

97 FERC ¶ 61, 330  
UNITED STATES OF AMERICA  
FEDERAL ENERGY REGULATORY COMMISSION

Before Commissioners: Pat Wood, III, Chairman;  
William L. Massey, Linda Breathitt,  
and Nora Mead Brownell.

DTE Energy Company  
International Transmission Company

Docket No. EC01-137-000

ORDER PRELIMINARILY APPROVING DISPOSITION OF FACILITIES

(Issued December 20, 2001)

I. Introduction

Today the Commission is acting on five interrelated orders intended to move the process forward in establishing an optimally sized regional transmission organization (RTO) in the Midwest and to support the establishment of viable, for-profit transmission companies that operate under an RTO umbrella and may, depending on their level of independence from market participants, perform certain of the RTO functions contained in the Commission's Order No. 2000.<sup>1</sup> In taking today's actions, we have made findings as to the RTO structure that we conclude best serves the public interest in the Midwest. Our decisions in these five orders recognize the realities and needs of the Midwestern wholesale electricity market and take into account the views of the Midwestern State commissions. However, our actions should not be construed to prejudge other types of RTOs in other parts of the country, including a structure in which a for-profit transmission company could be an umbrella RTO.

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<sup>1</sup>Regional Transmission Organizations, Order No. 2000, 65 Fed. Reg. 809 (January 6, 2000), FERC Stats. & Regs. ¶ 31,089 (1999) (Order No. 2000), order on reh'g, Order No. 2000-A, 65 Fed. Reg. 12,088 (March 8, 2000), FERC Stats. & Regs. ¶ 31,092 (2000) (Order No. 2000-A), aff'd sub nom. Public Utility District No. 1 of Snohomish County, Washington v. FERC, Nos. 00-1174, et al. (D.C. Cir. 2001).

For two years now, since the issuance of Order No. 2000, electric industry participants in the Midwest, State commissions, and this Commission have struggled with an array of different proposals and issues and how best to achieve a seamless wholesale power market in the Midwest. While both Midwest Independent Transmission System Operator, Inc. (Midwest ISO) and Alliance Companies have spent considerable money and resources in developing and attempting to reconcile their competing proposals, the Commission is at a point where we must make some difficult decisions with respect to the competing proposals. Based on the record before us, and taking into account the views of the majority of the Midwestern State commissions, we conclude that Midwest ISO's proposal most fully complies with the vision and requirements of Order No. 2000, in particular the requirement that an RTO be of sufficient scope, and that the Midwest ISO therefore should serve as the foundation upon which a Midwest RTO should be built. In this regard, we are confident that the Alliance Companies' desire to be a viable transmission business can be accommodated under the Midwest ISO umbrella.

In today's five orders, we take the following specific steps:

- (1) approve the Midwest ISO as an RTO (Docket No. RT01-87-000, et al.);
- (2) approve International Transmission Company's (International Transmission) request to transfer operational control of its transmission facilities to Midwest ISO; and accept an agreement between International Transmission and Midwest ISO that would allow International Transmission to be an independent transmission company that would share certain RTO functions with Midwest ISO (Docket No. ER01-3000-000, et al.);
- (3) preliminarily approve the disposition of International Transmission's transmission facilities to an unaffiliated entity with no ownership interest in a market participant, thus facilitating a stand-alone transmission company under the Midwest ISO umbrella (Docket No. EC01-137-000);
- (4) conclude that Alliance Companies, which filed for approval as a separate RTO, lacks sufficient scope to exist as a stand-alone RTO; but direct Alliance Companies to explore how their business plan (including the proposal for National Grid to become the managing member of Alliance) can be accommodated within the Midwest ISO (Docket No. RT01-88-000, et al.); and
- (5) grant in part and defer in part National Grid's request for a declaratory order that it is not a market participant and dismiss Alliance Companies' business plan (Docket No. EL01-80-001, et al.).

We now turn to the specific actions taken in the above captioned dockets.

## II. Instant Filing

On August 10, 2001, DTE Energy Company (DTE Energy) and its wholly-owned subsidiary, International Transmission Company (International Transmission) (collectively, Applicants) jointly filed an application under section 203 of the Federal Power Act (FPA)<sup>2</sup> requesting Commission authorization for the disposition of International Transmission's jurisdictional facilities to an as yet-undetermined, unaffiliated third party. They intend to accomplish the disposition through the sale of the stock of International Transmission to a third party purchaser, hereinafter, referred to as a divestiture. Applicants state that the purchaser of International Transmission would have no affiliation with a market participant, as that term is defined in 18 C.F.R. § 35.34 (b)(2).<sup>3</sup> As discussed below, we preliminarily approve the application, with final approval subject to our review of an amended application, which is to be filed once International Transmission's purchaser is determined.

In a separate order issued concurrently in Docket No. ER01-3000, et al., we address International Transmission's proposal to establish itself as a for-profit transmission company that will operate under the proposed RTO umbrella in the Midwest. Within this context, the proposed divestiture of International Transmission as a separate transmission business to an unaffiliated entity with no ownership interest in a market participant is a laudable and significant step in the process of forming a transco that may be sufficiently independent to perform certain of the RTO functions in Order No. 2000. This type of divestiture (*i.e.*, the transfer of control over assets to an unaffiliated third party non-market participant) is one of the most effective means of separating transmission interests from market or generation interests, and achieving independence for an appropriately-formed for-profit transmission company. However, before the Commission can determine whether to give final approval to the proposed transaction, it must have all of the relevant facts, particularly the identity of the purchaser, in order to ensure that the buyer is not a market participant and that the proposed transaction is

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<sup>2</sup>16 U.S.C. § 824b (1994).

<sup>3</sup>A market participant is defined as an entity that "sells or brokers electric energy or provides ancillary services to the [RTO], unless the Commission finds that the entity does not have economic or commercial interest that would be significantly affected by the [RTO]'s actions or decisions; and [a]ny other entity that the Commission finds has economic or commercial interests that would be significantly affected by the [RTO]'s actions or decisions." 18 C.F.R. § 35.34 (b)(2) (2001).

consistent with the public interest. Therefore, upon the selection of a purchaser for International Transmission, Applicants are directed to supplement their application as discussed below to enable the Commission to make a final determination regarding the proposed transaction.

### III. Background

#### A. Description of Applicants

DTE Energy, a public utility holding company exempt from registration under section 3(a)(1) of the Public Utility Holding Company Act of 1935 (PUHCA),<sup>4</sup> owns interests in subsidiaries that engage in generation, transmission or distribution of electric energy or related energy services in North America. DTE Energy has two principal public utility subsidiaries, The Detroit Edison Company (Detroit Edison) and International Transmission. Detroit Edison is engaged in the generation and retail distribution of electric energy in the State of Michigan. Detroit Edison also sells electric energy at wholesale at cost-based rates and is authorized to sell power at wholesale at market-based rates.<sup>5</sup>

International Transmission is a special purpose, wholly-owned subsidiary of DTE Energy created for the purpose of acquiring substantially all of Detroit Edison's transmission assets.<sup>6</sup> International Transmission is engaged in the transmission of electric energy in interstate commerce<sup>7</sup> and provides transmission service in the State of Michigan pursuant to its open access transmission tariff (OATT). International Transmission's facilities are directly interconnected with those of Michigan Electric Transmission Company (METC), a wholly-owned subsidiary of CMS Energy Corporation (CMS),<sup>8</sup> and

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<sup>4</sup>15 U.S.C. § 79c(a)(1) (1994).

<sup>5</sup>Detroit Edison Co., 80 FERC ¶ 61,348 (1997).

<sup>6</sup>The Commission recently authorized the disposition of substantially all of Detroit Edison's integrated transmission facilities with a voltage rating of 120 kV and above to International Transmission. See DTE Energy Co., et al., 91 FERC ¶ 61,317 (2000).

<sup>7</sup>International Transmission owns, operates, and controls 3,000 miles of transmission lines ranging in voltage from 120kV to 345 kV and owns and jointly controls the Michigan Electric Coordination Center.

<sup>8</sup>METC owns and operates the transmission facilities formerly owned by

(continued...)

those of American Transmission Systems, Inc., a wholly-owned subsidiary of FirstEnergy Corporation. International Transmission and METC jointly operate their interconnected transmission systems, which comprise substantially all of the Michigan transmission grid, as a single control area.<sup>9</sup> They also jointly provide transmission service under their joint open access transmission tariff (JOATT).<sup>10</sup>

## B. Related Filings

On September 28, 2000, in Docket No. ER00-3295-000, the Commission conditionally approved International Transmission's request to charge "innovative rates" under Order No. 2000<sup>11</sup> to become effective, subject to refund, when the following two conditions are met: (1) International Transmission notifies the Commission that the Board of Directors has voted to divest the transmission assets to a fully independent transco with no active or passive ownership interests by market participants, and (2) International Transmission makes a section 203 filing, including a timetable for other required regulatory approvals.<sup>12</sup> In the instant filing, Applicants gave notice to the Commission that they met the September 28 Order's conditions, and would begin charging the Innovative Rates effective August 10, 2001, under the OATT and JOATT. However, Applicants have since committed to not charge the innovative rates until (1) the Midwest ISO is determined to be an Order No. 2000-compliant RTO, and (2) International

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<sup>8</sup>(...continued)

Consumers Energy Company, another wholly-owned subsidiary of CMS.

<sup>9</sup>International Transmission and METC are parties to the Michigan Electric Coordination System Transmission Interconnection and Control Area Operating Agreement (MECS Agreement).

<sup>10</sup>Consumers Energy Co. and International Transmission Co., 92 FERC ¶ 61,192 (2000).

<sup>11</sup>Regional Transmission Organizations, Order No. 2000, 65 Fed. Reg. 809 (January 6, 2000), FERC Stats. & Regs. ¶ 31,089 at 31,196 (1999), order on reh'g, Order No. 2000-A, 65 Fed. Reg. 12,088 (March 8, 2000), FERC Stats. & Regs. ¶ 31,092 (2000), aff'd sub nom., Public Utility District No. 1 of Snohomish County, Washington v. FERC, Nos. 00-1174, et al. (D.C. Cir, Dec. 11, 2001).

<sup>12</sup>See International Transmission Company, 92 FERC ¶ 61,276 (2000); reh'g pending (September 28 Order).

Transmission has been divested to an unaffiliated third party with no ownership interests in any market participants.<sup>13</sup>

On August 31, 2001, in Docket Nos. ER01-3000-000, RT01-101-000 and EC01-146-000, International Transmission informed the Commission that it was withdrawing from the proposed Alliance RTO as a participating transmission owner and requested that the Commission: (1) approve an agreement providing for International Transmission's participation in the Midwest ISO as an independent transmission company;<sup>14</sup> and (2) determine that International Transmission meets the requirements of Order No. 2000 to participate in an RTO by joining the Midwest ISO pursuant to the terms of the agreement. In the August 31 filing, DTE Energy and International Transmission also jointly sought Commission authorization to transfer functional control of International Transmission's jurisdictional transmission facilities to the Midwest ISO.

### C. Proposed Transaction

Applicants seek authorization for DTE Energy to sell all of the issued and outstanding shares of the common stock of International Transmission to an unaffiliated third party (Winning Bidder) that has no ownership interest in any market participant. Applicants state that the divestiture would result in a change in control over the issued and outstanding shares of International Transmission's common stock, and result in the indirect disposition of transmission facilities to the Winning Bidder. The Winning Bidder would acquire the general and intangible plant assets, and other equipment, tools and

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<sup>13</sup>On September 10, 2001, Applicants filed a motion in Docket Nos. EC01-137-000, and ER00-3295-002 to suspend the effective date of the innovative rates and to hold in abeyance the pending rehearing of the September 28 Order so that Midwest ISO can refile the innovative rates in a specific RTO proposal. Applicants add that consistent with the September 28 Order, International Transmission and its buyer must join an RTO to remain eligible to charge the innovative rates. On November 26, 2001, the Midwest ISO filed an update to the status of the expected Innovative Rate filing, in which it provided notice that it will not re-file International Transmission's rates now, which it states is "inappropriate considering the uncertainty of the Commission's RTO decision-making in the Midwest." The Midwest ISO states that it will evaluate whether to re-file the innovative rates after the Midwest ISO becomes operational on December 15, 2001.

<sup>14</sup>See Docket Nos. ER01-3000-000, RT01-101-000 and EC01-146-000, in which International Transmission submitted for filing the "Appendix I Agreement by and Between International Transmission Company and the Midwest Independent Transmission System Operator, Inc., dated August 31, 2001" (ITC-MISO Agreement).

property associated with International Transmission's transmission operations (Transmission System). Applicants add that the Transmission System includes all tariffs, contracts, service agreements, and related books and records necessary for International Transmission to provide transmission service under the terms of the OATT and/or JOATT. Applicants state that International Transmission would provide the same non-discriminatory open access transmission service under the OATT and the JOATT. By this transaction, DTE Energy intends to fully exit the transmission business and focus on other parts of the energy business.<sup>15</sup> Applicants state that although certain details are still undetermined, the divestiture would result in the complete severance of any corporate affiliation between the Winning Bidder and any market participant, including DTE Energy and its affiliates.

The divestiture would be executed using an open, non-discriminatory, competitive bidding process to be administered by DTE Energy and Credit Suisse First Boston Corporation (CSFB), DTE Energy's investment advisor for the divestiture. Bids would be accepted only from "Qualified Bidders" who may not own, operate or control any generation assets and may not engage in sales of electric energy at wholesale or retail.<sup>16</sup> DTE Energy and CSFB have begun this process and they would select the Winning Bidder at the end of the competitive bidding process. Applicants state that the Winning Bidder will not be affiliated, either through active or passive ownership arrangements, with any market participant, as defined at 18 C.F.R. § 35.34 (b)(2) (2001). Upon the selection of the Winning Bidder, Applicants commit that they and the Winning Bidder would jointly file to amend and supplement the application and pursue any required regulatory approvals to consummate the divestiture. Applicants state that they are not required to seek any additional licenses, orders, or other regulatory approvals for the divestiture, other than Commission approval of the instant Application as "consistent with the public interest" under FPA Section 203.

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<sup>15</sup>Applicants state that DTE Energy is implementing this corporate restructuring to comply with Orders No. 888 and 889, Order No. 2000 and the Michigan electric restructuring law (Customer Choice Electric Reliability Act, MICH. COMP. LAWS § 6d et seq.).

<sup>16</sup>According to Applicants, Qualified Bidders, include but are not limited to, financial buyers, foreign buyers, or strategic buyers that meet the "Independence Standard" accepted by the Commission in the September 28 Order.

Applicants have included a Draft Confidential Information Memorandum (Draft CIM) issued by CSFB, to be distributed to potential investors.<sup>17</sup> Pursuant to 18 C.F.R. § 388.112, Applicants request privileged/confidential treatment of the Draft CIM. Applicants have also included a proposed Protective Order, and contend that confidential treatment of the Draft CIM is necessary due to the proprietary, commercially sensitive information in it.

#### IV. Notice of Filings, Interventions and Comments

Notice of the application was published in the Federal Register with interventions and protests due on or before August 31, 2001.<sup>18</sup> Timely motions to intervene with comments and/or protests were filed by Michigan TDUS,<sup>19</sup> Michigan Public Power Agency (MPPA), and DIG and CMS,<sup>20</sup> jointly; Enron Power Marketing, Inc. (Enron) filed a timely motion to intervene. Michigan TDUS also filed a timely motion for decisions, and request for access to a sealed document with its motion to intervene. The State of Michigan and the Michigan Public Service Commission filed a timely notice of intervention. ABATE<sup>21</sup> filed a late motion to intervene with comments on September 4, 2001.

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<sup>17</sup>Applicants have included the Draft CIM to demonstrate the steps taken by DTE Energy toward completing the divestiture and the company's commitment to the divestiture of International Transmission by September 28, 2002.

<sup>18</sup>66 Fed. Reg. 44,614 (2001).

<sup>19</sup>Cities of Croswell, Detroit, Sebawaing, and Wyandotte, Michigan, Michigan Public Power Agency, Michigan South Central Power Agency, Nordic Electric, L.L.C., and Thumb Electric Cooperative.

<sup>20</sup>Dearborn Industrial Generation, L.L.C., CMS Marketing, Services and Trading Co., and CMS MS&T Michigan, L.L.C.

<sup>21</sup>Current members of ABATE (Association of Businesses Advocating Tariff Equity) are: ABTco, Inc., A Louisiana - Pacific Co.; ATOFINA Chemicals, Inc; BASF Corp.; The Budd Co., Daimler Chrysler Corp.; Eaton Corp.; Edward C. Levy Co.; Escanaba Paper, A Mead Co.; Ford Motor Co.; General Motors Corp.; Martin Marietta Magnesia Specialities, Inc.; National Steel Corp.- Great Lakes Division; North Star Steel Co.; Pharmacia & Upjohn; Quanex Corp.; and Steelcase, Inc.

## V. Discussion

### A. Procedural Matters

Pursuant to Rule 214 of the Commission's Rules of Practice and Procedure, 18 C.F.R. § 385.214 (2001), the timely, unopposed motions to intervene by DIG and CMS, Enron, Michigan TDUS, MPPA, and the notice of intervention of the State of Michigan and the Michigan Public Service Commission, make each a party to this proceeding. We will grant ABATE's untimely motion to intervene given its interest in this proceeding, the early stage of this proceeding and the absence of any undue prejudice or delay.

### B. Standard of Review under Section 203

Section 203(a) of the FPA provides that the Commission must approve a proposed disposition if it finds that the disposition "will be consistent with the public interest."<sup>22</sup> The Commission generally takes account of three factors in analyzing proposed mergers and other section 203 transactions: (a) the effect on competition; (b) the effect on rates; and (c) the effect on regulation.<sup>23</sup>

#### 1. Effect on Competition

Applicants assert that the divestiture would not adversely affect competition. Applicants state that the divestiture is not the type of transaction that would raise competitive concerns, i.e., it does not involve the consolidation of generating capacity. They emphasize that the transaction is intended to facilitate the severance of any corporate affiliation between International Transmission and any market participant. They further claim that the divestiture would have a neutral or positive effect on competition in that it could decrease the price of delivered electricity for customers in the State of Michigan and

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<sup>22</sup>16 U.S.C. § 824b(a) (1994).

<sup>23</sup>See Revised Filing Requirements Under Part 33 of the Commission's Regulations, Order No. 642, 65 Fed. Reg. 70,983 (2000), FERC Stats. & Regs. ¶ 31,111 at 33,362-63 (2000), order on reh'g, Order No. 642-A, 94 FERC ¶ 61,289 (2001); see also Inquiry Concerning the Commission's Merger Policy Under the Federal Power Act: Policy Statement, Order No. 592, 61 Fed. Reg. 68,595 (1996), FERC Stats. and Regs. ¶ 31,044 at 30,117-18 (1996), reconsideration denied, Order No. 592-A, 62 Fed. Reg. 33,341 (1997), 79 FERC ¶ 61,321 (1997) (Merger Policy Statement).

could create more competition between local generation and regional/distant generation. Based on these contentions, Applicants have not prepared a competitive screen analysis.<sup>24</sup>

Anticompetitive effects are unlikely to arise in a transaction that only involves a disposition of transmission facilities.<sup>25</sup> At this stage, International Transmission's proposed divestiture of ownership of its Transmission System to an unaffiliated entity that is not a market participant appears not to adversely affect competition. We note that despite a change in the stock ownership of International Transmission's facilities, these facilities would continue to be subject to our open access requirements under Order No. 888 and Order No. 2000. We also note that, at this time, no party asserts that the divestiture would adversely affect competition. However, we will make a final determination on this issue after the selection of the Winning Bidder and an opportunity to independently determine that the prospective purchaser of International Transmission is not affiliated with any market participant, including whether it is affiliated with any entity whose economic or commercial interests are significantly affected by an RTO's actions or decisions.<sup>26</sup> We will also consider whether the selected Winning Bidder presents any other competitive or public interest concerns.

## 2. Effect on Rates

Applicants also assert that the divestiture would not adversely affect wholesale transmission rates. They state that the Innovative Rates conditionally approved by the Commission in the September 28 Order are a rate moratorium based on the transmission component of Detroit Edison's formerly bundled retail rates and are effectively frozen through January 1, 2005. Applicants add that upon the commencement of RTO operations, the Innovative Rates would be in effect for all transmission transactions that "sink" within International Transmission's service area, *i.e.*, drive-in and drive within transactions. In addition, Applicants state that under the Michigan Restructuring Law, captive customers are protected from the pass-through of any costs associated with the divestiture due to a retail rate freeze that is currently in effect through January 1, 2006.

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<sup>24</sup>In support, Applicants cite to Order No. 642 at 31,902.

<sup>25</sup>Order No. 642 at 31,902. In this situation, the Commission generally exempts an applicant from submitting a competitive analysis with its initial filing. However, if the Commission determines that a filing raises competitive issues, it will evaluate those issues and direct the applicant to submit any data that the Commission determines is necessary to satisfy its concerns. *Id.* at note 79.

<sup>26</sup>Order No. 2000 at 31,061-062.

According to Applicants, until the RTO becomes operational, the rates presently charged by International Transmission for ancillary services under its OATT or the JOATT would remain unchanged. Applicants state that when the RTO commences operations, customers would likely purchase ancillary services from the RTO at Commission-approved rates. No intervenor has raised any concerns that the divestiture would adversely affect rates.<sup>27</sup>

Subject to the Commission's review of the amended application to be submitted in this proceeding, we find that the divestiture, in its present form, would not adversely affect rates.

### 3. Effect on Regulation

Applicants contend that the divestiture would not adversely affect federal regulation. They assert that following the divestiture, International Transmission would continue to be subject to Commission regulation, and that it is unlikely that the sale of International Transmission's stock would result in the formation of a registered holding company under PUHCA.

As explained in the Merger Policy Statement and Order No. 642, the Commission's primary concern with the effect of merger applications involving public utility subsidiaries of registered holding companies on federal regulation pertains to the possible shift of authority from the Commission to the Securities and Exchange Commission.<sup>28</sup> The Commission determined that in such filings, applicants must commit to abide by the Commission's policies with respect to intra-system transactions or be prepared to go to hearing on the issue of the effect of the proposed registered holding company structure on effective regulation by the Commission.<sup>29</sup> Based on the facts presented in the instant filing, we agree with Applicants that federal regulation would not be impaired and we further note that no intervenor alleges that federal regulation would be impaired by the divestiture. However, we will make a final determination on this issue upon the submission of Applicants' amended application, which should indicate whether a registered holding company would be formed or whether International Transmission

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<sup>27</sup>While intervenors question whether International Transmission meets the conditions required in order to charge Innovative Rates, that issue, along with the justness and reasonableness of the Innovative Rates raised by ABATE, will be addressed in Docket No. ER00-3295 if Midwest ISO re-files the innovative rates.

<sup>28</sup>Merger Policy Statement at 30,125; Order No. 642 at 31,914.

<sup>29</sup>Id.

would become a subsidiary of a registered holding company, and, if so, how Applicants propose to address any relevant regulatory concerns.

Applicants also contend that state regulation would not be impaired by the divestiture. They state that the Michigan Restructuring Law requires each investor-owned utility to either join a Commission-approved RTO or divest its transmission facilities to an independent transmission owner,<sup>30</sup> which the divestiture would fulfill. No intervenor, including the Michigan Public Service Commission and the State of Michigan, has raised any concern about the effect of the divestiture on state regulation; nor have they indicated that they lack the ability to renew the proposed transaction.

Where a state does not have authority to act on the proposed transaction and raises concerns about the effect on its regulation, the Commission will consider, on a case-by-case basis, whether to set the issue of effect on state regulation for hearing.<sup>31</sup> Where a state has authority to act on the transaction, the Commission will not set for hearing the issue of the effect on state regulation.<sup>32</sup> Based on the facts and considerations thus far presented, the Commission finds that state regulation would not be adversely affected. However, Applicants' amended application should comply with filing requirement of Part 33.2(i) with respect to other required regulatory approvals. After the amended application is noticed and identifies the Winning Bidder, other entities will have the opportunity to intervene and raise any regulatory concerns.

### C. Protests and Comments

CMS, DIG, and Michigan TDUS contend that Applicants' section 203 filing is deficient because of the as-yet-unidentified details of the transaction, including a still undetermined purchaser. Even if a buyer were determined, CMS and DIG question whether Applicants can carry out the proposed transfer if no Commission filings were made to transfer Detroit Edison service agreements to International Transmission. They further state that the application does not meet Part 33 filing requirements.

As previously discussed, we are reserving final decision on the proposed transaction until Applicants' submission of an amended application after the Winning Bidder is determined to include information about the purchaser, terms of the transaction

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<sup>30</sup>Applicants cite to Mich. Comp. Laws §10w(1).

<sup>31</sup>Merger Policy Statement at 30,125; Order No. 642 at 31,914-915.

<sup>32</sup>Id.

and other require regulatory approvals,<sup>33</sup> thus, we dismiss as moot intervenors' claims that the application is deficient.

MPPA filed a motion to intervene and protest to protect its rights and interests under the Belle River Transmission Ownership and Operating Agreement between the Detroit Edison Company and the Michigan Public Power Agency, dated December 11, 1982 (Belle River Agreement).<sup>34</sup> MPPA states that the proposed disposition of the Transmission System without its consent violates this agreement,<sup>35</sup> and ignores MPPA's prospective co-owner status. MPPA requests the Commission to withhold approval of the divestiture until Applicants have reached an accommodation with MPPA and obtained its consent; otherwise, the Commission should address the matter as part of this proceeding.

Our preliminary approval of the application does not affect any other necessary approvals, such as obtaining approval by any state commission or necessary consent by any party to a contract.

#### D. Draft CIM

Pursuant to 18 C.F.R. § 388.112, Applicants request confidential treatment of the Draft CIM submitted with their application, which they state contains "confidential company information regarding its business strategy, future goals, and certain economic assumptions used as the baseline for International Transmission's business plan."<sup>36</sup> Applicants contend that confidential treatment of the Draft CIM is necessary due to the proprietary, commercially sensitive information and have submitted a proposed Protective Order to govern the use of all protected materials produced by or on the behalf of, any participant. As the terms of the Protective Order are not contested by any party, and allow

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<sup>33</sup>We have also previously discussed intervenors' concern regarding the conditions for charging Innovative Rates. See note 26.

<sup>34</sup>MPPA states that its transmission ownership and use rights in the Detroit Edison/ITC transmission system are governed by the Belle River Agreement, which MPPA asserts International Transmission is bound by as a result of Detroit Edison's transfer of the transmission system to International Transmission.

<sup>35</sup>In support, MPPA cites to various provisions of the Belle River Agreement, which it does not attach to its filing.

<sup>36</sup>Application at 38.

for subsequent objections and/or revisions, should circumstances warrant,<sup>37</sup> we adopt the proposed protective order to facilitate Applicants' provision of the complete application to interested persons.

The Commission orders:

(A) Applicants' proposed protective order is adopted.

(B) The proposed application is approved, subject to further amendment of the application, as discussed herein.

By the Commission.

( S E A L )

Linwood A. Watson, Jr.,  
Acting Secretary.

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<sup>37</sup>Protective Order, Paragraphs 13, 14.