

UNITED STATES OF AMERICA
FEDERAL ENERGY REGULATORY COMMISSION

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

Michigan Electric Transmission Company, LLC

Docket Nos. ER04-847-001
EC04-110-001

ORDER GRANTING IN PART AND
DENYING IN PART REHEARING

(Issued March 29, 2005)

1. In this order, the Commission grants in part and denies in part requests by Michigan Electric Transmission Company, LLC (Michigan Electric), Michigan South Central Power Agency (MSCPA) and the Michigan Public Power Agency (MPPA and, together with MSCPA, the Michigan Agencies) for rehearing of the order issued in this proceeding on October 27, 2004.¹ This order benefits customers because it ensures that the rates, terms, and conditions for transmission service are just and reasonable and not unduly discriminatory, and thus encourages more competitive markets.

Background

2. Michigan Electric is a transmission-owning member of the Midwest Independent Transmission System Operator, Inc. (Midwest ISO) and transmission service across its facilities is provided under the Midwest ISO's Open Access Transmission Tariff (OATT).

3. The Michigan Agencies are municipal power agencies in Michigan (and thus are not public utilities subject to the Commission's jurisdiction), and have ownership interests in and transmission service rights over the Michigan Electric transmission

¹ *Michigan Electric Transmission Company, LLC*, 109 FERC ¶ 61,080 (2004) (October 27 Order).

system. MPPA is a transmission-owning member and transmission customer of the Midwest ISO and MSCPA is a transmission customer of the Midwest ISO.

4. On May 17, 2004, Michigan Electric filed an application under section 203 of the Federal Power Act (FPA)² for authorization to transfer undivided ownership interests in certain of its 345 kV extra high voltage transmission facilities to the Michigan Agencies. Michigan Electric also sought Commission approval of new Transmission Ownership and Operating Agreements between it and the Michigan Agencies under section 205 of the FPA (New Agreements).³ The New Agreements were entered into pursuant to the Michigan Agencies' rights and Michigan Electric's obligations under the so-called Midland Antitrust Settlements and the Branch County Settlements.⁴

5. In *Trans-Elect I*, the Commission conditionally approved the Branch County Settlements and Michigan Electric's assumption of certain obligations under the Transmission Ownership and Operating Agreements existing at that time.⁵ It expressed concern that, if the additional transmission service rights pursuant to the Branch County Settlements were not compatible with the terms and conditions of service under the applicable OATT (now the Midwest ISO OATT), efficient operation and use of the transmission system could be impaired. Therefore, the Commission conditioned its

² 16 U.S.C. § 824b (2000).

³ 16 U.S.C. § 824d (2000).

⁴ The Midland Antitrust Settlements resolved antitrust claims brought against Consumers Power Company (Consumers), Michigan Electric's predecessor, before the Nuclear Regulatory Commission (NRC) and require Consumers to sell ownership interests in certain transmission facilities to the Michigan Agencies, and to grant the Michigan Agencies transmission service rights in the transmission system now owned by Michigan Electric in defined MW capacity amounts. The Branch County Settlements resolved state court litigation initiated by the Michigan Agencies to prevent the disposition of Consumers' membership interests in Michigan Electric to Michigan Transco Holdings. Under the Branch County Settlements, Michigan Electric assumed certain obligations under the Midland Antitrust Settlements to sell additional ownership interests and related transmission service rights to each of the Michigan Agencies.

⁵ See *Trans-Elect, Inc.*, 98 FERC ¶ 61,142 (*Trans-Elect I*), order on reh'g, 98 FERC ¶ 61,368 (2002) (*Trans-Elect II*), reh'g pending. The Michigan Agencies sought rehearing of *Trans-Elect II*, but, at the Michigan Agencies' request, their request for rehearing is being held in abeyance, pending the outcome of this proceeding.

approval of the Branch County Settlements on such transmission service rights being defined in a manner that is consistent with the terms and conditions of service of the OATT applicable to the Michigan Electric system.⁶

6. In that order, the Commission also noted that further filings would be required under FPA sections 203 and 205 in order to implement the Michigan Agencies' acquisition of these ownership interests and transmission service rights, and stated that in those filings (which are the filings at issue here), the applicants would be required to demonstrate that the transmission service rights are consistent with the terms and conditions of service under the OATT applicable to the Michigan Electric system.⁷

7. The New Agreements at issue in the Commission's October 27 Order provide that, in exchange for the Michigan Agencies acquiring undivided ownership interests in certain 345 kV transmission facilities from Michigan Electric, Michigan Electric will provide the Michigan Agencies transmission service rights between multiple receipt and delivery points to MPPA or MSCPA over the Michigan Electric transmission system. The New Agreement with MPPA provides MPPA with 90 MW of transmission service capacity and the New Agreement with MSCPA provides MSCPA with 31.5 MW of transmission service capacity. The New Agreements also provide for Michigan Electric to manage, control, operate and maintain the transferred facilities, except where that power is vested with the Midwest ISO, and for the Michigan Agencies to bear their share of operation and maintenance costs for the facilities.

8. In its May 17, 2004 application, Michigan Electric stated that the transfer of ownership interests in the facilities and the New Agreements would: (1) implement the Michigan Agencies' rights and Michigan Electric's obligations under the Midland Antitrust and Branch County Settlements; (2) integrate the Michigan Agencies into the Midwest ISO; (3) integrate the Michigan Agencies into the Greater Michigan Joint Transmission Pricing Zone (Greater Michigan Joint Zone) established under the settlement conditionally approved by the Commission on March 5, 2004, in Docket Nos. ER02-2458-000 and ER02-2458-001,⁸ and (4) reflect agreeable arrangements among the Midwest ISO, Michigan Electric, MPPA and MSCPA for the integration of the existing

⁶ *Id.* at 61,424.

⁷ *Id.*

⁸ *Midwest Independent Transmission System Operator, Inc.*, 106 FERC ¶ 61,219 (2004), *reh'g pending* (March 5 Order).

Transmission Ownership and Operating Agreements and the New Agreements into both the Midwest ISO and the Greater Michigan Joint Zone.

9. Because MPPA is a transmission-owning member of the Midwest ISO but MSCPA is not, Michigan Electric explained, each agency's Transmission Ownership and Operating Agreements are integrated into the Midwest ISO differently. According to Michigan Electric, MPPA takes all the transmission service that it needs from the Midwest ISO under the Midwest ISO OATT and, under the settlement agreement establishing the Greater Michigan Joint Zone, MPPA would receive a capacity offset for its transmission service entitlements under the existing Transmission Ownership and Operating Agreements and the New Agreements against its billing demand for the license plate zonal transmission rate. Because all service is taken by MPPA under the Midwest ISO OATT, scheduling, losses and all other aspects of the transmission service will be governed by the Midwest ISO OATT. Michigan Electric stated that, in contrast to MPPA, MSCPA serves most of its transmission service needs through its Agreements and, when it requires supplemental transmission service, it buys point-to-point transmission service from the Midwest ISO under the Midwest ISO OATT. However, Michigan Electric stated, the New Agreements are operationally compatible with the Midwest ISO's procedures and operations.

10. In the October 27 Order, the Commission explained that *Trans-Elect I* requires that the transmission service provided under the New Agreements be consistent with the rates, terms and conditions of transmission service under the Midwest ISO's OATT in order to ensure efficient operation and use of the Midwest ISO's transmission system. However, the Commission determined that the New Agreements did not meet this requirement. The Commission stated that while the parties had attempted to modify the *pro forma* Transmission Ownership and Operating Agreement contained in the Midland Antitrust Settlements to reflect the terms and conditions of service under the Midwest ISO's OATT, such as provisions for real power losses, many of the terms and conditions of transmission service, such as reservation and scheduling rules, remained undefined.

11. In order to ensure that the transmission service contemplated under the New Agreements meets the requirements of *Trans-Elect I* and *Trans-Elect II*, the Commission directed that the transmission service provisions be removed from the New Agreements and that the transmission service contemplated in those agreements be provided under the rates, terms and conditions of the Midwest ISO's OATT, through service agreements under the Midwest ISO's OATT. The Commission determined that, with this condition, the parties could still preserve the financial bargain reflected in the Branch County Settlements and the New Agreements through an arrangement for sharing revenues received for transmission service under the Midwest ISO OATT. The Commission determined that, since Michigan Electric claimed in its filing that the New Agreements track the Midwest ISO OATT, this condition would not require Michigan Electric to do

anything it would object to and, since the Commission's condition imposed on the New Agreements removed the transmission entitlements from these agreements, there would be no capacity offsets with the New Agreements.

Requests for Rehearing

12. On November 24, 2004, Michigan Electric and the Michigan Agencies each filed requests for rehearing of the October 27 Order. Michigan Electric and the Michigan Agencies state that the Commission erred by eliminating the capacity offsets associated with the ownership entitlements purchased under the New Agreements and requiring that the transmission service rights contemplated in the New Agreements be provided pursuant to the rates under the Midwest ISO's OATT. They state, further, that the October 27 Order errs in its presumption that the parties can preserve the financial bargain reflected in the Branch County Settlements and the New Agreements via a revenue sharing scheme instead of the capacity offsets. They argue, therefore, that the Commission should reverse the October 27 Order, and approve the capacity offsets in order to preserve the financial bargain struck in the various agreements, while all other provisions of the Midwest ISO OATT apply to the service under the New Agreements.

13. Michigan Electric and the Michigan Agencies point out that the parties always contemplated that the service under the New Agreements would be governed by all terms and conditions of the Midwest ISO's OATT, other than those establishing the base transmission rates set forth in Schedule 7, 8 and 9, and that remains their intent. To the extent that the Commission, as expressed in the October 27 Order, desires that the language of the New Agreements be modified to expressly provide that the service thereunder will be in accordance with the non-base transmission rates, terms and conditions of the Midwest ISO's OATT, the parties agreed to submit amended agreements in the compliance stage of this proceeding. Michigan Electric and the Michigan Agencies contend, however, that the base transmission rates must be handled by the capacity offsets, or the financial bargain of the Midland Antitrust Settlements and Branch County Settlements will not be preserved.

14. Michigan Electric and the Michigan Agencies explain that revenue distribution is not an adequate substitute for the capacity offset. A revenue distribution scheme would provide the Michigan Agencies with a distribution equal to their respective annual revenue requirements but would not provide them with any benefit for paying for the ownership entitlement. A revenue sharing arrangement, on the other hand, might result in the Michigan Agencies not paying *any more* than Michigan Electric's costs or the Michigan Electric zonal rate, but that, at best, puts the Michigan Agencies back in the same position as if they had not purchased the ownership entitlements in the first place. They state that the Michigan Agencies can pay Michigan Electric's costs today without purchasing an ownership interest. The purpose of the transfer and the New Agreements

is to enable the Michigan Agencies to obtain transmission service at the Michigan Agencies' costs, not at Michigan Electric's costs, in accordance with the terms and conditions of the Midland Antitrust Settlements and Branch County Settlements. Further, they argue that capacity offsets are consistent with the Midwest ISO's OATT and Commission policy, as demonstrated by the Commission's approval of the Greater Michigan Joint Zone settlement.

15. In addition, Michigan Electric and the Michigan Agencies state that the October 27 Order improperly expanded the condition imposed in *Trans-Elect I* to include the rate provisions of the Midwest ISO OATT. They contend that *Trans-Elect I* requires that the new use rights be defined in a manner that is "consistent with *the terms and conditions* of the OATT applicable to the [Michigan Electric] system." However, they state, the October 27 Order applied a different condition by stating that, "[*Trans-Elect I*] thus requires that the transmission service provided under the New Agreements be consistent with *the rates, terms and conditions* of transmission service under the Midwest ISO's OATT in order to ensure efficient operation of the Midwest ISO's transmission system." According to Michigan Electric and the Michigan Agencies, the Commission has given no reason for its departure from its finding in *Trans-Elect I*.

16. In addition, the Michigan Agencies challenge the October 27 Order's finding that the New Agreements are not grandfathered agreements under the Midwest ISO's OATT. The Michigan Agencies state that such a finding is contrary to the Midwest ISO OATT since the OATT defines grandfathered agreements as those agreements executed or committed to prior to the first Commission order substantially approving the Midwest ISO, and provides that such agreements shall not be subject to the specific terms and conditions of the OATT. The Michigan Agencies argue that the Midland Antitrust Settlements were executed in 1979, before the Midwest ISO's September 16, 1998 approval date as an independent system operator, and contain commitments to enter into future agreements. The Michigan Agencies argue, further, that the Midland Antitrust Settlements can only be implemented through ownership and operating agreements such as the New Agreements and that the Midland Antitrust Settlements' grandfathered status must be imputed to the New Agreements by virtue of the language in the Midwest ISO's OATT.

Discussion

17. We will grant rehearing in part. Upon further consideration, we agree with Michigan Electric and the Michigan Agencies that it is not possible to preserve the parties' financial bargain (reflected in the Branch County Settlements, the New Agreements, and the Greater Michigan Joint Zone settlement) through an arrangement for sharing revenues received for transmission service under the Midwest ISO OATT.

Therefore, while, as discussed below, we will still require that the transmission service provisions be removed from the New Agreements and that the transmission service contemplated in those agreements be provided under the Midwest ISO's OATT, through service agreements under the Midwest ISO's OATT, we will allow capacity offsets or credits equal to 16 MW capacity amounts currently defined in the New Agreements, to the billing demand for the license plate zonal rates in Schedules 7, 8 and 9 for Network Integration Transmission Service or Point-to-Point Transmission Service that the Michigan Agencies take under the Midwest ISO OATT. The Michigan Agencies would pay all other Midwest ISO OATT charges, except for the license plate zonal transmission rates in Schedules 7, 8, and 9. This rate treatment associated with these capacity offsets or credits should be reflected in Schedules 7, 8, and 9 of the Midwest ISO OATT. This will ensure that the additional transmission service rights provided pursuant to the Branch County Settlements are consistent with the applicable OATT, as required by *Trans-Elect I* and *Trans-Elect II*.

18. We deny Michigan Agencies' request for rehearing of the October 27 Order's denial of grandfathered status for the New Agreements. We disagree with the Michigan Agencies that the New Agreements should be granted grandfathered status. They are new agreements entered into after the September 16, 1998 date of the Commission's approval of the Midwest ISO as an independent system operator, and after the July 9, 1996 cut-off date for existing contracts under Order No. 888.⁹ Therefore, they do not qualify for grandfathered status under the Midwest ISO OATT or Order No. 888. In addition, we note that the New Agreements were not included in the comprehensive list of grandfathered agreements identified by the Commission in its September 16, 2004 order addressing the treatment of grandfathered agreements in the Midwest ISO's energy markets.¹⁰ Moreover, the Midland Antitrust Settlements have never been filed with or

⁹ See *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, 61 Fed. Reg. 21,540 (May 10, 1996), FERC Stats. & Regs., Regulations Preambles 1991-1996 ¶ 31,036 (1996), *order on reh'g*, Order No. 888-A, 62 Fed. Reg. 12,274 (Mar. 14, 1997), FERC Stats. & Regs., Regulations Preambles 1991-1996 ¶ 31,048 (1997), *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).

¹⁰ *Midwest Independent Transmission System Operator, Inc.*, 108 FERC ¶ 61,236 (2004) *reh'g pending*.

approved by the Commission, and the Commission retains full authority to review the jurisdictional transactions that take place as a result of those agreements, such as the New Agreements, to ensure that they are consistent with the Commission's policies.¹¹ In allowing the requested rate treatment as discussed above while requiring the service to be under the OATT, we believe we are striking a reasonable balance between recognizing the parties' contracts and Order No. 888's requirement that all new transmission service be provided under the OATT.

19. The October 27 Order directed Michigan Electric to file revisions to the New Agreements within 30 days of the date of that order. By notice dated December 1, 2004, an extension of time for Michigan Electric to make its compliance filing was granted to, and until, 60 days after the Commission issues its order on rehearing of the October 27 Order. Accordingly, Michigan Electric is directed to file revisions to the New Agreements consistent with the requirements of the October 27 Order, as modified above, within 60 days of the date of issuance of this order.

The Commission orders:

(A) Michigan Electric's and the Michigan Agencies' requests for rehearing are hereby granted in part, and denied in part, as discussed in the body of this order.

(B) Within 60 days of the date of issuance of this order, Michigan Electric shall file revisions to the New Agreements, as discussed in the body of this order.

By the Commission.

(S E A L)

Linda Mitry,
Deputy Secretary.

¹¹ See *Trans-Elect II*, 98 FERC at 62,596.