

151 FERC ¶ 61,035  
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.

Michigan Electric Transmission Company, LLC

Docket No. EC12-15-001

ORDER DISMISSING REQUEST FOR CLARIFICATION

(Issued April 16, 2015)

1. On May 7, 2012, Consumers Energy Company (Consumers) filed a request for clarification of the April 5, 2012 order in this proceeding.<sup>1</sup> In the April 5 Order, the Commission authorized, pursuant to section 203(a)(1) of the Federal Power Act (FPA),<sup>2</sup> Michigan Electric Transmission Company, LLC (METC) to acquire certain substation assets from Consumers. As discussed below, we dismiss Consumers' request for clarification.

**I. Background**

2. METC, a wholly-owned subsidiary of ITC Holdings Corp. and a transmission-owning member of the Midcontinent Independent System Operator, Inc. (MISO), is an independent transmission company that operates primarily in the northern and western portions of Michigan's Lower Peninsula. Consumers, a combination electric and natural gas utility, is the principal subsidiary of CMS Energy Corporation. It owns and operates multiple electric generating plants and provides retail sales and delivery service to almost six million Michigan residents in all 68 counties of Michigan's Lower Peninsula.<sup>3</sup> Consumers is also a member of MISO.

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<sup>1</sup> *Michigan Elec. Transmission Co., LLC*, 139 FERC ¶ 62,015 (2012) (April 5 Order).

<sup>2</sup> 16 U.S.C. § 824b(a)(1) (2012).

<sup>3</sup> METC October 21, 2011 Application at 4 (Application).

3. On January 10, 2001, the Commission authorized Consumers to transfer substantially all of its integrated transmission facilities with voltage ratings of 120 kV and above, including generation tie lines from the generation step-up transformers to the point of connection to the transmission grid, and all related jurisdictional transmission tariffs, contracts, books and records, to Michigan Electric Transmission Company, METC's predecessor, which was then a wholly-owned subsidiary of Consumers.<sup>4</sup> On February 13, 2002, the Commission conditionally authorized Consumers to transfer METC to Michigan Transco Holdings, LP, an unaffiliated entity.<sup>5</sup> In that order, the Commission also conditionally approved a Distribution-Transmission Interconnection Agreement between METC and Consumers, which defines the terms and conditions governing the interconnections between the transmission facilities owned by METC and Consumers' distribution facilities.<sup>6</sup> On May 13, 2002, in compliance with the February 13, 2002 order, the applicants submitted an amended version of the Distribution-Transmission Interconnection Agreement, which was accepted by delegated letter order on January 30, 2004.<sup>7</sup>

4. On October 21, 2011, METC filed an Application in this proceeding requesting Commission authorization under FPA section 203(a)(1) for the acquisition of six groups of transmission assets from Consumers, which had been transferred to METC between 2007 and 2010.<sup>8</sup> Included among these was an undivided interest in assets jointly owned by Consumers and METC at particular substations in Michigan (referred to in the application as Transaction 5).<sup>9</sup>

5. In its comments on the Application, Consumers noted that it agreed to the proposed transfers and did not protest or oppose them. However, it questioned whether

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<sup>4</sup> *Consumers Energy Co.*, 94 FERC ¶ 61,018, at 61,031 (2001).

<sup>5</sup> *Trans-Elect, Inc.*, 98 FERC ¶ 61,142 (2002).

<sup>6</sup> *Id.* at 61,415.

<sup>7</sup> *Trans-Elect, Inc.*, Docket No. EC02-23-005 (Jan. 30, 2004) (delegated letter order). METC and Consumers have revised the Distribution-Transmission Interconnection Agreement multiple times to reflect ownership changes. The most recent version of the Distribution-Transmission Interconnection Agreement was accepted by delegated letter order on March 24, 2015. *Midcontinent Indep. Sys. Operator, Inc.*, Docket No. ER15-611-001 (Mar. 24, 2015) (delegated letter order).

<sup>8</sup> Application at 5-6.

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

Commission authorization was necessary for the transfer of the jointly owned assets described in Transaction 5. It argued that, even if Commission authorization was necessary to effectuate the transfer, the orders authorizing the “original transfer of Consumers’ transmission facilities to METC and the associated agreements, including the [Distribution-Transmission Interconnection Agreement]” likely granted authorization for such transfers.<sup>10</sup> In support of this argument, Consumers contended that because the Distribution-Transmission Interconnection Agreement establishes the structure of jointly owned asset transfers and because the transactions described in Transaction 5 carried out these transfers in accordance with the approved structure, further authorization was unnecessary.<sup>11</sup>

6. In the April 5 Order, the Commission approved METC’s acquisition of all of the previously transferred assets (including Transaction 5). It did not address Consumers’ comments.

## **II. Request for Clarification**

7. On May 7, 2012, Consumers filed a request for clarification stating that the April 5 Order failed to address its comments pertaining to the jointly owned assets included in Transaction 5. Consumers asks the Commission to reconsider Consumers’ arguments pertaining to Transaction 5. More specifically, it contends that “the jurisdictional status of [jointly owned asset transfers] is borderline at best” and that requiring Commission approval for every transfer “constitutes an ineffective and unnecessary drain on the Commission’s resources.”<sup>12</sup> It reiterates its argument that even if such transfers require Commission authorization, such authorization “was already provided” in the orders that approved the transfer of Consumers’ transmission assets to METC and that accepted the Distribution-Transmission Interconnection Agreement.<sup>13</sup>

8. Consumers states:

It is possible that the Commission felt that it did not need to address Consumers’ issues regarding Transaction [5] since METC conceded the Commission’s jurisdiction over the Transaction. Even if response to Consumers’ arguments is not deemed to be strictly required, responding would aid in the efficient administration and enforcement of [s]ection 203.

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<sup>10</sup> Consumers Comments at 6.

<sup>11</sup> *Id.*

<sup>12</sup> Consumers Clarification Request at 4.

<sup>13</sup> *Id.*

Lack of clarity regarding the extent of Commission jurisdiction and oversight can lead to the filing of unnecessary applications out of an abundance of caution and failure to file in other situations where approval is required. The proper administration of [s]ection 203 would be aided by the Commission taking the opportunity to clarify which transactions require Commission approval.<sup>14</sup>

### **III. Commission Determination**

9. In its Application in this proceeding, METC sought Commission authorization under FPA section 203(a)(1) for the acquisition of six groups of transmission assets from Consumers, including the assets in Transaction 5.<sup>15</sup> As noted above, Consumers acknowledges in its request for clarification that METC “conceded the Commission’s jurisdiction over the Transaction.”<sup>16</sup> As also noted above, Consumers suggests that response to its arguments may not be strictly required but responding would “aid in the efficient administration and enforcement of [s]ection 203.”<sup>17</sup> In these circumstances, we dismiss Consumers’ request as beyond the scope of the instant proceeding.<sup>18</sup>

#### The Commission orders:

Consumers’ request for clarification is hereby dismissed, as discussed above.

By the Commission.

( S E A L )

Nathaniel J. Davis, Sr.,  
Deputy Secretary.

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<sup>14</sup> *Id.* at 5.

<sup>15</sup> Application at 2-3.

<sup>16</sup> Consumers Clarification Request at 5.

<sup>17</sup> *Id.*

<sup>18</sup> To the extent that Consumers seeks clarification as to the Commission’s jurisdiction over future transfers of particular facilities, a petition for declaratory order would be the appropriate proceeding in which to raise such matters.