

3. The Commission also accepted for filing under section 205 of the FPA certain “service level agreements,” including a Construction and Maintenance/Engineering/System Operations Agreement (C&M Agreement) between Detroit Edison and ITC under which Detroit Edison would provide certain field, operational, and administrative and general services to ITC for three years after the consummation of the divestiture transaction, while ITC made the transition to operational independence. We reasoned that, as a contractor to ITC, Detroit Edison would be providing many of the same day-to-day functions it had been performing as the owner of the assets. However, we stated that while there were valid reasons for an interim arrangement to ensure a smooth transition, we could not permit an agreement of this nature to continue for a protracted period of time because of its obvious threat to ITC’s independence.³ Thus, in the February Order, the Commission limited the period for ITC contracting with Detroit Edison to one year from the date service began (March 1, 2003). The Commission added that after one year, we expected ITC to acquire the staff and other resources necessary to operate as a stand-alone transmission business.⁴

4. On February 27, 2004, ITC filed a status report in this proceeding stating that although it had previously notified the Commission that it was on schedule to supersede its existing service level agreements with Detroit Edison, as required by the February Order, it had then experienced certain problems. Specifically, ITC explains that as it prepared to replace these agreements with ITC’s own operators and with new contracts with third parties, ITC experienced considerable delays in joint transition as well as in the delivery and installation of system software. ITC also states that during the testing of its new systems, it discovered database conversion requirements that, if not corrected, could endanger safe and reliable operations. ITC states that these issues caused delays in ITC’s training of its personnel necessary to prepare them to take over the full set of service functions that Detroit Edison has been performing under the service level agreements. ITC adds that although it has been able to complete the planning process, install late-delivered software, convert the required database, and otherwise complete the installation -- before the Commission’s March 1 deadline -- of its new switching room, the delays in training necessitate a delay in the complete turnover of operations from Detroit Edison to ITC. Consequently, ITC asserts that it would be operationally prudent for Detroit Edison to continue to provide (for an additional short period of time, not to exceed two months) some of the services that it has been providing under the C&M Agreement. Therefore, ITC states that it asked Detroit Edison to continue to provide certain limited services under a letter agreement.

³ February Order at P 52.

⁴ Id. at P 53.

5. In addition, ITC states that during the extended term of the letter agreement, ITC's system and contract personnel would work in parallel, training on the new equipment with Detroit Edison's personnel. ITC asserts that this will provide ITC's system operators with the additional training they need to make up for the time lost because of the recent planning, software and database conversion delays. ITC also maintains that starting on March 1, 2004, it will take over many of the functions now performed by Detroit Edison under the C&M Agreement, including field operations, normal maintenance activities and the scheduling of system maintenance.

DETROIT EDISON'S FILING AND NOTICE

6. On February 27, 2004, Detroit Edison filed the Letter Agreement, which revises section 7(a) of the C&M Agreement between Detroit Edison and ITC to extend the term during which Detroit Edison would provide certain services until March 27, 2004. Detroit Edison states that under the Letter Agreement, ITC would continue to pay Detroit Edison for providing these limited services in accordance with the existing C&M Agreement. The Letter Agreement also provides ITC with the right to further extend the term during which Detroit Edison must provide these services to April 30, 2004. Detroit Edison states that at any time during this extended term, the Letter Agreement provides ITC with the right to terminate by giving Detroit Edison at least 10 business days prior written notice. Detroit Edison adds that the Letter Agreement does not provide for the provision of such services by Detroit Edison beyond April 30, 2004.

7. Detroit Edison states that ITC requested that Detroit Edison enter into the Letter Agreement to ensure that ITC will continue to have the necessary staff and resources to reliably operate its jurisdictional transmission facilities in southeastern Michigan as ITC completes the transition to full operational independence. In addition, Detroit Edison expects that ITC will complete the transition to full operational independence no later than April 30, 2004, and that with the exception of these limited services, Detroit Edison's obligations under the service level agreements will terminate as originally agreed on February 29, 2004.

8. Detroit Edison requests that the Commission waive the prior notice requirement in order to grant an effective date of February 27, 2004.

9. Notice of the filing was published in the Federal Register, 69 Fed. Reg. 11,613 (2004), with interventions and protests due on or before March 19, 2004. None was filed.

DISCUSSION

10. We will accept Detroit Edison's Letter Agreement for filing, to be effective March 1, 2004.⁵ The Commission finds that ITC has essentially complied with the February Order to become totally independent by February 29, 2004, except for certain limited services, which will be provided by Detroit Edison, at ITC's direction, to make contingency plans and recommend planned outage schedules; direct and approve switching and tagging to isolate equipment for repairs; coordinate planned outages and perform outage studies to facilitate maintenance schedules; monitor ITC's transmission system for overloads and other unusual events; and provide monitoring and maintenance of Supervisory Control and Data Acquisition systems on the transmission system. We find that having these services performed by Detroit Edison will assist ITC in assuring reliable operation of its transmission facilities for a limited interim period until ITC achieves full operational independence. Moreover, we note that because of certain unavoidable delays, ITC asked Detroit Edison to continue providing these services for a short period of time only, and that ITC will monitor the limited services performed by Detroit Edison or perform these services in parallel.

The Commission orders:

The Letter Agreement filed by Detroit Edison is hereby accepted for filing, to be effective March 1, 2004, as discussed in the body of this order.

By the Commission.

(S E A L)

Linda Mitry,
Acting Secretary.

⁵ Detroit Edison requested an effective date of February 27; however, it also states that the one-year period for ITC to become ready to operate the business without Detroit Edison's assistance ends February 29, 2004. The Letter Agreement is not needed until the existing arrangement expires.