

137 FERC ¶ 61,032
FEDERAL ENERGY REGULATORY COMMISSION
WASHINGTON, D.C. 20426

October 11, 2011

In Reply Refer To:
Michigan Electric
Transmission Company, LLC
Docket No. ER11-4287-000

Troutman Sanders LLP
Attn: David B. Rubin
Attorney for Michigan Electric
Transmission Company, LLC
401 9th Street, NW
Suite 1000
Washington, DC 20004

Dear Mr. Rubin:

1. On August 12, 2011, you submitted for filing a Facilities Upgrade Agreement, dated as of February 11, 2011, between Michigan Electric Transmission Company, LLC (Michigan Electric) and Midland Cogeneration Venture Limited Partnership (Midland) pursuant to which Michigan Electric accelerated work on two 345 kV lines between the Tittabawassee substation and the Midland switchyard.¹ Michigan Electric states that it is filing the Facilities Upgrade Agreement as a result of a comprehensive review that Michigan Electric and its affiliates undertook to ensure compliance with the Commission's filing requirements for agreements that affect or relate to Commission-jurisdictional rates, charges, classifications, or services. As discussed below, we accept the Facilities Upgrade Agreement, effective October 12, 2011, as requested.

2. Notice of the filing was published in the *Federal Register*, 76 Fed. Reg. 52,651 (2011), with interventions and protests due on or before September 2, 2011. On September 1, 2011, Consumers Energy Company (Consumers Energy) filed a timely motion to intervene and comment. On September 16, 2011, Michigan Electric filed a motion for leave to answer and answer.

¹ The Facilities Upgrade Agreement is designated as Michigan Electric Rate Schedule No. 60.

3. Pursuant to Rule 214 of the Commission's Rules of Practice and Procedure,² Consumers Energy's timely, unopposed motion to intervene serves to make it a party to the proceeding. Rule 213(a)(2) of the Commission's Rules of Practice and Procedure prohibits an answer to a protest unless otherwise ordered by the decisional authority.³ We will accept Michigan Electric's answer because it has provided information that assisted us in our decision-making process.

4. Under the terms of the Facilities Upgrade Agreement, Michigan Electric planned to upgrade existing line relays on two 345 kV lines at its Tittabawasee substation. These upgrades were originally expected to require each line between the substation and the Midland switchyard to be taken out of service for a three-week period. As a result, the Midland generating facility would have been limited to the use of one circuit for up to six weeks. In order to reduce the total planned line outages to four weeks, Midland requested that Michigan Electric use overtime labor to perform the upgrades and agreed to reimburse Michigan Electric under the Facilities Upgrade Agreement for overtime costs of \$70,000.

5. Michigan Electric acknowledges that when a utility files a jurisdictional agreement with the Commission after service has commenced, the utility is required to refund the time-value of monies it has received under the agreement.⁴ Michigan Electric argues that the \$70,000 received merely reimbursed Michigan Electric for its actual costs and, therefore, asserts that it would operate at a loss if it is required to make time-value refunds. In this regard, Michigan Electric notes that under the Commission's *Prior Notice* policy and subsequent cases, time-value refunds are limited to ensure that a utility does not operate at a loss.⁵ Accordingly, Michigan Electric requests waiver of the Commission's requirement to make time-value refunds.

6. In its motion to intervene, Consumers Energy states that it does not oppose the filing of the Facilities Upgrade Agreement. However, Consumers Energy states that Michigan Electric has not indicated how the revenue received under the Facilities Upgrade Agreement has been accounted for and does not disclose the information in its

² 18 C.F.R. § 385.214 (2011).

³ 18 C.F.R. § 385.213(a)(2) (2011).

⁴ Michigan Electric Filing at 6 (citing *Prior Notice and Filing Requirements Under Part II of the Federal Power Act*, 64 FERC ¶ 61,139 at 61,979, *order on reh'g*, 65 FERC ¶ 61,081 (1993)).

⁵ *Id.* at 2 (citing *Southern California Edison Co.*, 98 FERC ¶ 61,304 (2002); *Florida Power & Light Co.*, 98 FERC ¶ 61,276, *reh'g denied*, 99 FERC ¶ 61,320 (2002)).

Form 3Q for the first quarter of 2011. Consumers Energy contends that these revenues should be accounted for as a credit against costs in Michigan Electric's Attachment O formula rate. As such, Consumers Energy seeks clarification from the Commission or Michigan Electric that the revenues should be classified in this manner.⁶

7. We find that the Facilities Upgrade Agreement is just, reasonable and not unduly discriminatory or preferential. Therefore, we will accept it effective October 12, 2011, as requested.

8. As acknowledged by Michigan Electric, the Facilities Upgrade Agreement was not filed with the Commission before service commenced, as required by the Commission's *Prior Notice* policy. As Michigan Electric notes, under our precedent, a utility is not required to refund the time-value of monies received under such an agreement if, as a result, the utility would operate at a loss.⁷ Michigan Electric, however, has failed to demonstrate that it would operate at a loss in the event that it is required to make time-value refunds. In order to substantiate this argument, Michigan Electric must submit evidence documenting the costs incurred as a result of the Facilities Upgrade Agreement. Accordingly, Michigan Electric is directed to make time-value refunds within 30 days of the date of this letter order and to file a refund report with the Commission within 30 days thereafter, or to demonstrate that making time-value refunds would result in a loss.

9. Michigan Electric agrees that revenues received pursuant to the Facilities Upgrade Agreement should be credited against its transmission revenue requirement reflected in Attachment O of the Midwest Independent Transmission System Operator, Inc. Open Access Transmission, Energy, and Operating Reserve Markets Tariff.⁸ Consequently, we find that Michigan Electric has addressed the concerns raised in Consumers Energy's comments. To the extent that Consumers Energy has additional concerns regarding the treatment of revenues received under the Facilities Upgrade Agreement, those concerns should be addressed through Michigan Electric's Attachment O protocols.

By direction of the Commission. Commissioner Spitzer is not participating.

Nathaniel J. Davis, Sr.,
Deputy Secretary.

⁶ Consumers Energy Intervention at 4.

⁷ Michigan Electric Filing at 3.

⁸ Michigan Electric Answer at 3.