

151 FERC ¶ 61,034
UNITED STATES OF AMERICA
FEDERAL ENERGY REGULATORY COMMISSION

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

Wolverine Power Supply Cooperative, Inc.

Docket No. ER15-976-000

ORDER APPROVING RECLASSIFICATION OF CERTAIN ASSETS

(Issued April 16, 2015)

1. On February 4, 2015, Wolverine Power Supply Cooperative, Inc. (Wolverine) filed a request (Wolverine Application), pursuant to section 205 of the Federal Power Act (FPA)¹ and Part 35 of the Commission's regulations,² to approve the reclassification by the Michigan Public Service Commission (Michigan Commission) of certain facilities from distribution to transmission, and to include the revenue requirements associated with such facilities in the Michigan Joint Zone for rate recovery purposes under the Midcontinent Independent System Operator, Inc. (MISO) Open Access Transmission, Energy and Operating Reserve Markets Tariff (MISO Tariff). In this order, we approve Wolverine's request, effective April 6, 2015, as requested.

I. Background

2. Wolverine is a Michigan-based not-for-profit generation and transmission electric cooperative that provides wholesale service to its seven members and is subject to the Commission's jurisdiction under the FPA. In 2002, the Commission denied proposed revisions to the MISO Tariff designed to establish a separate pricing zone for Wolverine upon it becoming a transmission-owning member in MISO. Instead, the Commission established settlement procedures and encouraged MISO and affected regional

¹ 16 U.S.C. § 824d (2012).

² 18 C.F.R. pt. 35 (2014).

transmission-owning members to develop a joint pricing zone to accommodate Wolverine's participation in MISO.³

3. In 2004, MISO and affected transmission-owning members jointly filed a proposed settlement agreement that established a new joint pricing zone within MISO, the Michigan Joint Zone. Wolverine states that, as proposed, the settlement agreement would have allowed Wolverine to include certain facilities in the Michigan Joint Zone for rate recovery based on a finding by Wolverine's consultant, as supported by MISO, that such facilities are transmission under the seven factor test articulated in Order No. 888.⁴ However, the Commission modified the proposed settlement agreement by accepting the Michigan Commission's application of the seven factor test rather than the consultant's, limiting the portion of Wolverine's facilities reflected in the new Michigan Joint Zone for rate recovery to Wolverine's 138 kV facilities and excluding its 69 kV and 44 kV facilities.⁵ The Commission noted its decision as in keeping with its previous approval of the seven factor test as applied by the Michigan Commission to certain Michigan Electric Transmission Company, LLC (METC) facilities, also located in the Michigan Joint Zone.⁶

4. Wolverine states that, in 2005, the parties to the 2004 settlement agreement submitted an amendment governing the establishment of the Michigan Joint Zone and Wolverine's integration as a MISO transmission owner.⁷ According to Wolverine, the

³ *Midwest Indep. Transmission Sys. Operator, Inc.*, 101 FERC ¶ 61,004, at P 21 (2002).

⁴ Wolverine Application at 4 (referencing the seven factor test established in *Promoting Wholesale Competition Through Open Access Non-Discriminatory Transmission Services by Public Utilities; Recovery of Stranded Costs by Public Utilities and Transmitting Utilities*, Order No. 888, FERC Stats. & Regs. ¶ 31,036 (1996) (Order No. 888), *order on reh'g*, Order No. 888-A, FERC Stats. & Regs. ¶ 31,048, *order on reh'g*, Order No. 888-B, 81 FERC ¶ 61,248 (1997), *order on reh'g*, Order No. 888-C, 82 FERC ¶ 61,046 (1998), *aff'd in relevant part sub nom. Transmission Access Policy Study Group v. FERC*, 225 F.3d 667 (D.C. Cir. 2000), *aff'd sub nom. New York v. FERC*, 535 U.S. 1 (2002)).

⁵ *Midwest Indep. Transmission Sys. Operator, Inc.*, 106 FERC ¶ 61,219, at P 53 (2004).

⁶ *Id.*

⁷ Wolverine Application at 4 (citing *Midwest Indep. Transmission Sys. Operator, Inc.*, 112 FERC ¶ 61,351 (2005)).

amendment incorporated a revised administrative determination by the Michigan Commission providing an explicit list of Wolverine's transmission facilities that may be included in the Michigan Joint Zone.⁸ The revised settlement agreement also provided that the list of Wolverine's transmission facilities shall be updated as Wolverine's transmission facilities dedicated to MISO are added or withdrawn.⁹ The Commission approved the revised settlement agreement on September 30, 2005.¹⁰

5. Wolverine states that on November 5, 2014, Wolverine filed an application with the Michigan Commission to reclassify certain assets from distribution to transmission pursuant to the Order No. 888's seven factor test and the Michigan Commission's prior decisions that classify comparable facilities consistently within the Michigan Joint Zone.¹¹ Wolverine and Michigan Commission staff subsequently submitted to the Michigan Commission a settlement agreement among settling parties (Consumers Energy Company (Consumers), Michigan Commission staff, METC and Wolverine) that affirmed Wolverine's reclassification of these assets from distribution to transmission.¹² The Michigan Commission approved this settlement agreement on January 27, 2015.

6. In its Application, Wolverine requests that the Commission approve the reclassification by the Michigan Commission of certain facilities from distribution to transmission under Order No. 888's seven factor test. Wolverine notes that the Commission has previously shown deference to state utility commission reclassifications that apply the seven factor test. The Application includes Wolverine's November 3, 2014 application to the Michigan Commission and accompanying testimony¹³ that includes the following: (1) a seven factor test performed by Wolverine that demonstrates that the

⁸*Id.*

⁹ *Id.* at 6 (citing *Midwest Indep. Transmission Sys. Operator Inc.*, Second Amendment to Settlement Agreement, Docket No. ER02-2458-000 (filed May 17, 2005)).

¹⁰ *Midwest Indep. Transmission Sys. Operator, Inc.*, 112 FERC ¶ 61,351.

¹¹ Wolverine Application at 7.

¹² *Id.*

¹³ *Id.*, Attachment D.

facilities are transmission;¹⁴ (2) citations to cases where the Commission has approved reclassifications from distribution to transmission based on similar facts; and (3) citations to Michigan Commission-approved classifications as transmission of facilities owned by other entities in Michigan that are similar to Wolverine's facilities, including a Michigan Commission-approved reclassification of Consumers' facilities currently pending before the Commission. Also included in the Application is the January 27, 2015 settlement agreement, which provides that the settlement agreement may be used as evidence of the parties' agreement that Wolverine's facilities should be classified as transmission at the Commission.¹⁵

7. Wolverine states that the total net plant balance for its listed transmission facilities as of December 1, 2014 is \$249.91 million, reflecting an increase of \$15.91 million as a result of the facilities' reclassification. Wolverine states that it will submit actual historical data and the actual value associated with the updated list of transmission facilities in its submission of its revenue requirement to MISO pursuant to Attachment O of the MISO Tariff, as required by MISO.¹⁶

8. Wolverine notes that a portion of the facilities is currently used to provide wholesale distribution service to the Zeeland Board of Public Works (Zeeland). Wolverine states that, to avoid a potential double recovery, Wolverine intends to coordinate with MISO to separately submit a filing to terminate its wholesale distribution service with Zeeland, with an effective date as of the date the Attachment O revenue requirements for the reclassified facilities goes into effect under the MISO Tariff.¹⁷

9. Finally, Wolverine requests that the reclassification of the facilities become effective April 6, 2015, to provide sufficient time for Wolverine to submit its Attachment O revenue requirement to MISO by May 15, 2015.

¹⁴ Wolverine identifies the facilities as Group A Assets and Group B Assets. Group A Assets are 11 stations integrated into Wolverine's 69 kV looped transmission lines, and Group B Assets are 68 line segments and five stations connecting Wolverine's 69kV looped transmission system to its bulk electric power substations. *Id.* at 4.

¹⁵ *Id.*, Attachment A, Exhibit A, at 5.

¹⁶ *Id.* at 10.

¹⁷ *Id.*

II. Notice of Filing and Responsive Pleadings

10. Notice of the Wolverine Application was published in the *Federal Register*, 80 Fed. Reg. 7,453 (2015), with interventions and protests due on or before February 25, 2015. The Michigan Commission filed a notice of intervention and Consumers filed a timely motion to intervene. MISO filed a motion to intervene and comments. METC filed a motion to intervene out-of-time. On March 6, 2015, Wolverine filed an answer to MISO's comments. On March 18, 2015, Wolverine filed comments in support of its March 6, 2015 answer.

11. In its comments, MISO states that it was unaware of Wolverine's proceedings until Wolverine filed the instant request with the Commission. MISO states that it is unable to discern whether Wolverine intends to submit some or all of the facilities as Transferred Facilities, or Non-Transferred Facilities, as defined by the MISO Transmission Owners Agreement.¹⁸ MISO states that the Transmission Owners Agreement makes a clear distinction between facilities transferred to MISO's functional control, listed under Appendix H of the Transmission Owners Agreement, and facilities which are used by MISO pursuant to the Agency Agreement, under Appendix G. MISO states that the Appendix in which Wolverine's facilities are placed will not affect Wolverine's ability to recover its revenue requirements under Attachment O, but incorrectly placing the facilities in Appendix H, as Transferred Facilities, would adversely affect MISO's market operations if those facilities are below 100kV.¹⁹ MISO requests that the Commission specify in its order that it does not rule on the nature of the facilities under the Transmission Owners Agreement, and that, before Wolverine can recover its revenue associated with such facilities, it must properly classify them according to the Transmission Owners Agreement.²⁰ MISO notes that this process will not delay Wolverine's cost recovery, as it can be done in a matter of days.²¹

12. Wolverine's answer explains that none of the facilities will be identified in Appendix H; all will be classified in Appendix G as Non-Transferred Facilities. Wolverine states that it will update its Appendix G submission once Wolverine receives approval for reclassification from the Commission. Wolverine also notes that none of the facilities in the Application is new, and that the facilities are already reflected in MISO's

¹⁸ MISO Comments at 2.

¹⁹ *Id.* at 3-5.

²⁰ *Id.* at 6.

²¹ *Id.*

transmission system model.²² Wolverine notes that it “has provided MISO with a copy of the non-public version of the Wolverine Application so that MISO may review the one-line diagrams and system map that were removed from the public version” to allay MISO’s concerns.²³

13. Wolverine’s comments in support of its answer state that, after reviewing the non-public information it provided, MISO “advised Wolverine that its concerns have been completely addressed” and “authorized Wolverine to inform the Commission that MISO has no objection to Wolverine’s proposed reclassification of its facilities.”²⁴

III. Discussion

A. Procedural Matters

14. Pursuant to Rule 214 of the Commission’s Rules of Practice and Procedure, 18 C.F.R. § 385.214 (2014), the notice of intervention and timely, unopposed motions to intervene serve to make the entities that filed them parties to this proceeding.

15. Pursuant to Rule 214(d) of the Commission’s Rules of Practice and Procedure, 18 C.F.R. § 385.214(d) (2014), the Commission will grant METC’s late-filed motion to intervene given its interest in the proceeding, the early stage of the proceeding, and the absence of undue prejudice or delay.

16. Rule 213(a)(2) of the Commission’s Rules of Practice and Procedure, 18 C.F.R. § 385.213(a)(2) (2014), prohibits an answer to a protest unless otherwise ordered by the decisional authority. We will accept Wolverine’s answer and comments because they have provided information that assisted us in our decision-making process.

B. Commission Determination

17. In Order No. 888, the Commission determined that it would defer to state regulatory authorities’ recommendations in determining the Commission’s jurisdiction and cost allocation for such facilities to be included in rates, provided that such recommendations are consistent with the essential elements of the seven factor test.²⁵ In order for the Commission to grant such deference, state regulators must specifically

²² Wolverine Answer at 2-3.

²³ *Id.* at 3 n.7.

²⁴ Wolverine Comments at 1.

²⁵ Order No. 888 at 31,784 & n.548.

evaluate the seven indicators and any other relevant facts, and ultimately make recommendations consistent with the elements of Order No. 888.²⁶ As Wolverine notes, the Commission has approved the reclassification of facilities from distribution to transmission in other cases when provided similar evidence to that provided by Wolverine here, i.e., a state regulatory study and recommendation under the seven factor test.²⁷ Our analysis of the Michigan Commission's findings indicates that the Michigan Commission's implementation of the seven factor test is sufficient, and we therefore defer to its findings. Accordingly, we will approve the Wolverine Application to reclassify its facilities from distribution to transmission and include those facilities in the Michigan Joint Zone.

18. We note that Wolverine acknowledges that, in order to avoid a potential double recovery, it will need to remove the facilities from the Wholesale Distribution Service rate. We also note Wolverine's commitment to coordinate with MISO to separately submit a filing to terminate its Wholesale Distribution Service rate with Zeeland, with a requested effective date as of the date the Attachment O revenue requirements for the reclassified facilities goes into effect under the Tariff.²⁸ We expect Wolverine to make the necessary modifications to other related agreements, and make the necessary filings, in coordination with MISO, for Commission review and approval.

The Commission orders:

Wolverine's request for approval of the reclassification of certain facilities from distribution to transmission, and to include those facilities in the Michigan Joint Zone, is hereby granted, effective April 6, 2015, as discussed in the body of this order.

By the Commission.

(S E A L)

Nathaniel J. Davis, Sr.,
Deputy Secretary.

²⁶ *Id.* n.548.

²⁷ Wolverine Application, Transmittal at 9 (citing *Northeast Utilities Serv. Co.*, 107 FERC ¶ 61,246 (2004)).

²⁸ Wolverine Application at 10.