

UNITED STATES OF AMERICA
FEDERAL ENERGY REGULATORY COMMISSION

Before Commissioners: Joseph T. Kelliher, Chairman;
Sudeen G. Kelly, Marc Spitzer,
Philip D. Moeller, and Jon Wellinghoff.

Michigan Electric Transmission Company, LLC
and Midwest Independent Transmission
System Operator, Inc.

Docket No. ER07-95-000

ORDER CONDITIONALLY ACCEPTING AND SUSPENDING REVISED
FORMULA TRANSMISSION RATE, SUBJECT TO THE OUTCOME OF ONGOING
PROCEEDINGS

(Issued December 21, 2006)

1. On October 30, 2006, pursuant to section 205 of the Federal Power Act (FPA),¹ Michigan Electric Transmission Company, LLC (Michigan Electric) and Midwest Independent Transmission System Operator, Inc. (Midwest ISO) filed Michigan Electric's proposed revisions to its transmission rate formula under Attachment O of Midwest ISO's Open Access Transmission and Energy Market Tariff (TEMT or Tariff).² Michigan Electric proposes to use projected current costs to calculate transmission rates, subject to true-up, rather than the prior-year costs currently used. In this order, we conditionally accept, suspend and make subject to refund Michigan Electric's proposed formula rate revisions, to be effective January 1, 2007, as requested, subject to Michigan Electric's making a compliance filing, and subject to the outcome of the ongoing proceeding in Docket Nos. ER06-56-000 and ER06-56-002.

¹ 16 U.S.C. § 824d (2000).

² As the administrator of the Tariff, Midwest ISO joins Michigan Electric in the filing to amend the Tariff but takes no position on the substance of the filing. Consequently, in this order, we refer to the proposed revisions as Michigan Electric's proposals.

I. Background

2. By orders dated February 13, 2002, and March 29, 2002, the Commission approved Michigan Electric's proposal establishing it as an independent transmission company³ and giving Michigan Electric the authority: (1) to use a \$0.98 per kW per month rate for network and point-to-point transmission service, and a \$.056 per kW per month rate for scheduling, system control and dispatch service, for the Michigan Electric pricing zone of the Midwest ISO for the duration of a rate moratorium through December 31, 2004; (2) to defer recovery of depreciation and return on investment in new transmission facilities incurred between January 1, 2001, and December 31, 2004, and to amortize those amounts over a five-year period beginning January 1, 2006; (3) to defer and recover over a 20-year period beginning January 1, 2006, an acquisition premium equal to the amount of accumulated deferred income taxes on Michigan Electric's books immediately before the sale of Michigan Electric; and (4) to recover carrying costs on those deferred amounts accrued each year from January 2001 through December 2005 and on the unamortized balances of those amounts thereafter.⁴ By order dated November 17, 2003, the Commission approved Michigan Electric's proposal to use a 13.88 percent return on equity (ROE) (100 basis points above the 12.88 percent ROE that had then been approved for generic use by Midwest ISO transmission owners),⁵ a target capital structure of 50 percent debt and 50 percent equity through December 31, 2004, and actual capital structure for 2005, to compute carrying charges on the deferrals.⁶ In a subsequent order dated May 28, 2004, the Commission granted Michigan Electric's request to extend, by one year, through December 31, 2005, the rate moratorium and

³ Michigan Electric became an independently-owned transmission company upon the sale of Michigan Electric by Consumers Energy Company (Consumers Energy) to Michigan Transco Holdings, LP, a partnership managed by Trans-Elect, Inc.

⁴ *Trans-Elect, Inc.*, 98 FERC ¶ 61,142, *order on reh'g*, 98 FERC ¶ 61,368 (2002).

⁵ *Midwest Independent Transmission System Operator, Inc.*, 100 FERC ¶ 61,262 (2002), *order denying reh'g*, 102 FERC ¶ 61,143 (2003), *order on voluntary remand*, 106 FERC ¶ 61,302 (2004). Subsequently, on remand, the Commission lowered the ROE approved for generic use by Midwest ISO transmission owners to 12.38 percent, excluding the 50 basis point incentive adder for participating in a regional transmission organization. *Midwest Independent Transmission System Operator, Inc.*, 111 FERC ¶ 61,355 (2005).

⁶ *Michigan Electric Transmission Company, LLC*, 105 FERC ¶ 61,214 (2003).

deferral of recovery of depreciation and return on investment in new transmission facilities.⁷

3. In Docket No. ER06-56-000, Michigan Electric and Midwest ISO filed revised tariff sheets containing a proposed rate increase to take effect once the rate moratorium expires on December 31, 2005. Michigan Electric proposed to generally follow the formula rate contained in Attachment O of the TEMT to establish its revenue requirement and rates for the Michigan Electric pricing zone effective January 1, 2006. Michigan Electric proposed modifications to the Attachment O formula rate to reflect recovery of the deferred amounts described above, to reduce the equity component of the capital structure to eliminate the accounting treatment of goodwill associated with the sale of limited partner interests, to reflect a 150 basis-point adder to the 12.38 percent ROE that is currently approved for use by all Midwest ISO transmission owners, and to reflect an income tax allowance for the return on equity associated with partnership interests.⁸ Michigan Electric proposed to adopt Schedule 1 for updating transmission rates under Attachment O each June 1, based on FERC Form No. 1 data for the prior calendar year. On December 30, 2005, the Commission rejected the proposed 50 basis point incentive for membership in a Regional Transmission Organization, without prejudice, but approved Michigan Electric's use of a 13.38 percent ROE. The Commission conditionally accepted Michigan Electric's proposed tariff revisions for filing, suspended them for a nominal period, to become effective January 1, 2006, subject to refund, and established hearing and settlement judge procedures.⁹

II. Summary of Filing

4. On October 30, 2006, Michigan Electric and Midwest ISO submitted proposed revisions to Michigan Electric's Attachment O formula rate under the TEMT to change from using backward-looking historical data to using projected data, subject to true-up, thus eliminating the cost recovery lag caused by using costs from the previous calendar year to update rates each June 1. Michigan Electric states that this proposed change will allow it to maintain an aggressive investment program and complete large, multi-year capital projects. Michigan Electric proposes to use its current rate, based on 2005 calendar data, effective January 1, 2007. This rate would remain in effect throughout 2007, subject to true-up in rates charged in 2009 for 2007 actual costs as reported in the

⁷ *Michigan Electric Transmission Company, LLC*, 107 FERC ¶ 61,206 (2004).

⁸ *See Michigan Transco Holdings, LP*, 105 FERC ¶ 62,013 (2003).

⁹ *Michigan Electric Transmission Company, LLC*, 113 FERC ¶ 61,343 (2005), *order on reh'g*, 116 FERC ¶ 61,164 (2006).

FERC Form No. 1 for the calendar year ending December 31, 2007. Michigan Electric will forego the rate change that otherwise would occur June 1, 2007, under the current Attachment O formula rate. For 2008 and following years, Michigan Electric proposes to provide an estimate of its projected net revenue requirement for the upcoming calendar year to customers by September 1 of each year and the rate would be updated based on such projected costs effective the following January 1. Michigan Electric notes that the Commission approved a similar proposal by American Transmission Company, LLC, and International Transmission Company.¹⁰

5. As part of its proposal to use estimated costs, Michigan Electric proposes an annual true-up mechanism using the FERC Form No. 1 to calculate a true-up adjustment reflecting any difference between the revenues received in the previous calendar year and the net revenue requirement calculated using actual FERC Form No. 1 data for that same year. Such true-up adjustment would be calculated and posted by June 1 each year. Then, in the following calendar year, any revenue over-collection would be returned to customers via a credit and any revenue under-collection would be added to that year's rates. Michigan Electric proposes to calculate the interest on any over-collection based upon the Commission's regulations at 18 C.F.R. § 35.19(a) (2006), and to calculate the interest on any under-collection using actual short-term debt costs, capped at the applicable FERC refund interest rate as was approved for International Transmission Company.¹¹

6. Michigan Electric also requests waiver of the Commission's regulations concerning the cost data requirements to the extent that this is deemed applicable to its filing.¹² It states that the waiver is appropriate because it is changing the implementation of its formula rate rather than requesting any change or increase in a stated rate, and the inputs for the formula rate are contained in the annual FERC Form No. 1.

¹⁰ *Citing American Transmission Company, LLC*, 97 FERC ¶ 61,139 (2001) (letter order accepting settlement), and *International Transmission Company*, 116 FERC ¶ 61,036 (2006).

¹¹ *International Transmission Company*, 116 FERC ¶ 61,036 at P 20 (2006).

¹² 18 C.F.R. § 35.13(d) (2006).

III. Notice of Filing and Responsive Pleadings

7. Notice of Michigan Electric's filing was published in the *Federal Register*,¹³ with motions to intervene and protest due on or before November 20, 2006. The Michigan Public Service Commission (Michigan Commission) filed a notice of intervention and protest. Michigan Public Power Agency and Michigan South Central Power Agency (collectively, Michigan Agencies) and Consumers Energy filed timely motions to intervene and protests. Wolverine Power Supply Cooperative, Inc. submitted a timely motion to intervene and comments. On December 5, 2006, Michigan Electric filed a motion for leave to answer and an answer. On December 11, 2006, the Michigan Commission filed a motion for leave to answer and an answer.

IV. Discussion

A. Procedural Matters

8. Pursuant to Rule 214 of the Commission's Rules of Practice and Procedure,¹⁴ the notice of intervention and the timely, unopposed motions to intervene serve to make the entities who filed them parties to this proceeding. Rule 213(a)(2) of the Commission's Rules of Practice and Procedure¹⁵ prohibits an answer to a protest or an answer to an answer unless otherwise ordered by the decisional authority. We will accept Michigan Electric's and the Michigan Commission's answers because they have provided information that assisted us in our decision-making process.

B. Substantive Matters

1. Projected Revenue Requirement and True-Up Mechanism

9. The Michigan Commission recognizes that Michigan Electric's proposal is substantially similar to that approved for International Transmission in Docket No. ER06-1006-000. In Docket No. ER06-1006-000, the Michigan Commission argued that the annual inputs into the Attachment O formula rate are not filed with the Commission or subject to any regulatory review, and that ratepayers had no means of determining how the estimated costs were derived and whether the estimates were reliable or accurate. It also argued that International Transmission had little incentive to contain costs and that the consequences to International Transmission of overestimating its costs were relatively

¹³ 71 Fed. Reg. 65,484 (2006).

¹⁴ 18 C.F.R. § 385.214 (2006).

¹⁵ 18 C.F.R. § 385.213(a)(2) (2006).

low compared to the benefits received by the company's higher return earned on the estimated amounts. The Michigan Commission reiterates these same concerns with regard to Michigan Electric's proposal to use forward-looking data subject to true-up, and requests that the Commission reconsider its endorsement of such an approach.

10. In addition, the Michigan Commission objects to the tariff provisions that state that Michigan Electric will project cost information for the next calendar year to its "customers" by September 1 each year and hold a "customer meeting" by October 30 each year to discuss such projections. The Michigan Commission presumes that the provisions were not drafted with the intent to exclude the Michigan Commission; however, it requests that the Commission require Michigan Electric to specify in the tariff that the relevant information would also be available to state regulators such as the Michigan Commission, and that the state regulators would be entitled to attend and participate in the annual meeting. The Michigan Commission also requests the Commission to direct Michigan Electric to provide information regarding ongoing and projected construction expenditures as part of the information sharing procedures included in the proposed revisions. Specifically, the Michigan Commission states that the Commission should require Michigan Electric, as part of its annual information sharing process, to identify: (1) the projected costs of such projects in its forecasted rate base; (2) the expected construction schedule and/or in-service date for such projects, and the date the projects are included in the projected monthly transmission plant balances; and (3) a description of the need for the projects.

11. Further, the Michigan Commission notes that the issue of the scope of the information that Michigan Electric should be required to provide in connection with its annual adjustment of the Attachment O rate formula is currently pending in Docket Nos. ER06-56-000 and ER06-56-002. The Michigan Commission states that Consumers Energy has argued, in Docket Nos. ER06-56-000 and ER06-56-002, that Michigan Electric should be required to provide certain information regarding annual construction expenditures, particularly projects that are not included in the Midwest ISO Transmission Expansion Plan. Consumers Energy's view is that such information is necessary to allow for an assessment of the prudence of Michigan Electric's construction expenses. The Michigan Commission states that Michigan Electric has taken the position in Docket Nos. ER06-56-000 and ER06-56-002 that the information sharing procedures proposed in the instant filing are a basis to reject Consumers Energy's position in Docket Nos. ER06-56-000 and ER06-56-002. The Michigan Commission disagrees that the instant filing resolves concerns about the scope of information that Michigan Electric should be required to provide in connection with its Attachment O formula rate. The Michigan Commission states that, at a minimum, the Commission should specify that any acceptance of Michigan Electric's proposal in this case is without prejudice and subject to the outcome of the information sharing issues pending in Docket Nos. ER06-56-000 and ER06-56-002.

12. Michigan Agencies recognize the similarities between Michigan Electric's proposal here and International Transmission's proposal in Docket No. ER06-1006-000. Michigan Agencies state that the Commission should allow Michigan Electric to use estimated costs for five years, during which Michigan Electric may implement its multi-year capital investment plan. Rates should then be established as they are today, using historical costs in the FERC Form No. 1, unless Michigan Electric seeks and obtains Commission approval for continued use of estimated costs.

13. Wolverine states that a transition year is necessary to avoid unfairly increasing rates Wolverine must pay and decreasing revenues that Wolverine receives in the Michigan Joint Zone. Wolverine argues that using a projected revenue requirement before 2008 would have unjust and unreasonable impacts on Wolverine and its customers. In addition, Wolverine states that the Commission requires comparable treatment of transmission facilities of multiple transmission owners situated in a joint pricing zone such as the Michigan Joint Zone; therefore, either all Michigan Joint Zone transmission owners should use projected revenue requirements or none of them should use them.

14. Michigan Agencies state that, if the true-up results in an over-collection of revenues, such over-collected amounts should be refunded based on the 13.38 percent ROE that Michigan Electric receives, or at least the overall rate of return, rather than the Commission's standard interest rate. Similarly, Michigan Agencies state that, in the event of an under-collection, Michigan Electric should use its actual short-term debt costs, capped at the Commission's interest rate, when calculating interest on the under-collected amounts. In addition, Michigan Agencies argue that, rather than waiting for up to 24 months to return over-collected amounts, Michigan Electric should be required to provide refunds promptly upon determination of the actual difference in revenue requirements. Michigan Agencies also state that a true-up mechanism requires not just a comparison of estimated to actual costs, but use of the appropriate demand divisor and that it is unclear whether Michigan Electric intends to estimate the demand divisor.

15. In its answer, Michigan Electric commits to including the Michigan Commission in all customer briefings and to making available to the Michigan Commission all projected revenue requirement information provided to Michigan Electric's customers. Michigan Electric states that it will make available complete information regarding the transmission investments that form the basis for its projected revenue requirement. Michigan Electric further states that it appears that the Michigan Commission is seeking information beyond that reasonably related to its forward-looking Attachment O formula rate proposal, and that this information was also sought in connection with the pending rates in Docket No. ER06-56. For purposes of this proceeding, Michigan Electric agrees to provide information necessary to support its estimated revenue requirement.

16. In its answer, Michigan Electric states that its proposal to retain its current rate through calendar year 2007, subject to true-up when actual data for 2007 is available, satisfies Wolverine's request for a transition period and provides Wolverine with ample time to file for its own forward-looking implementation of Attachment O, if Wolverine wishes to do so.

Commission Determination

17. The Commission will conditionally accept Michigan Electric's formula rate and true-up mechanism, without suspension or hearing, effective January 1, 2007, as requested. We will not impose a five-year limit on the proposal, as requested by Michigan Agencies; our analysis indicates that Michigan Electric's proposal to switch to forward-looking estimated transmission costs with a true-up mechanism is just and reasonable, and therefore it need not be limited to a five-year duration. We also note that using projected costs is consistent with traditional ratemaking practice,¹⁶ and customers ultimately will pay the same costs they would have paid on a lagging basis.¹⁷ Further, in response to Wolverine's comments, Michigan Electric proposes to use its current rate for the 2007 rate period. Michigan Electric will begin using its projected revenue requirement in the 2008 rate period, providing the other transmission owners in the Michigan Joint Zone adequate opportunity to submit section 205 filings requesting similar proposed revisions to their Attachment O formula rates to take effect when projected costs are reflected in Michigan Electric's rates; the fact that they have not yet done so or choose not to do so should not and does not affect Michigan Electric's right to do so.

18. In its answer, Michigan Electric commits to providing information to the Michigan Commission and to inviting the Michigan Commission to attend and participate in Michigan Electric's annual customers' meeting, during which Michigan Electric will explain its projected revenue requirement for the upcoming rate period. The parties note that the Commission, in Docket Nos. ER06-56-000 and ER06-56-002, has not determined the scope of information that must be provided to interested parties regarding Michigan Electric's implementation of its Attachment O formula rate. Michigan Electric agrees to provide its customers and the Michigan Commission information related to its ongoing and projected construction expenditures included in its projected revenue requirement, which is at issue in this proceeding. We will accept this commitment and clarify that accepting Michigan Electric's proposal to provide information necessary to evaluate the accuracy of its projected revenue requirement is without prejudice to the information

¹⁶ See 18 C.F.R. § 35.13 (2006).

¹⁷ See *Boston Edison Co.*, 91 FERC ¶ 61,198 (2000) (approving use of projected costs in formula rate where customers were protected by true-up to actual costs).

sharing and review issues pending in Docket Nos. ER06-56-000 and ER06-56-002, and, as discussed below, we accept the instant proposal subject to the outcome of that proceeding. Michigan Electric must revise its tariff sheets, in a compliance filing to be made within 30 days of the date of this order, to reflect these commitments.

19. We reject the suggestion that Michigan Electric should use either its 13.38 percent ROE rate or its overall rate of return when refunding any over-collections as a result of the true-up process. The Commission's regulations state the interest rate to be used when computing refunds.¹⁸ We are not convinced that we should deviate from the practice of applying the Commission's refund interest rate and, therefore, any annual true-up amounts that result in refunds to customers must include interest calculated in accordance with the Commission's regulations. For true-up charges assessed to customers based on under-estimated costs, Michigan Electric states in its proposal that it would apply its actual short-term debt costs, capped at the applicable Commission refund interest rate, as Michigan Agencies request and as we approved for International Transmission's Attachment O rate formula.

20. We disagree with protestors who argue that they will have no means of determining if the estimated costs that Michigan Electric proposes each year are accurate. Michigan Electric's proposal to submit its projected revenue requirements and estimated data by September 1 of each year gives customers a reasonable opportunity to review and provide input on the projected costs before rates go into effect. Michigan Electric also plans to hold a customer meeting to explain the formula rate input projections and cost details by October 30 of each year, and to post the yearly true-up on its Open Access Same-time Information System no later than June 1 following the issuance of the FERC Form No. 1 for the previous year. Additionally, since the true-up is based on the previous year's Form No. 1, customers will be able to determine the accuracy of Michigan Electric's revenue requirement, including the demand divisor. Finally, we will accept the proposed schedule for reflecting true-up amounts in rates, which is consistent with the true-up provisions we accepted for International Transmission, and allows time to ensure the accuracy of the true-up amount before it is included in rates.

2. ROE

21. Protestors argue that Michigan Electric's currently effective rate treatments, including its ROE of 13.38 percent, already account for the business risks deemed to be inherent in a transmission-only entity and that no new facts have developed since Michigan Electric's business model was first evaluated that identify any new risks or conditions. Protestors argue that Michigan Electric's proposal for accelerated cost

¹⁸ 18 C.F.R. § 35.19a (2006).

recovery would decrease its financial risk, and, therefore, Michigan Electric's current 13.38 percent ROE should be reduced.

Commission Determination

22. Michigan Electric did not propose to change its existing ROE or any of the underlying components of its Attachment O formula rate. As such, as proponents of a change in an unchanged component of a formula rate, protestors bear the burden to show that the existing ROE is unjust and unreasonable. In our judgment, the protestors' assertions that Michigan Electric's financial risk profile would change under the revised Tariff provisions are too general and unsupported to warrant initiation of an investigation into Michigan Electric's existing ROE.¹⁹ Both its existing methodology and its proposed forward-looking methodology equally provide Michigan Electric the opportunity to recover its actual costs. The proposal merely keeps its cost recovery more current, and does not reduce its risk of non-recovery of actual costs. Therefore, we decline to modify or order an investigation of Michigan Electric's ROE.

3. Docket Nos. ER06-56-000 and ER06-56-002

23. Michigan Electric's Attachment O rates are currently before the Commission in Docket Nos. ER06-56-000 and ER06-56-002. Consumers Energy states that given the wide divergence of opinions that parties to the proceeding have presented regarding the appropriate level of costs that Michigan Electric may recover between January 2001 and December 2005, refunds of the currently effective transmission rate may be required. In the instant proceeding, Michigan Electric agrees to abide by any refund requirement resulting from the proceeding in Docket Nos. ER06-56-00 and ER06-56-002. However, Consumers Energy points out that Michigan Electric also asserts that "[a]ny such refunds will be taken into account in calculating the applicable true-up for years affected by such refunds."

24. Consumers Energy states that including refunds that result from the proceeding in Docket Nos. ER06-56-000 and ER06-56-002 in the calculation of the applicable true-up for the year in which the refunds would otherwise be paid will unduly delay the payment

¹⁹ See, e.g., *General Motors Corp. v. FERC*, 613 F.2d 939, 944-945 (D.C. Cir 1979); *New England Power Co. v. Algonquin Gas Transmission Co.*, 76 FERC ¶ 61,143 at 61,793-94 (1996) (discussing the Commission's discretion under section 5 of the Natural Gas Act); and *ISO New England, Inc.*, 111 FERC ¶ 61,096, at P 31 (2005) (discussing the Commission's discretion under section 206 of the FPA). Cases under the Natural Gas Act and the FPA typically are read *in pari materia*. See, e.g., *FPC v. Sierra Pacific Power Co.*, 350 U.S. 348, 353 (1956) and *Arkansas-Louisiana Gas Co. v. Hall*, 453 U.S. 571, 578 n.7 (1981).

of such refunds. Specifically, if the Commission orders a reduction in Michigan Electric's revenue requirement, Michigan Electric would be required to establish new rates going back to January 1, 2006, and customers would be re-billed and receive a refund, including interest, from Michigan Electric's over-collection for the period from January 2006 to the date of the order. However, Consumers Energy states, that since Michigan Electric will not establish new rates for 2007, any reduction in its revenue requirement would also result in refunds for at least a portion of the 2007 rate period. Further, Consumer Energy states that the earliest customers could expect to see refunds for 2007 overpayments would be in 2009, when Michigan Electric would take the 2007 refunds into account when calculating the true-up for 2007.

25. In its answer, Michigan Electric states that it will make any and all refunds required by the Commission in Docket Nos. ER06-56-000 and ER06-56-002, as ordered by the Commission, and that true-up calculations will simply reflect any such refunds.

Commission Determination

26. The Commission's regulations state that the public utility whose proposed increased rates or charges were suspended shall refund, with interest, at such time in such amounts and in such manner as required by final order of the Commission, the portion of any increased rates or charges found by the Commission not to be justified.²⁰ Michigan Electric, therefore, must pay any refunds that result from Docket Nos. ER06-56-000 and ER06-56-002 as directed by the Commission in those proceedings. Moreover, Michigan Electric has committed to do just that.

27. To the extent that Michigan Electric's proposed revised formula rate contains elements of the formula that is pending before the Commission in Docket Nos. ER06-56-000 and ER06-56-002, we will accept and suspend the proposal, as modified above, subject to refund and subject to the outcome of Docket Nos. ER06-56-000 and ER06-56-002.

4. Docket No. EC06-123-000

28. On September 21, 2006, the Commission issued an order that conditionally authorized the direct and indirect acquisition by ITC Holdings Corp. of 100 percent of the ownership interests in Michigan Transco Holdings Limited Partnership, the parent company of Michigan Electric, and for an intra-corporate reorganization of certain owners of Michigan Electric and Trans-Elect NTD Path 15, LLC that would occur before

²⁰ 18 C.F.R. § 35.19a (a)(1) (2006).

the closing of the ITC Holdings Corp. acquisition.²¹ The Commission conditioned its authorization on the applicants providing ratepayer protection consistent with the hold harmless provision approved by the Commission in *Consolidated Edison*.²² The Commission stated that, if the applicants sought to recover merger-related costs through their transmission rates, then they must submit an informational filing to the Commission that details how they are satisfying the hold harmless requirement.²³

29. The Michigan Commission and Consumers Energy state that, while the instant filing does not explicitly request any change to the hold harmless condition, a recent statement by ITC Holdings Corp. indicates a belief that approval of the proposed Attachment O revisions would, in some way, do away with the hold harmless conditions. Protestors provided a transcript of an ITC Holdings Corp. conference call with investors in which the President and CEO of ITC Holdings Corp. is quoted as stating that, “If we go to forward-looking Attachment O for [Michigan Electric], and FERC grants us our request, that takes us out of the proposition [sic] of having to make a lot of filings before FERC to cost-justify all those merger-related costs. They’ll just not be part of that future showing, and so that would be a really good thing. So it will take us out of the litigation rounds.”

30. Protestors state that this statement suggests that, if the Commission approves the proposed Attachment O revisions, then ITC Holdings Corp. believes that Michigan Electric will no longer be required to specifically identify all merger-related costs that Michigan Electric wishes to include in its rates, demonstrate that the costs to be included are exceeded by the savings produced by the merger, and receive specific authorization from the Commission before it may include such costs in Michigan Electric’s rates.

31. In its answer, Michigan Electric states protestors misinterpreted ITC Holdings Corp.’s statement and that it firmly intends to honor its commitment to comply fully with the requirements of the hold harmless condition adopted in Docket No. EC06-123-000.

Commission Determination

32. Approval of Michigan Electric’s proposed Attachment O revisions should not affect the hold harmless conditions placed upon ITC Holdings Corp. in the September 21 Order. ITC Holdings Corp. and Michigan Electric must follow the hold harmless conditions and, as discussed in the September 21 Order, Michigan Electric may not include merger-related costs in its transmission rates without first: (1) specifically

²¹ *ITC Holdings Corp.*, 116 FERC ¶ 61,271 (2006) (September 21 Order).

²² *Consolidated Edison, Inc.*, 94 FERC ¶ 61,079 (2001).

²³ September 21 Order at P 48.

identifying them; (2) demonstrating that the costs included in the rates are exceeded by the savings produced by the merger; and (3) bearing the burden of proof that the merger savings exceed merger costs.²⁴

5. Waiver and Effective Date

33. Michigan Electric requests waiver of the Commission's regulations concerning the cost data requirements, to the extent that they are deemed applicable to its filing.²⁵ Michigan Electric states that waiver is appropriate because it is changing the implementation of a formula rate rather than requesting any change or increase in a stated rate, and the inputs for the formula rate are contained in the annual FERC Form No. 1.

Commission Determination

34. Michigan Electric has show good cause for waiver of section 35.13 of the Commission's regulations,²⁶ and we will grant its request for waiver.

The Commission orders:

(A) Michigan Electric's proposed TEMT revisions are hereby conditionally accepted, suspended, and made effective subject to refund based on the outcome in ER06-56-000 and ER06-56-002, to become effective on January 1, 2007, as modified herein, as discussed in the body of this order.

(B) Michigan Electric's request for waiver of section 35.13(d) of the Commission's regulations is hereby granted, as discussed in the body of this order.

(C) Michigan Electric is hereby directed to file a compliance filing within 30 days of the date of this order, as discussed in the body of this order.

By the Commission.

(S E A L)

Magalie R. Salas,
Secretary.

²⁴ September 21 Order at P 48.

²⁵ 18 C.F.R. § 35.13(d) (2006).

²⁶ *See Idaho Power Co.*, 115 FERC ¶ 61,281 at P 20 (2006).