

167 FERC ¶ 61,212  
UNITED STATES OF AMERICA  
FEDERAL ENERGY REGULATORY COMMISSION

Before Commissioners: Neil Chatterjee, Chairman;  
Cheryl A. LaFleur, Richard Glick,  
and Bernard L. McNamee.

Consumers Energy Company

Docket No. EL19-59-000

v.

Midcontinent Independent System Operator, Inc.  
Michigan Electric Transmission Company, LLC

ORDER GRANTING MOTION TO HOLD PROCEEDING IN ABEYANCE

(Issued June 7, 2019)

1. On April 16, 2019, Michigan Electric Transmission Company, LLC (Michigan Electric) submitted to the Commission a motion requesting that this proceeding be held in abeyance until a decision is rendered by the Michigan Public Service Commission (Michigan Commission) in pending Michigan Commission Case No. U-20497 regarding the classification of a 138 kV interconnection facility (Morenci Interconnection Project) approved by the Midcontinent Independent System Operator, Inc. (MISO) in the 2018 MISO Transmission Expansion Plan (MTEP). In this order, we grant Michigan Electric's motion.

**I. Background**

2. On April 3, 2019, Consumers Energy Company (Consumers) filed a complaint (Complaint) against MISO and Michigan Electric alleging that MISO improperly approved the Morenci Interconnection Project for inclusion in the 2018 MTEP. Consumers considers the proposed project to be a local distribution facility and thus ineligible for inclusion in the MTEP. Consumers requests that the Commission (1) determine that MISO has neither the obligation nor the authority to review and approve local distribution projects as part of its transmission planning process, (2) determine the Morenci Interconnection Project is a local distribution project under

the Seven Factor Test established in Order No. 888,<sup>1</sup> and (3) order MISO to remove the Morenci Interconnection Project from the 2018 MTEP. Alternatively, if the Commission declines to conduct a Seven Factor Test determination, Consumers requests that the Commission order MISO to evaluate the project under the Seven Factor Test, require MISO to consider non-transmission alternatives to the project, require MISO to explain how and why it reached its conclusions, and reverse or stay MISO's approval of the Morenci Interconnection Project on an interim basis.<sup>2</sup>

3. On April 16, 2019, Michigan Electric filed a motion requesting that this proceeding be held in abeyance until a decision is rendered by the Michigan Commission regarding the classification of the Morenci Interconnection Project.<sup>3</sup> Michigan Electric contends that, to determine whether facilities should be classified as transmission or local distribution, the Commission established a Seven Factor Test to differentiate between assets and that the Commission should defer to the Michigan Commission's classification of facilities as long as such classifications utilize the Seven Factor Test and are applied consistently to ensure comparability. Michigan Electric argues that, in Order No. 888, the Commission "determined that it is appropriate to provide deference to state commission recommendations regarding certain transmission/local distribution matters" and that "it is important to develop mechanisms to avoid regulatory conflict and to help

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<sup>1</sup> *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) (cross-referenced at 75 FERC ¶ 61,080) (Order No. 888), *order on reh'g*, Order No. 888-A, FERC Stats. & Regs. ¶ 31,048 (cross-referenced at 78 FERC ¶ 61,220), *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).

<sup>2</sup> Consumers Complaint at 1-3, 40-42.

<sup>3</sup> Michigan Electric also moves to lodge in the record of this proceeding the application filed with the Michigan Commission on behalf of Michigan Electric, Wolverine Power Supply Cooperative, Inc. (Wolverine), and Midwest Energy and Communication in Michigan Commission Case No. U-20497 that requests "an ex parte administrative determination regarding the proper classification of a 138 kV transmission line facility ([Morenci Interconnection Project]) as transmission pursuant to the Federal Energy Regulatory Commission's ... seven-factor test." Michigan Electric Motion Filing at Exhibit 1.

provide certainty to utilities as to which regulator has jurisdiction over which facilities.”<sup>4</sup> Additionally, Michigan Electric argues that the Commission, in accordance with this precedent, has deferred to the Michigan Commission and its expertise when Michigan public utilities and cooperative transmission owners have requested Commission approval of facility classifications, including the proceeding that led to the creation of the Michigan Joint Pricing Zone. Michigan Electric states that the Commission previously directed MISO, Wolverine, and the MISO transmission owners to establish a MISO pricing zone for Wolverine based on the Michigan Commission’s Seven Factor Test determination and eventually approved incorporation of the Michigan Commission’s Seven Factor Test determination into the Michigan stakeholders’ settlement agreement, which now creates the framework for the Michigan Joint Pricing Zone.<sup>5</sup>

4. Michigan Electric argues that its motion is a limited procedural request and that the request is reasonable under the circumstances. Michigan Electric contends that the scope of issues related to the Morenci Interconnection Project classification is asset-specific, that the broader legal and policy questions raised in the Complaint are secondary to the question of classification, and that resolution of such broader questions will not be delayed if the Commission grants the motion. Michigan Electric also argues that granting the motion is in the public interest because it will result in the receipt of helpful material and clarity regarding the classification of the facilities. Additionally, Michigan Electric states that granting the motion will not bind the Commission to any final determination.<sup>6</sup>

## II. Responsive Pleadings

5. Wolverine, MISO, the Michigan Commission, the Association of Businesses Advocating Tariff Equity, and Consumers submitted answers and comments in response to the motion to hold the proceeding in abeyance.

6. Wolverine argues that, given the Commission’s precedent of deferring to the Michigan Commission’s threshold Seven Factor Test analysis to determine comparable facilities in the Michigan Joint Pricing Zone, it is appropriate for the Commission to defer ruling on the Complaint (or at least the Seven Factor Test issue) and allow the Michigan Commission a reasonable opportunity to issue a determination regarding the

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<sup>4</sup> Michigan Electric Motion Filing at 3 (citing Order No. 888, FERC Stats. & Regs. ¶ 31,036 at 21,619-20, 21,626-27).

<sup>5</sup> *Id.* at 8 (citing *Midwest Indep. Transmission Sys. Operator, Inc.*, 101 FERC ¶ 61,004, at P 1 (2002); *Midwest Indep. Transmission Sys. Operator, Inc.*, 112 FERC ¶ 61,351, at PP 28-30 (2005)).

<sup>6</sup> *Id.* at 9-12.

classification of the Morenci Interconnection Project. Wolverine also argues that the Commission should direct the state petitioners to submit periodic reports apprising the Commission of the status of the Michigan Commission's proceeding and should reserve its inherent authority under the Federal Power Act to issue a ruling on the Seven Factor Test in the Complaint, in the event that the Michigan Commission declines or is unable to issue a ruling in a timely manner.<sup>7</sup>

7. MISO states that it does not oppose holding the case in abeyance until the Michigan Commission acts on Michigan Electric's application in Michigan Commission Case No. U-20497, although it does not take a position on Michigan Electric's specific arguments.<sup>8</sup>

8. The Michigan Commission supports Michigan Electric's motion and states that it intends to exercise its jurisdictional authority and render a decision in Michigan Commission Case No. U-20497. The Michigan Commission explains that Order No. 888 establishes that the Commission should defer to the Michigan Commission for a facility's classification, which the Commission has previously done for such classifications and/or cost allocations. The Michigan Commission further asserts that, distinct from Order No. 888, the Commission has consistently deferred to state regulatory commission classifications. The Michigan Commission argues that, given the Commission's historic deference for state commission determinations applying the Seven Factor Test, the Michigan Commission plans to issue an order as expeditiously as possible in Michigan Commission Case No. U-20497 after allowing the parties to present testimony, conduct cross examination of all parties, and file briefs. The Michigan Commission notes that it would not object if the Commission acts on the Complaint if it does so quickly.<sup>9</sup>

9. The Association of Businesses Advocating Tariff Equity also supports Michigan Electric's motion and states that the classification of the Morenci Interconnection Project is a critical matter that needs to be resolved in order to prevent cross subsidies between customers within the Michigan Joint Pricing Zone. The Association of Businesses Advocating Tariff Equity contends that the Complaint likely becomes moot if the Michigan Commission determines the Morenci Interconnection Project to be a local distribution project because both MISO and Michigan Electric agree that local

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<sup>7</sup> Wolverine Answer at 1-5.

<sup>8</sup> MISO Answer at 1-3.

<sup>9</sup> Michigan Commission Answer at 3, 5-9.

distribution projects cannot be included in the transmission revenue requirement for the Michigan Joint Pricing Zone.<sup>10</sup>

10. Consumers opposes Michigan Electric's motion. Consumers argues that the Michigan Commission has already established a Seven Factor Test framework, which the Commission has approved. Consumers contends that the Morenci Interconnection Project falls into that framework, and therefore the Commission should apply the Michigan Commission's existing framework, which will ensure consistency with the previous asset classification for other Michigan Joint Pricing Zone members. Further, Consumers avers that Michigan Electric's motion does not offer a sound reason for why the Commission should not apply the Michigan Commission's existing Seven Factor Test framework or for why it wants to delay the Complaint. Consumers asserts that because it is contested, a resolution of the Michigan Commission proceeding will likely be complicated and take some time. Consumers continues that if Michigan Electric wanted the Michigan Commission to conduct a Seven Factor Test analysis, it should have made its request when Consumers first raised concerns about the Morenci Interconnection Project. Further, Consumers claims that although the Commission has historically deferred to classification determinations by state regulators, the Commission is not required to allow a state regulator to weigh in on every asset classification dispute. Consumers states that any resolution from the Michigan Commission proceeding would not address all of Consumers' arguments in the Complaint (i.e., removal of the project from the 2018 MTEP, MISO's administration of the MTEP process, or MISO's authority and obligation to vet MTEP projects) and therefore the Commission is a better forum under the present circumstances.<sup>11</sup>

### **III. Discussion**

#### **A. Procedural Matters**

11. Motions to lodge information from other proceedings may be appropriate in some instances to supplement the Commission's record.<sup>12</sup> Here, we find that the application to the Michigan Commission submitted by Michigan Electric has assisted us in our decision-making, and we therefore grant Michigan Electric's motion to lodge.

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<sup>10</sup> Association of Businesses Advocating Tariff Equity Comments at 1-4.

<sup>11</sup> Consumers Answer at 3-10.

<sup>12</sup> See, e.g., *California Indep. Sys. Operator, Inc.*, 139 FERC ¶ 61,072, at P 8 (2012).

## **B. Commission Determination**

12. We grant Michigan Electric's motion. We find that a determination of the classification of the Morenci Interconnection Project is central to addressing Consumer's concerns raised in the Complaint. As Michigan Electric and others note, the Commission has taken into consideration state commissions' recommendations, when appropriate, with regard to certain transmission/local distribution matters. For example, the Commission directed MISO and others to establish the Michigan Joint Pricing Zone based on the Michigan Commission's Seven Factor Test determination to accommodate Wolverine's participation in MISO.<sup>13</sup> We find that it is appropriate in this case to grant Michigan Electric's motion to hold the Complaint proceeding in abeyance to allow the Michigan Commission to make a determination regarding the classification of the Morenci Interconnection Project, which the Michigan Commission states it intends to do expeditiously in Michigan Commission Case No. U-20497. Although the Commission is not bound by the Michigan Commission's determination, delaying a final decision on the Complaint will help prevent regulatory conflict and provide consistency and certainty to the interested parties.

13. We are not persuaded by Consumers' arguments in opposition to Michigan Electric's motion. While we agree with Consumers that the Commission is not required to allow a state regulator to weigh in on every asset classification dispute, this proceeding will benefit from the Michigan Commission's expertise and familiarity with its Seven Factor Test framework as applied to the Michigan Joint Pricing Zone. We also do not believe that granting Michigan Electric's motion will unreasonably delay the Commission's determinations in the Complaint proceeding, for as noted above, the Michigan Commission states that it plans to act as expeditiously as possible on Michigan Electric's application in Michigan Commission Case No. U-20497. Additionally, while the Michigan Commission proceeding will not address all of Consumers' arguments in the Complaint, granting Michigan Electric's motion will not prevent the Commission from addressing the Complaint in full following the Michigan Commission proceeding.

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<sup>13</sup> See *Midwest Indep. Transmission Sys. Operator, Inc.*, 101 FERC ¶ 61,004 at PP 1, 21 (directing settlement procedures to establish a pricing zone for Wolverine stating that "Wolverine's transmission facilities must meet the requirements of the seven factor test, as interpreted by the Michigan Commission . . ."); *Midwest Indep. Transmission Sys. Operator, Inc.*, 106 FERC ¶ 61,219 (2004) (conditionally approving the settlement agreement and reasoning that the facilities at question in the proceeding in the Michigan Joint Pricing Zone must meet the requirements of the Seven Factor Test as applied by the Michigan Commission).

14. In order to keep the Commission informed regarding the Michigan Commission proceeding, we direct Michigan Electric to file the Michigan Commission's final decision in the above-captioned docket within 15 days of its issuance.

The Commission orders:

(A) Michigan Electric's motion to lodge is hereby granted, as discussed in the body of this order.

(B) Michigan Electric's motion to hold this proceeding in abeyance is hereby granted, as discussed in the body of this order.

(C) Michigan Electric is directed to file the final decision of the Michigan Commission in Docket No. EL19-59-000 within 15 days of its issuance, as discussed in the body of this order.

By the Commission.

( S E A L )

Kimberly D. Bose,  
Secretary.