respectively.

16. The Commission finds that the transaction will not adversely affect competition. Trans-Elect and its subsidiaries do not own generation assets. None of the Management Shareholders, which will control the day-to-day operations and management of Trans-

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<sup>10</sup> 16 U.S.C. § 824 (2004).

Elect Holding, sell electricity. In addition, none of the passive investors in Trans-Elect Holding, the GFI Companies, own or have interests in, generation. Therefore, the transaction will not consolidate control of generation assets in any market and will not increase horizontal market power. The transaction will also not combine ownership and control of transmission systems and, further, the transmission systems or interests controlled by Trans-Elect's jurisdictional subsidiaries, METC and NTD Path 15, will remain within the functional control of the Midwest ISO and CAISO. Thus, the transaction does not present vertical market power concerns.

## **2. Effect on Rates**

17. Applicants state that they are not proposing any changes in the rates or rate treatments currently applicable to them. Thus, they assert that the transaction will not adversely affect jurisdictional rates.

18. In its petition to intervene, Consumers expresses concern that journal accounting entries potentially associated with the transaction could affect METC's formula rates under Attachment O of the Midwest ISO OATT, after METC's rate moratorium expires in 2005. Consumers states that the ability to challenge rates under Attachment O is uncertain and that an Attachment O rate change would be without the established procedures of an ordinary rate increase under 18 C.F.R. Part 35. Based on this concern, Consumers initially requested that Applicants be required to file for approval of any accounting entry that may result from the transaction.

19. In its reply to Consumers' concern, Applicants state that there will be no change in METC's ownership structures that would cause METC to restate its financial reports or require any accounting entries. Nevertheless, Applicants state that METC commits to file for Commission review, in a subsequent section 205 proceeding to establish METC's rates, all accounting journal entries for METC, if any, resulting from the transaction. Consumers has indicated that this commitment resolves its concerns and no longer requests that the Commission include a condition regarding accounting entries resulting from the transaction. Accordingly, Applicants request that the Commission approve the transaction without condition.

20. The Commission finds, given Applicants' commitment, that the transaction will not adversely affect METC's or NTD Path 15's rates. We also note that NTD Path 15 has no transmission customers and that all use of Path 15 Upgrade facilities associated with its TSRs occur pursuant to the CAISO OATT.

### 3. Effect on Regulation

21. Applicants assert that the transaction will not affect the ability of the Commission or state commissions to regulate jurisdictional facilities and transactions of Applicants. They note that none of the Applicants are registered public utility holding companies or affiliates or subsidiaries of registered public utility holding companies. Applicants state that the transaction will not create a new, registered public utility holding company. In addition, Applicants commit to abide by the Commission's policies with respect to intra-company and inter-affiliate transactions. Applicants further state that the utility activities of METC and NTD Path 15 are not subject to rate regulation by any state commission and that no state commission has jurisdiction over the transaction.

22. The Commission finds that the transaction will not adversely affect the Commission's or state regulation. We note that no state commission has sought intervention in this proceeding.

#### C. Independence

23. Applicants request that the Commission's order state that the transaction will not cause Applicants to lose their status as transmission companies independent of market participants. Applicants state that the Commission's confirmation in this regard is a condition to the closing of the transaction. They note that in determining the independence of transmission companies the Commission considers whether active or passive owners of transmission companies are market participants.<sup>11</sup> Thus, to satisfy the Commission's independence requirements Applicants state that they must maintain their status as non-market participants. Applicants assert that the change in their upstream ownership as a result of the transaction should not affect their status as independent transmission companies.

24. The Commission agrees. Trans-Elect and Trans-Elect Holding, the active owners of the companies that own transmission systems, are holding companies of transmission-only companies and thus will not be market participants. The Management Shareholders, which will own the common stock of Trans-Elect Holding and will control the day-to-day operations and management of Trans-Elect Holding, also will not be market participants. TE Investors holds the direct passive investment in Trans-Elect Holding but is not an affiliate of Trans-Elect Holding because it will not own any voting securities of Trans-Elect Holding. Also, TE Investors' only activity will be its ownership in Trans-Elect

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<sup>11</sup> See *ITC Holdings Corp., et al.*, 102 FERC ¶ 61,182 (2003) at P37-P44.

Holding. Therefore, TE Investors itself will not be a market participant. Further, while GFI Transmission, as the general and only controlling partner in TE Investors, is thus an affiliate of TE Investors, GFI Transmission is not now a market participant and commits, as stated in the Preferred Stock Purchase and Subscription Agreement (Purchase Agreement),<sup>12</sup> that it will not become a market participant in the future. Therefore, based on the facts represented in the Application, the Commission confirms that the transaction will not cause Applicants to lose their status as transmission companies independent of market participants.

The Commission orders:

(A) Applicants' proposed disposition of jurisdictional facilities is authorized, as discussed in the body of this order;

(B) The foregoing authorization is without prejudice to the authority of the Commission or any other regulatory body with respect to rates, service, accounts, valuation, estimates or determinations of costs, or any other matter whatsoever now pending or which may come before the Commission;

(C) Nothing in this order shall be construed to imply acquiescence in any estimate or determination of cost or any valuation of property claimed or asserted;

(D) The Commission retains authority under Sections 203(b) and 309 of the FPA to issue supplemental orders as appropriate; and

(E) Applicants shall notify the Commission within 10 days of the date that the Transaction has been consummated.

By the Commission.

( S E A L )

Linda Mitry,  
Deputy Secretary.

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<sup>12</sup> Purchase Agreement, section 8(e), attached as an exhibit to Exhibit I to the Application.