

140 FERC ¶ 61,136
UNITED STATES OF AMERICA
FEDERAL ENERGY REGULATORY COMMISSION

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

Michigan Electric Transmission Company, LLC

Docket No. ER12-2104-000

ORDER CONDITIONALLY ACCEPTING AMENDED
FACILITIES AGREEMENT

(Issued August 22, 2012)

1. On June 25, 2012, pursuant to section 205 of the Federal Power Act (FPA)¹ and Part 35 of the Commission's Regulations,² Michigan Electric Transmission Company, LLC (METC) filed an Amended and Restated Moore Road-Batavia Facilities Agreement (Amended Facilities Agreement) between METC and Michigan South Central Power Agency (Michigan Power).³ As discussed below, we conditionally accept METC's filing, effective August 27, 2012, subject to a compliance filing due 30 days after the date of this order.

I. Background and Filing

2. METC, a wholly-owned subsidiary of ITC Holdings Corp. (ITC Holdings), states that it and the other operating company subsidiaries of ITC Holdings have undertaken a comprehensive review of all of their contracts to ensure compliance with the Commission's prior notice and filing requirements.⁴ METC states that, as a result of this review, it has identified agreements that should be, but are not, on file with the

¹ 16 U.S.C. § 824d (2006).

² 18 C.F.R. Part 35 (2012).

³ The Amended Facilities Agreement is designated as Michigan Electric Transmission Company, LLC, FERC Electric Tariff, METC Rate Schedules and Agreements, [METC Rate Schedule No. 64, METC Facilities Agreement with MSCPA, 0.0.0](#).

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

Commission or that should have been, but were not, identified as METC rate schedules. As a product of this review, METC has determined that, although the original Moore Road-Batavia Facilities Agreement (Original Facilities Agreement) is on file with the Commission, an amendment to the Original Facilities Agreement which the parties entered into in 2010 (2010 Amendment) is not.⁵

3. METC is a transmission-owning member of Midwest Independent Transmission System Operator, Inc. (MISO). Transmission service over METC's facilities is provided pursuant to the MISO Open Access Transmission, Energy and Operating Reserve Tariff. METC's predecessor, Michigan Transmission Company, was formed as a wholly-owned subsidiary of Consumers Energy Company (Consumers Energy),⁶ which transferred its transmission assets to METC in 2001.⁷ In 2002, METC became independent of Consumers Energy and assumed responsibility for providing open access transmission service over the former Consumers Energy transmission system.⁸ Since 2006, METC has been a subsidiary of ITC Holdings.⁹

4. METC states that Consumers Energy and Michigan Power entered into the Original Facilities Agreement on November 20, 1980, and that it was previously amended in 1981 and again in 1983. The agreement provided the terms and conditions for various transmission facilities to be built between Michigan Power's Project I Generating Station and Consumer Energy's Moore Road and Batavia Substations. In addition, pursuant to the Original Facilities Agreement, Michigan Power agreed to acquire from Consumers Energy an undivided interest in a Designated Extra High Voltage (EHV) Transmission Line¹⁰ and was obligated to pay its share of expenses of the line. Michigan Power also was obligated to pay Consumers Energy a monthly charge for operating and maintaining Michigan Power's Project I Switching Station.

⁵ METC June 25 Application at 5.

⁶ In 1997, Consumers Power Company changed its name to Consumers Energy.

⁷ See *Consumers Energy Co.*, 94 FERC ¶ 61,018 (2001).

⁸ See *Trans-Elect, Inc., et al.*, 98 FERC ¶ 61,142 (2002).

⁹ See *ITC Holdings Corp.*, 116 FERC ¶ 61,271 (2006).

¹⁰ As described in the Original Facilities Agreement, the Designated EHV Transmission Line is a 345 kV transmission line.

5. The Original Facilities Agreement was designated as Consumers Supplement No. 17 to Rate Schedule No. 55.¹¹ When METC succeeded Consumers Energy as transmission provider in 2001, the Original Facilities Agreement was assigned to METC and given a designation under METC Rate Schedule No. 9.¹²

6. On June 25, 2012, METC filed an Amended Facilities Agreement between METC and Michigan Power, which would replace the Original Facilities Agreement, as previously amended. METC states that the Amended Facilities Agreement reflects current operations; incorporates the two previously accepted amendments into the body of the agreement;¹³ and incorporates the unfiled 2010 Amendment, which reflects METC's acquisition of the Project I Switching Station from Michigan Power and removes Michigan Power's obligation to reimburse METC for operation and maintenance activities for the Project I Switching Station.

7. In addition to incorporating the two previously accepted amendments and the unfiled 2010 Amendment, METC states that it also is revising article 5.2 to update the formula used to calculate operating expenses associated with the jointly-owned Designated EHV Transmission Line that are allocated to Michigan Power. Specifically, METC explains that it has removed language from article 5.2 that required it to deduct administrative and general expenses related to load that Consumers Energy served in Pontiac, Michigan. METC states that Consumers Energy, the predecessor to METC under the Original Facilities Agreement, has ceased serving Pontiac load and that therefore the language regarding the deduction is no longer necessary. METC has further amended the agreement to remove references to the rule against perpetuities in article 8.4, and, accordingly, removed Exhibit B.

8. METC requests waiver of any applicable requirement of Part 35 which is found not to be completely satisfied by this filing. Finally, METC requests that the Amended Facilities Agreement be made effective August 27, 2012.¹⁴

¹¹ See *Consumers Power Co.*, Docket No. ER94-391-000 (Dec. 16, 1994) (delegated letter order).

¹² See *Consumers Power Co., Michigan Electric Transmission Co.*, Docket No. ER01-1683-000 (May 15, 2001) (delegated letter order); see also *Consumers Power Co. and Michigan Electric Transmission Co. Application*, Docket No. ER01-1683-000 at Attachment 6 (filed Mar. 30, 2001).

¹³ The 1981 and 1983 amendments to the Original Facilities Agreement, Amendments Nos. 1 and 2, were accepted in Docket No. ER94-391-000.

¹⁴ METC June 25 Application at 6.

II. Notice of Filing and Responsive Pleadings

9. Notice of the filing was published in the *Federal Register*, 77 Fed. Reg. 39,491 (2012), with interventions and protests due on or before July 6, 2012. Consumers Energy filed a timely motion to intervene. Michigan Power filed a timely motion to intervene and protest. On July 31, 2012, METC filed a motion for leave to answer and answer. On August 10, 2012, Michigan Power filed an answer to METC's motion for leave to answer and answer.

10. In its protest, Michigan Power requests that the Commission either reject METC's filing as insufficient under the Commission's procedural requirements for filing changes to jurisdictional agreements under 18 C.F.R. § 35.13, or direct METC to make a compliance filing to cure its deficiencies under Section 35.13 and the prior notice requirements. Michigan Power states that METC should have submitted a comparison of anticipated revenues under the proposed rate change to article 5.2 with its existing revenues under the formula rate, as well as a comparison with METC's other rates for similar transmission services. Michigan Power also states that METC did not, in the alternative, submit a request for a waiver from complying with the filing requirements in Section 35.13. It also asserts that METC made no attempt to first discuss the changes with Michigan Power and that it is misleading for METC to include unilaterally proposed changes to the contract. Michigan Power states that it does not challenge the substance of the changes to articles 5.2 and 8.4.

11. Michigan Power also argues that METC failed to comply with the Commission's prior notice requirements because it failed to file the 2010 Amendment at least 60 days prior to collecting funds from Michigan Power pursuant to the Original Facilities Agreement as modified by the 2010 Amendment. Michigan Power also states that METC did not request waiver of the 60-day prior notice requirement with respect to the 2010 Amendment and did not allege extraordinary circumstances existed to grant waiver. As a result, Michigan Power asserts that it is due time-value refunds.

12. In its answer, METC states that the changes to articles 5.2 and 8.4 have no rate impact. METC states that it revised article 5.2 to update its calculation of administrative and general costs to remove references to a deduction related to load that Consumers Energy served in Pontiac, Michigan. METC states that the reference to the deduction is no longer necessary because Consumers Energy had stopped serving the Pontiac load. Accordingly, METC argues that the proposed revision to article 5.2 does not affect the rate, but merely memorializes the removal of unnecessary language relating to the Pontiac load. METC explains that even without the proposed changes to article 5.2, since there is no longer any Pontiac load included in the administrative and general costs, the deduction is always zero. Similarly, METC argues that it removed references to the rule

against perpetuities in article 8.4 because that rule is no longer in effect. It explains that removing these references does not change rates but rather clarifies how and when the parties' obligations under the agreement will cease.

13. In response to Michigan Power's contention that time-value refunds are due, METC asserts that its failure to file the 2010 Amendment did not give rise to any new payment terms or obligations, which would result in time-value refunds. The 2010 Amendment removed Michigan Power's obligation to reimburse METC for operations and maintenance activities related to the Project I Switching Station. METC explains that these changes have the effect of removing some of Michigan Power's financial obligations under the agreement and therefore, there is no "changed rate" giving rise to time-value refunds. Additionally, METC states that Michigan Power confuses the prior notice requirements under section 205 and the effective date that METC has requested for its proposed changes. METC explains that it is not seeking waiver of the 60-day notice requirement and is not asking for a retroactive effective date for the Amended Facilities Agreement. METC states that it requested an effective date of August 27, 2012, a date that is consistent with the Commission's *Prior Notice* policy.

14. In reply to METC's answer, Michigan Power states that where a public utility uses a formula rate, the formula is the rate; the output of that formula is merely the annual charge. Michigan Power claims that METC's proposal to remove all Pontiac-related variables from its formula rate thereby changes the formula rate. Thus, METC did not comply with the procedural requirements for submitting rate changes to the Commission for approval. Additionally, in regard to time-value refunds, Michigan Power states that it simply has preserved its right to respond to any subsequent calculation of the time value of the funds METC collected from Michigan Power pursuant to the 2010 Amendment before the Commission accepted the 2010 Amendment for filing. Michigan Power states that it purposefully and necessarily did not address such refunds directly because it is premature to do so – METC must first make a filing setting forth its time-value refund calculation.

III. Discussion

A. Procedural Matters

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

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

B. Substantive Matters

17. We will accept for filing the Amended Facilities Agreement, to become effective August 27, 2012, as requested, subject to METC filing within 30 days of the date of this order, an executed copy of the Amended Facilities Agreement.¹⁵ We also direct METC to correct typographical errors in the filing, as discussed below.

18. With respect to Michigan Power's claim that METC must pay time-value refunds to Michigan Power, we find that time-value refunds are inapplicable in this case. The Commission may require the refund of the time value of monies collected for the period during which those monies were collected without Commission authorization.¹⁶ Here, however, the Original Facilities Agreement is on file with the Commission and the 2010 Amendment, while late-filed, made no change in the rates under the Original Facilities Agreement that continue to be charged under the Amended Facilities Agreement and removed Michigan Power's obligation to reimburse METC for operations and maintenance activities related to the Project I Switching Station. Therefore, the monies collected were, in fact, collected pursuant to Commission authorization, and thus time-value refunds are not warranted.¹⁷

19. We reject Michigan Power's assertions that METC needed to submit revenue comparisons. Section 35.13 requires filings that result in rate increases to be accompanied by cost of service data, including revenue data to reflect the changed rates and revenue data to reflect present rates.¹⁸ In the instant case, since Pontiac-related load no longer exists under the Amended Facilities Agreement, METC's removal of the references to this load under article 5.2 has no effect on rates. Therefore, the proposed revisions to article 5.2 do not affect the rates that METC charges under the Amended Facilities Agreement, and METC is not required to submit additional information under the Commission's regulations.

¹⁵ METC acknowledges that, contrary to the requirements of section 35.3 of the Commission's regulations, 18 C.F.R. § 35.3 (2012), METC failed to file the 2010 Amendment in a timely manner. We remind METC that it must submit required filings on a timely basis or face possible sanctions by the Commission.

¹⁶ See *Prior Notice Order*, 64 FERC ¶ 61,139 at 61,979.

¹⁷ Cf. *Entergy Services, Inc.*, 76 FERC ¶ 61,034 at 61,186 (1996) (no time-value refunds warranted when utility had not collected monies and, thus, customer had not been deprived of use of those monies).

¹⁸ See 18 C.F.R. § 35.13(a), (c), (h) (2012).

20. We note that several articles of the proposed Amended Facilities Agreement apparently cross-reference incorrect sections of the agreement: (1) the last sentence of article 2.2.2 references article 2.2.3, but should reference article 2.2.2; (2) article 4.1(b) references article 2.2.3 but likely should reference article 2.2.2 instead; and (3) article 4.1(b) references article 2.2.4 but should instead refer to article 2.2.3. We direct METC to correct these typographical errors in the filing to be made within 30 days of the date of this order.

The Commission orders:

(A) The Amended Facilities Agreement is hereby accepted effective August 27, 2012, as requested, as discussed in the body of this order.

(B) METC is hereby directed to file an executed copy of the Amended Facilities Agreement and to correct typographical errors, as discussed in the body of this order, within 30 days of the date of this order.

By the Commission.

(S E A L)

Kimberly D. Bose,
Secretary.