UNITED STATES OF AMERICA
BEFORE THE
FEDERAL ENERGY REGULATORY COMMISSION

Consumers Energy Company, Complainant, v Midcontinent Independent System Operator, Inc., and Michigan Electric Transmission Company, LLC, Respondents.	)	Docket No. EL19-59-000

MICHIGAN PUBLIC SERVICE COMMISSION'S MOTION TO FILE A STATEMENT APPLYING THE SEVEN-FACTOR TEST TO THE MORENCI INTERCONNECTION PROJECT

Consistent with Rule 212 of the Federal Energy Regulatory Commission's Rules of Practice and Procedure, 18 C.F.R. § 385.212 (2019), and the Commission's June 7, 2019 order in this docket, the Michigan Public Service Commission (MPSC) moves to file the statement below, along with its November 14, 2019 order in MPSC Case No. U-20497 (attached as Appendix A to this filing). Through its order applying the Commission's seven-factor test, the MPSC found that the Morenci Interconnection Project, a 138-kilovolt facility in Morenci, Michigan, should be classified as a distribution facility.

In support of its motion to file the below statement, the Michigan PSC says the following:

Background

1. On March 29, 2019, the Michigan Electric Transmission Company, LLC (Michigan Electric); the Wolverine Power Supply Cooperative, Inc (Wolverine); and Midwest Energy & Communications (Midwest Energy—a distribution cooperative member of Wolverine) filed an application in MPSC Case No. U-20497. The applicants asked the MPSC to issue an *ex parte* order classifying Michigan Electric's Morenci Project as a transmission facility under FERC's seven-factor test. The Morenci Project was proposed to serve Midwest Energy's increasing load.

2. On April 3, 2019, the Consumers Energy Company (Consumers Energy) filed a complaint with the Commission against Michigan Electric and the Midcontinent Independent System Operator (MISO) alleging that MISO improperly included the Morenci Interconnection Project in the 2018 MISO Transmission Expansion Plan (MTEP18). Consumers Energy argued that the proposed project is a local distribution facility and should not be included in the MTEP process.

3. On April 16, 2019, Michigan Electric filed a motion with the Commission in the present case asking, among other things, that this matter be held in abeyance until the MPSC issues an order in MPSC Case No. U-20497.

4. On May 1, 2019, the MPSC filed a notice of intervention in the present docket and response to Michigan Electric's motion. The MPSC supported the request to hold this matter in abeyance and noted that it intends to apply the seven-factor test in MPSC Case No. U-20497 to determine whether the Morenci Project

should be classified as a transmission or a distribution facility. Applying this test, the MPSC said, is consistent with Commission precedent that promotes cooperative federalism by deferring to State commission decisions under the seven-factor test. The MPSC said it intended to issue an order as expeditiously as possible.

5. On May 2, 2019, the MPSC issued an order denying the applicants' *ex parte* request in Case No. U-20497 and initiating a contested case to allow the MPSC "to make a fully informed factual determination of whether the Morenci Project should be classified as transmission or distribution."[1] The MPSC also set a preliminary schedule for the case and established notice requirements for the prehearing conference.

6. On June 7, 2019, the Commission granted Michigan Electric's motion to hold the present case in abeyance. The Commission found 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.

[1] *In re application of Michigan Electric Transmission Company, LLC; Wolverine Power Supply Cooperative, Inc.; and Midwest Energy & Communications for an administrative determination regarding the proper classification of certain facilities and to submit findings to the Federal Energy Regulatory Commission*, MPSC Case No. U-20497, Order (Nov. 14, 2019), at 3 (Appendix A to this filing) (describing May 2, 2019 order).

U-20497."[2] The Commission further directed "Michigan Electric to file the Michigan Commission's final decision in the above-captioned docket within 15 days of its issuance."[3]

Statement Applying the Seven-Factor Test to the Morenci Interconnection Project

7. On November 14, 2019, after hearing evidence and arguments and evaluating each factor in the seven-factor test, and after considering the functional use of the Morenci Project and other issues, the MPSC issued an order finding that the Morenci Project should be classified as a distribution facility. Its findings include the following:

a. the Morenci Project is close to the retail customers being served;

b. the Morenci Project is radial in nature;

c. power can only flow through the Morenci Project to Midwest Energy's distribution system for consumption by retail end users;

d. power entering the Morenci Project is not transported to another market but is consumed by end users on Midwest Energy's distribution system;

e. most of the power entering Midwest Energy's distribution system will be consumed in a relatively restricted geographic area;

f. although the meter for the Morenci Project is located on the high-voltage side of the Wolverine substation, the function of the meter is to measure flows into the local distribution system; and

[2] *Midcontinent Independent System Operator, Inc.*, 167 FERC ¶ 61,212, at P 6 (2019).

[3] *Id.* at P 14.

g. the 138 kV radial lines that are part of the Morenci Project are comparable to 209 miles of 138 kV radial lines on Consumers Energy's system that are classified as distribution.[4]

8. In Order 888 the Commission adopted an approach for unbundled retail wheeling "that, in combination with the seven-factor test, classifies facilities on a case-by-case basis consistent with the functional use of the facility."[5] A functional-use review of the Morenci Project's technical characteristics reveals that "the function of the Morenci Project is to deliver the power leaving METC's [Michigan Electric's] looped transmission system to ME&C's [Midwest Energy's] distribution system for exclusive consumption by ME&C's retail end users."[6] And while "wholesale transactions occur at the Morenci facility, it does not mean that its function is a transmission facility."[7]

9. Considering the seven-factor test, confirmed through a functional-use review, the Commission denied "[t]he request by Michigan Electric Transmission Company, LLC, Wolverine Power Supply Cooperative, Inc., and Midwest Energy & Communications to classify a 138-kilovolt facility in Morenci, Michigan as

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[4] Appendix A, at 38–48.

[5] *Id.* at 49, citing *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, 21,619 (1996) (cross-referenced at 75 FERC ¶ 61,080) (Order No. 888), *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).

[6] *Id.*

[7] *Id.*

transmission."[8] Instead, the Commission found that the "Morenci Project should be classified as distribution."[9]

10. Given that the applicants have already received approval from the MISO Board of Directors to construct the Morenci substation, and given that Consumers Energy filed a complaint with the Commission in the present case alleging that MISO prematurely included the Morenci Project in the MTEP18, the MPSC asks the Commission to "provide more clarification regarding the transmission/distribution classification procedure" in this case.[10]

11. Specifically, while the Commission "provided a framework for classifying facilities as transmission or local distribution for jurisdictional purposes" in Order 888, the Commission did not describe the regional transmission organization's "role in the process."[11] As a result, the MPSC asks the Commission to "determine if, and when, in the transmission/distribution classification process it would be appropriate for a utility or MISO to request a state commission determination of whether or not a project is transmission and, thus, eligible to be included in MTEP."[12]

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[8] Appendix A, at 53.

[9] *Id.* at 51.

[10] *Id.*

[11] *Id.* at 51–52, citing Order 888, at 21,627.

[12] *Id.* at 52.

Relief Requested

WHEREFORE, the MPSC asks that the Commission grant this Motion to File a Statement Applying the Seven-Factor Test to the Morenci Interconnection Project, that the Commission classify the Morenci Interconnection Project as a distribution facility, and that the Commission provide additional guidance concerning the transmission and distribution classification process.

Respectfully submitted,

THE MICHIGAN PUBLIC SERVICE COMMISSION

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Dated: November 15, 2019

APPENDIX A

STATE OF MICHIGAN

BEFORE THE MICHIGAN PUBLIC SERVICE COMMISSION

* * * * *

In the matter of the application of **MICHIGAN ELECTRIC TRANSMISSION COMPANY, LLC, WOLVERINE POWER SUPPLY COOPERATIVE, INC,** and **MIDWEST ENERGY & COMMUNICATIONS** for an administrative determination regarding the proper classification of certain facilities and to submit findings to the Federal Energy Regulatory Commission.	)	Case No. U-20497

At the November 14, 2019 meeting of the Michigan Public Service Commission in Lansing, Michigan.

PRESENT: Hon. Sally A. Talberg, Chairman
Hon. Daniel C. Scripps, Commissioner
Hon. Tremaine L. Phillips, Commissioner

ORDER

History of Proceedings

On March 5, 2018, Wolverine Power Supply Cooperative, Inc. (Wolverine) contacted Consumers Energy Company (Consumers) to discuss the capacity of Consumers' existing 46 kilovolt (kV) system and to determine whether it could serve the proposed increased demand for wholesale electricity from one of its distribution cooperative members, Midwest Energy & Communications (ME&C). Between March 6 and April 9, 2018, Consumers and Wolverine exchanged several e-mails discussing possible options for serving ME&C's proposed load growth. 2 Tr 220; Exhibits CE-16 and CE-17.

Between August and December 2018, Michigan Electric Transmission Company, LLC (METC) applied to the Midcontinent Independent System Operator, Inc. (MISO) Board of Directors to construct a 138 kV facility to address ME&C's aforementioned proposed load growth, which is located near the Seneca distribution station in Morenci, Michigan (Morenci Project). 2 Tr 214; Exhibit CE-1, p. 2. On December 6, 2018, MISO approved the Morenci Project as a transmission facility to be included in the MISO 2018 Transmission Expansion Plan (MTEP18). 2 Tr 129. Consumers stated that it "repeatedly objected to MISO's inclusion of the Morenci Project in MTEP18, explaining that the Morenci Project would be a distribution facility under the [Federal Energy Regulatory Commission (FERC)] Seven Factor Test[1] and that MISO's MTEP process is limited to transmission facilities." Consumers' initial brief, p. 6; 2 Tr 211-213.

On March 29, 2019, METC, Wolverine, and ME&C (together, the Joint Applicants) filed an application in this case requesting that the Commission issue an *ex parte* determination classifying METC's Morenci Project as transmission pursuant to FERC's seven-factor test.

Consumers filed a complaint with FERC on April 3, 2019, alleging that the Morenci Project should be classified as distribution pursuant to the seven-factor test and that MISO inappropriately included the Morenci Project in MTEP18. Consumers' initial brief, p. 7; *see* FERC Docket No. EL19-59. In response, METC filed a motion with FERC on April 16, 2019, requesting that FERC: (1) hold Consumers' complaint in abeyance until the Commission issues a determination on the seven-factor test, (2) lodge the Joint Applicants' Commission application in FERC Docket

[1] *Promoting Wholesale Competition Through Open Access Nondiscriminatory Transmission Services by Public Utilities and Transmitting Utilities*, Order 888, 61 Fed Reg 21,540 (1996), *clarified*, 76 FERC ¶ 61,009 and 76 FERC ¶ 61,347 (1996), *on reh'g*, Order 888–A, 62 Fed Reg 12,274, *clarified*, 79 FERC ¶ 61,182 (1997), *on reh'g*, Order 888–B, 81 FERC ¶ 61,248, 62 Fed Reg 64,688 (1997), *on reh'g*, Order 888–C, 82 FERC ¶ 61,046 (1998), *aff'd in part and remanded in part sub nom. Transmission Access Policy Study Group v FERC*, 225 F3d 667 (DC Cir 2000), *aff'd sub nom. New York v FERC*, 535 US 1 (2002) (Order 888).

No. EL19-59, and (3) shorten the answer period and expedite consideration of the motion. FERC Docket No. EL19-59.

On May 2, 2019, the Commission issued an order in this case (May 2 order) denying the Joint Applicants' *ex parte* request and finding that a contested case is necessary to enable the Commission to make a fully informed factual determination of whether the Morenci Project should be classified as transmission or distribution. In addition, in the May 2 order, the Commission established a preliminary schedule for the case, prescribed notice requirements for the prehearing conference, and set a date on which petitions for intervention were due. Consumers and DTE Electric Company (DTE Electric) timely filed petitions to intervene on April 17, 2019, and May 28, 2019, respectively.

On June 4, 2019, a prehearing conference was held before Administrative Law Judge Dennis W. Mack (ALJ). The Joint Applicants and the Commission Staff (Staff) participated in the proceeding. The ALJ granted Consumers' and DTE Electric's petitions for intervention.

On June 7, 2019, FERC issued an order holding Consumers' complaint in abeyance pending the Commission's decision in this case. FERC Docket No. EL19-59; 167 FERC ¶ 61, 212 (2019).

On July 18, 2019, the Joint Applicants filed a motion for protective order for discovery responses and other confidential information in this case that may contain confidential, critical energy infrastructure information, proprietary, competitively sensitive, and/or trade secrets. The ALJ entered the protective order on July 23, 2019.

On August 6, 2019, the Joint Applicants filed motions to strike the testimony of Staff witness Naomi J. Simpson and Consumers' witness Donald A. Lynd. In addition, on August 6, 2019, Consumers filed a motion to strike portions of the rebuttal testimony of Joint Applicants' witness,

Terry Rubenthaler, and Exhibit JA-2. On August 9, 2019, the Staff, Consumers, and the Joint Applicants filed responses to the motions to strike.

Prior to the cross-examination proceeding on August 12, 2019, the ALJ denied the motions to strike. He concluded that the direct and rebuttal testimony challenged in the motions are relevant to the issues raised in this case, do not offer a legal opinion, are within the scope of this case, and should be admitted pursuant to MRE 401. 2 Tr 62.

The Joint Applicants, Consumers, DTE Electric, and the Staff filed initial briefs on September 10, 2019. On September 26, 2019, the Joint Applicants, Consumers, and the Staff filed reply briefs. With the goal of issuing an expeditious decision on the Joint Applicants' application, the Commission decided to read the record, dispensing with the need for a Proposal for Decision. The record consists of 345 pages of transcript and 43 exhibits.

Michigan Electric Transmission Company, LLC's, Wolverine Power Supply Cooperative, Inc.'s, and Midwest Energy & Communications' Application

The Joint Applicants' application stated that METC owns approximately 5,600 circuit miles of transmission lines in Michigan and that MISO provides FERC-jurisdictional transmission service over its transmission facilities. Wolverine is a "Michigan not-for-profit generation and transmission electric cooperative that provides wholesale electric service, in both MISO and PJM [PJM Interconnection LLC], to its seven members and is subject to Federal Energy Regulatory Commission jurisdiction under the Federal Power Act." Application, p. 2. And, according to the application, ME&C is a non-profit corporation and a distribution cooperative member of Wolverine that distributes and sells electric energy to retail member-customers in parts of Berrien, Cass, Kalamazoo, Lenawee, Monroe, St. Joseph, and Van Buren Counties in Michigan, and several counties in Ohio and Indiana.

The Joint Applicants noted that there is load growth around Morenci, Michigan, due to existing and new customer requests. The Joint Applicants stated that:

> load growth exceeds the current capability of ME[&]C's Seneca 46/12.47kV distribution station, as well as the upstream high voltage 46kV distribution system of Consumers Energy. Presently, Consumers Energy distributes wholesale electricity to ME[&]C in the Morenci area using a 46kV high voltage distribution service line via the Seneca substation. ME[&]C's Seneca substation currently serves 4.5 MW [megawatts] of load in this area, and ME[&]C expects growth of another 3 MWs in 2019 and up to another 7-10 MWs within the next eight years.

Id., p. 3.

The Joint Applicants stated that the Morenci Project will include tap pole and line switch additions to an existing METC transmission line. Then, the Joint Applicants explained, a new radial line will be installed, which will be operated at 138 kV, will terminate at a new distribution substation owned by Wolverine, and will transform from 138 kV to 12.47 kV for distribution to ME&C's end users. Exhibits CE-5 and CE-7. According to the Joint Applicants, the Morenci Project will span approximately 10.5 miles in the Morenci, Michigan area. The Joint Applicants contended that they evaluated other options and determined that the Morenci Project is crucial to load growth in the Morenci area and is the most cost-effective solution to the problem of increased demand.

In the Joint Applicants' opinion, if the Morenci Project is not constructed, ME&C cannot meet the demand attributed to new customers and increased economic growth and, as a consequence, customers may choose another location and provider. Therefore, the Joint Applicants asserted that transmission service from METC is required as a soon as possible, but no later than 2020. *Id*., pp. 4-5. The Joint Applicants requested that the Commission apply the seven-factor test to the proposed Morenci Project and find that it is a transmission facility.

The Federal Energy Regulatory Commission's Seven-factor Test

FERC established the seven-factor test in Order 888 so that "the demarcation between federal and state jurisdiction over transmission in interstate commerce and local distribution" could be determined. 61 Fed Reg 21540, 21627. In Order 888, FERC explained that:

> For unbundled retail wheeling, the NOPR [notice of proposed rulemaking] proposed to apply a combination functional-technical test that would take into account technical characteristics of the facilities used for the wheeling. The [Federal Energy Regulatory] Commission proposed seven indicators of local distribution to be evaluated on a case-by-case basis:
>
> (1) Local distribution facilities are normally in close proximity to retail customers.
> (2) Local distribution facilities are primarily radial in character.
> (3) Power flows into local distribution systems; it rarely, if ever, flows out.
> (4) When power enters a local distribution system, it is not reconsigned or transported on to some other market.
> (5) Power entering a local distribution system is consumed in a comparatively restricted geographical area.
> (6) Meters are based at the transmission/local distribution interface to measure flows into the local distribution system.
> (7) Local distribution systems will be of reduced voltage.

61 Fed Reg 21619, 21620. In addition, FERC stated that, "where states unbundle retail sales, we will give deference to their determinations as to which facilities are transmission and which are local distribution, provided that the states, in making such determinations, apply the seven criteria discussed in the NOPR . . . ." *Id*. at 21625. And, although FERC asserted that it "will entertain proposals by public utilities, filed under section 205 of the FPA [Federal Power Act], containing classifications and/or cost allocations for transmission and local distribution facilities," FERC stated that "as a prerequisite to filing transmission/local distribution facility classifications and/or cost allocations with the Commission, utilities must consult with their state regulatory authorities." *Id*. at 21627.

Positions of the Parties

A. Cost, Customer Choice, and Reliability Issues

In their initial brief, the Joint Applicants alleged that Consumers refused to answer discovery questions relating to the timing of new load in the Morenci area, which the Joint Applicants claimed is self-serving. The Joint Applicants explained that, during discovery, they learned "that Consumers Energy is now posed to serve large industrial customers near the locations of ME[&]C's new load, and the load associated with these large industrial customers matches the amount of limited excess capacity Consumers told Wolverine/ME[&]C that it had available." Joint Applicants' initial brief, p. 20. Accordingly, the Joint Applicants surmised that Consumers is delaying the Morenci Project so that it may obtain new customers. And, the Joint Applicants asserted that Consumers' obstruction of the Morenci Project puts customers' reliability at risk.

Consumers objected to the Joint Applicants' claim that it is attempting to delay the Morenci Project. Consumers contended that its "customers would receive no benefit from the Morenci Project, but they would be forced to pay for approximately 80% of its costs – more than $16 million – if the project is classified as transmission." Consumers' initial brief, p. 3. Therefore, Consumers claimed that the Joint Applicants are attempting to classify the Morenci Project as transmission so that ME&C will not be responsible for the $20 million project cost. In addition, Consumers asserted that it offered the Joint Applicants non-transmission proposals that would cost less than half, and possibly less than a third, of the Morenci Project cost; Consumers contended that ME&C would be responsible for "only some of the $6.5 million alternative." *Id*., pp. 39-40; Exhibit CE-2, p. 5; 3 Tr 337-339. Consumers stated that the Joint Applicants did not respond to the proposals. 2 Tr 213-214.

In response to the Joint Applicants' claim that the delay of the Morenci Project allows Consumers to poach ME&C's customers and puts customer reliability at risk, Consumers argued that the Joint Applicants failed to explain these arguments. In any event, Consumers asserted that customers are entitled to choose a service provider and it is not inappropriate for Consumers to offer to serve customers in the Morenci area. Consumers' initial brief, pp. 44-45. Consumers also disputed that it refused to answer discovery questions or was behaving in an obstructionist manner. Consumers stated that it "provided substantive answers to 80% of the numerous discovery requests served by Joint Applicants in this case, and the Company provided appropriate objections to the remaining requests. 2 TR 49, 51-52. Joint Applicants never moved to compel additional answers, or different answers, to those discovery requests." Consumers' reply brief to Joint Applicants, p. 27 (note omitted).

B. Comparability Standard

The Joint Applicants stated that the transmission facilities of METC, Consumers, Wolverine, and Michigan Public Power Agency (MPPA) are part of the Michigan Joint Zone (MJZ), "which is a cost allocation zone, under MISO's Open Access Transmission, Energy and Operating Reserve Markets Tariff ("MISO Tariff")." Joint Applicants' initial brief, p. 19. The Joint Applicants noted that, pursuant to *Midwest Indep Transmission Sys Operator, Inc*., 106 FERC ¶ 61,219 (*MISO I*) at 53, FERC requires the Commission to make facility classifications on a comparable basis for all customers in the MJZ.

Accordingly, the Joint Applicants asserted that the "comparability standard requires that all of the facilities included in the [Michigan] Joint Zone be classified as transmission facilities with ***similar application*** of the seven-factor test." Joint Applicants' initial brief, p. 8, quoting *Midwest Indep Transmission Sys Operator, Inc*., 106 FERC ¶ 61,219 at 53 (emphasis in original). And, the

Joint Applicants argued, the only fair test of comparability is for the Commission to compare the Morenci Project with those facilities agreed to be transmission among all Michigan transmission owners, and to not compare the Morenci Project to facilities that have not yet been reclassified as transmission.

The Joint Applicants contended that the Morenci Project is comparable to other assets that have been identified as transmission. The Joint Applicants stated that, in Case No. U-17598, Consumers requested that two categories of assets be reclassified as transmission: (1) Group A assets, which was equipment located in 69 substations integrated into 138 kV transmission lines; and (2) Group B assets, which were 65 138 kV line segments and six substations connecting 138 kV transmission lines to Consumers' bulk power substations. 2 Tr 133. The Joint Applicants noted that the Commission approved a settlement agreement on October 16, 2014, in Case No. U-17598 (October 16 order) that reclassified the two categories of assets as transmission. The Joint Applicants alleged that the Morenci Project is comparable to the assets classified as transmission in Case No. U-17598 and should be similarly classified.

In addition, the Joint Applicants stated that, in Case No. U-17742, Wolverine requested that two categories of assets be reclassified as transmission: (1) Group A assets, which were 11 substations integrated into Wolverine's 69 kV transmission looped lines; and (2) Group B assets, which were 68 line segments and five substations connecting Wolverine's 69 kV looped transmission system to its bulk electric power substations. 2 Tr 169; *see*, January 27, 2015 order in Case No. U-17742 (January 27 order), p. 1. The Joint Applicants noted that the Commission approved a settlement agreement in the January 27 order that reclassified the two categories of assets as transmission. The Joint Applicants alleged that the Morenci Project is comparable to the

assets classified as transmission in Case No. U-17742 and should be similarly classified. Joint Applicants' initial brief, p. 22.

Furthermore, the Joint Applicants stated that "the Morenci Project is similar in configuration to Consumers Energy's Vernon Substation," which, according to the Joint Applicants, has radial assets serving the substation that are classified as transmission. Joint Applicants' initial brief, p. 24; 2 Tr 136-137. The Joint Applicants averred that the Morenci Project's 138 kV line will be operated radially but is connected to a distribution system that can be looped, which is exactly the same as Consumers' Vernon substation. In summary, pursuant to the comparability analysis, the Joint Applicants asserted that the Commission should classify the Morenci Project as transmission. *Id*.

Consumers disagreed, asserting that the Morenci Project should be classified as distribution. Consumers stated that it owns more than 150 line segments configured exactly like the Morenci Project, "all of which are classified as distribution under the Seven Factor Test." Consumers' initial brief, p. 2; 2 Tr 195-196 (emphasis in original). In Consumers' opinion, if the Commission were to classify the Morenci Project as transmission, it would overturn 20 years of the Commission's seven-factor test classifications, run contrary to FERC's approval of these classifications, and challenge the existing classification of many other similar assets in the MJZ.

As more fully explained in Consumers' seven-factor test analysis below, Consumers disputed the Joint Applicants' claim that the Morenci Project is comparable to assets that were classified as transmission in Case Nos. U-17598 and U-17742. In addition, Consumers asserted that the Joint Applicants' comparability argument is flawed because the "Joint Applicants do not provide a list of individual assets, for example, that are currently classified by the Commission as transmission and allegedly comparable to the Morenci Project. Nor do Joint Applicants explain how those

allegedly comparable facilities are configured or how their configuration is similar to the Morenci Project." Consumers' initial brief, p. 16.

In reply, the Joint Applicants asserted that Consumers is misapplying the comparability standard because "[t]he MJZ is a pricing zone for transmission cost allocation. There are zero distribution facilities in the MJZ; therefore, there cannot be a distribution asset to compare to the Morenci Project." Joint Applicants' reply brief to Consumers, p. 4; Joint Applicants' reply brief to Staff, p. 3 (emphasis in original). Instead, the Joint Applicants argued, the correct test is to compare the Morenci Project with other transmission assets in the MJZ. The Joint Applicants also reiterated the arguments set forth in testimony and briefing that the Morenci Project is comparable to Wolverine's Group B transmission assets and is configured similarly to Consumers' Vernon substation. Joint Applicants' reply brief to Consumers, pp. 5-6; Joint Applicants' reply brief to Staff, pp. 5-6.

In its reply brief, Consumers stated that "it makes no sense to suggest that comparability requires an analysis only of existing transmission facilities when FERC's comparability requirement is rooted in a Seven Factor Test that measures distribution attributes – and when that test is intended to sort facilities into both distribution and transmission categories for jurisdictional purposes." Consumers' reply brief to Joint Applicants, p. 7. Consumers contended that for the comparability standard, there is nothing in Order 888 that requires the Commission to divide the system into transmission facilities and those that have not yet been reclassified as transmission. According to Consumers, the seven-factor test is a distribution test and Order 888 "clearly contemplates that some facilities will be local distribution and others will be transmission." *Id*.

C. The Seven-factor Analysis

The Joint Applicants argued that, using the methodology developed over the past 20 years, the Morenci Project is properly classified as transmission under the seven-factor test. The Joint Applicants noted that the Commission has classified facilities as transmission even though they do not meet all factors of the seven-factor test, which demonstrates that it is a balancing test. After analyzing and balancing the factors, the Joint Applicants asserted that the Morenci Project has "more functional characteristics of a transmission asset than a distribution asset." Joint Applicants' initial brief, p. 45.

Consumers contended that the Joint Applicants failed to provide substantive evidence showing that the Morenci Project should be classified as transmission. Rather, according to Consumers, the Joint Applicants request that the Morenci Project be classified as transmission "simply because they say so." Consumers' reply brief to Joint Applicants, p. 3. Consumers asserted that the Joint Applicants' position:

> would render any asset classification under Order No. 888 a self-fulfilling prophecy. Because METC is a transmission company, Joint Applicants suggest, the Morenci Project must be a transmission facility. Joint Applicants likewise posit that a facility should be classified as transmission merely because its proponents request transmission service, or because it will be used to effectuate a wholesale sale. Similarly, Joint Applicants suggest that the Morenci Project should be considered looped because someday it might be looped.

Id., p. 2. In Consumers' opinion, if the Commission adopts the Joint Applicants' arguments, it avoids the proper application of the seven-factor test and abolishes the boundary between the Commission's jurisdiction over distribution facilities and FERC's jurisdiction over transmission facilities.

The Staff asserted that, pursuant to its analysis of the seven-factor test, the Morenci Project should be classified as distribution. On page 4 of its initial brief, the Staff "explained that if the

Morenci Project was classified as distribution, the costs of the system upgrade to serve the Morenci area would be borne by ME[&]C as the requesting customer for the project. 2 TR 118. However, if the project was classified transmission, those same costs would be allocated to the entire Michigan Joint Zone. *Id*. Exhibit S-1." In addition, the Staff claimed that some of the Morenci Project's reliability aspects are not specified and, as a result, it is unclear whether there will be reliability consequences.

DTE Electric stated that Consumers' and the Staff's conclusions that the Morenci Project should be classified as distribution "are most persuasive on the record and supported by reasoned analysis and policy." DTE Electric's initial brief, p. 4.

In response, the Joint Applicants argued that Consumers' and the Staff's cost allocation and reliability concerns are irrelevant to the seven-factor test and outside the scope of this case. Joint Applicants' initial brief, p. 18; Joint Applicants' reply brief to Consumers, p. 18. Additionally, the Joint Applicants asserted that DTE Electric did not perform its own analysis and failed to provide support for the claims in its brief. In summary, the Joint Applicants asserted that the Commission should find that the Morenci Project should be classified as transmission under the seven-factor test.

1. Local distribution facilities are normally in close proximity to retail customers.

According to the Joint Applicants, in the January 14, 1998 order in Case No. U-11283 (January 14 order), the Commission established a one-mile radius test to determine whether the facility was in close proximity to retail customers and, therefore, a distribution facility. The Joint Applicants stated that they "performed a geographic analysis that examined the relative locations of ME[&]C's retail electric customers to the Morenci Project, which consisted of determining the percentage of customers located within one mile of the Morenci Project," and found that less than

1.0% of the customers served by ME&C are located within one mile of the proposed Morenci substation. Joint Applicants' initial brief, pp. 20-30; Exhibit JA-1.

Next, the Joint Applicants noted that, in Case No. U-17598, 3.5% of Consumers' retail customers were located within one mile of its Group A assets, and 4.4% were located within one mile of its Group B assets, both of which were classified as transmission. Therefore, the Joint Applicants asserted that because less than 1.0% of the Morenci Project customers are located within one mile of the project, it is comparable to Consumers' assets that were classified as transmission in Case No. U-17598. Finally, the Joint Applicants alleged that they "provided an electrical proximity test proving that the Morenci Project is electrically remote from the distribution system" because ME&C's "common impedance of its 12.47kV looped system is approximately 137 times greater than the Morenci Project's 138kV impedance." Joint Applicants' initial brief, p. 32; 2 Tr 132. The Joint Applicants stated that these results are comparable to the results in Case No. U-17598, wherein Consumers' assets were classified as transmission. In sum, the Joint Applicants concluded that the Morenci Project is not in close proximity to retail customers and should be classified as transmission under factor (1).

Consumers contended that "the Morenci Project is expressly intended to serve local distribution load in and around Morenci, Michigan, through Wolverine's new Morenci distribution substation. . . . The Morenci Project would be located entirely within Lenawee County, where all of Midwest Energy's relevant projected load growth is located." Consumers' initial brief, p. 18; 2 Tr 198-199. Consumers also stated that most of the load served by the Morenci Project is from customers located, or who will be located, in the same industrial park "where the new Wolverine distribution substation would be located." *Id*., p. 19; 2 Tr 263. Therefore, Consumers argued that the Morenci Project is in close proximity to the retail customers who will be served by the project.

In addition, Consumers asserted that the Joint Applicants' electrical proximity test is flawed. Consumers stated that the Joint Applicants compared the impedance calculation in this case to the impedance calculation in Case No. U-17598 to demonstrate that the two systems are similar. However, in Case No. U-17598, Consumers contended that the typical system impendence for distribution facilities operated at 25 kV and below is between 27 and 121 times greater than the typical system impedance of the 138 kV system. 2 Tr 229. In contrast, Consumers averred that the 46 kV system has an impedance only 6 times greater than the 138 kV system. Consumers stated that, "[w]hen interpreted correctly, . . . Case No. U-17598 shows that the Morenci Project is not comparable to the Consumers Energy facilities classified as transmission in that case. In fact, [Joint Applicants'] testimony actually demonstrates that the Morenci Project is comparable to Consumers Energy's 138 kV lines that supply facilities operated at 25 kV and below, which are lines that are classified as distribution." 2 Tr 229; Consumers' initial brief, p. 21 (emphasis in original). Consumers argued that, based on the above factors, the Morenci Project should be classified as distribution under factor (1).

According to an analysis of the discovery response in Confidential Exhibit S-2.0, page 1, the Staff asserted that approximately 0.5% of ME&C's customers would be located within one mile of the proposed Morenci Project. In addition, the Staff stated that 2.4% of ME&C's customers are located within one mile of the Seneca and MGP substations, and 3% of its customers are within one mile of the Palmyra substation, all of which are classified as distribution. 2 Tr 72; Confidential Exhibit S-2.0, page 3. Therefore, the Staff claimed that it not uncommon for ME&C to have a small number of customers within one mile of a distribution substation. And, because ME&C "is a rural electric and communications co-operative that serves a non-contiguous geographic area" and, because it does not provide service to a village or town, "it is unlikely that

there are a large number of customers within one mile of any of its substations." 2 Tr 73. As a result, the Staff concluded that a small number of customers near a substation should not automatically define the Morenci Project as transmission. In the Staff's opinion, because the Morenci Project is more comparable to ME&C's Seneca and MGP distribution substations, the project should be classified as distribution under factor (1).

In response to Consumers, the Joint Applicants claimed that Consumers inappropriately attempts to expand the simple one-mile geographical radius test established in the January 14 order "to include: applying a county-wide radius, using the percentage of customers within the one-mile radius of ME[&]C's distribution system, and applying a load-based test." Joint Applicants' reply brief to Consumers, p. 8. The Joint Applicants argued that Consumers' test has not been used in prior Commission cases and, in any event, no matter how the test is applied, the percentage of customers along the entire length of the Morenci Project is very small.

The Joint Applicants also objected to Consumers' allegation that their electrical proximity test is flawed. The Joint Applicants stated that:

> Consumers Energy argues that the Joint Applicants misinterpret Consumers Energy's analysis in Case No. U-17598 by comparing the Morenci Project's electrical proximity results with Consumers Energy's electrical proximity results of its 25kV system rather than the 46kV system. (CE Initial Brief, p 21). Instead, it is Consumers Energy that misrepresents its own testimony in Case No. U-17598 where it very clearly claimed that its 138kV facilities have a much lower impedance than its 25kV system and should therefore be classified as transmission; Consumers Energy did not justify its assets based on a comparison to its 46kV.

Id., p. 10. The Joint Applicants asserted that they applied the correct electrical proximity test and comparison of assets, and therefore, the Morenci Project should be classified as transmission under factor (1).

In response to the Joint Applicants' claim that the Morenci Project is comparable to the assets classified as transmission in the October 16 order, Consumers explained that:

> the Company's analysis in Case No. U-17598 actually looked at the percentage of customers located within one mile of the subject assets as a whole rather than just the assets' corresponding substations or any other discrete project components. 2 TR 226-27, 2 TR 252-53 (Confidential). [The Joint Applicants'] geographic analysis therefore excluded customers located within one mile of [the] Morenci Project, and the percentages presented . . . are inaccurate. *Id*.

Consumers' initial brief, p. 20 (emphasis in original). As a result, Consumers contended that the Joint Applicants failed to show that the percentage of customers located near the Morenci Project justifies a transmission classification.

The Staff also disputed the Joint Applicants' comparison of the Morenci Project with the facilities classified as transmission in Case No. U-17598. First, the Staff asserted that "Case No. U-17598 concluded in a settlement agreement involving all the parties to the case. It was not resolved in a contested manner and the Commission did not issue an order setting 3.5% and 4.4% of customers in proximity as a benchmark to be used in future cases. It was not based on a full and complete record capturing all the various adversarial parties' evidence." Staff's initial brief, p. 7. Second, the Staff noted that there are important and substantive differences between the service territories and the methods for calculating customer percentage within a one-mile radius in this case and in Case No. U-17598. The Staff alleged that the Joint Applicants' calculation for customer percentage within one mile included only one part of the asset – the substations – whereas, in Case No. U-17598, Consumers calculated the customer percentage within one mile of the entirety of the asset.

In reply to the Staff, the Joint Applicants averred that the Morenci Project must be compared to other transmission facilities in the MJZ, and that "[i]t is not acceptable to use one standard for Consumers Energy (Case No. U-17598) and Wolverine (Case No. U-17742) but another standard here." Joint Applicants' reply brief to Staff, p. 7. The Joint Applicants asserted that the Staff used a new comparison test to determine proximity and, because the Joint Applicants were unable to

duplicate the Staff's calculation method, they contended that the Commission should not adopt it. In addition, the Joint Applicants stated that the "Staff continues to completely ignore its lack of electrical proximity analysis under Factor One." *Id.*, p. 8.

The Joint Applicants also disagreed that because Case No. U-17598 was resolved by settlement agreement, is not precedential. The Joint Applicants stated that "[t]he settlement agreement is not the basis for comparison. The record's facts and methodologies used leading up to the settlement agreement are the basis; the resulting factual classification of the assets is precedential and must be considered by the Commission." *Id.*, p. 4. Therefore, the Joint Applicants asserted that pursuant to asset comparability tests and Commission precedent, the only appropriate conclusion is for the Commission to determine that the Morenci Project is transmission.

2. Local distribution facilities are primarily radial in character.

The Joint Applicants asserted that, "[u]nder current one-line diagram configurations, the Morenci Project is properly classified as transmission because the underlying distribution/sub-transmission network can be looped (requiring only that the line be closed in) from other ties to the transmission or high-voltage distribution network." Joint Applicants' initial brief, p. 32. According to the Joint Applicants, this configuration is the same as Consumers' Vernon substation and related lines. Thus, the Joint Applicants claimed that the Morenci Project is comparable to Consumers' assets in Case No. U-17598 that are classified as transmission.

The Joint Applicants also argued that Consumers and the Staff failed to consider the comparability requirement for assets located in the MJZ. The Joint Applicants stated that Consumers and the Staff "ignore the 69/12.47 kV comparable transmission facilities in Case No. U-17742 . . . . Had either [Consumers or the Staff] correctly performed the comparability test

or reviewed the proper and updated methodology, they would have reached the conclusion that the Morenci Project, while characterized as radial, is transmission." 2 Tr 160. Based on these considerations, the Joint Applicants contended that the Morenci Project should be classified as transmission under factor (2).

First, Consumers responded that the Joint Applicants did not provide one-line diagrams that support their claim, and the only one-line diagram that was provided fails to show that ME&C's distribution system is looped. 2 Tr 98 (Confidential). According to Consumers, the Joint Applicants "admit that the Midwest Energy distribution system could only be considered looped if a new line were constructed to 'close in' the system." Consumers' reply brief to Joint Applicants, p. 9. Second, Consumers stated that the "Joint Applicants themselves, along with MISO, have consistently characterized the Morenci Project as a radial facility. See 2 TR 201. That characterization is consistent both with the limited engineering drawings submitted by METC with its EPR [expedited project review] request and with other known technical characteristics of the project. 2 TR 200-201." Consumers' initial brief, p. 22. Third, Consumers explained that METC has a new policy that disallows three-terminal networked lines, which as a result, requires that the Morenci Project be radial. 2 Tr 201. Finally, Consumers argued that the Joint Applicants admitted in a discovery response "that a single contingency outage on the Morenci Project would result in a loss of load for customers served by the project," which confirms that the Morenci Project is radial. Consumers' initial brief, p. 22. Therefore, Consumers asserted that, based on the above considerations, the Morenci Project should be classified as distribution under factor (2).

The Staff asserted that the proposed 138 kV line of the Morenci Project is radial in nature and will operate as distribution pursuant to the single-line diagram provided in Confidential Exhibit S-2.1. And, in the event of a single contingency outage, the Staff stated that there would be a loss

of load, which is characteristic of a radial line. Furthermore, the Staff noted that the Morenci Project was referred to as radial and non-looped in an internal Wolverine e-mail and in METC's EPR request. Staff's initial brief, p. 12.

The Staff disputed the Joint Applicants' claim that the Morenci Project is comparable to Consumers' Group B transmission assets in Case No. U-17598. The Staff reiterated that the Commission did not explicitly find that Consumers' Group B assets should be classified as transmission after a fully contested case in the October 16 order; rather, Consumers' Group B assets were classified as transmission through a Commission-approved settlement agreement. The Staff stated that "what the parties agreed to in settlement of a past case has no bearing on how the Commission should determine the classification of the Morenci project in this case." Staff's initial brief, p. 11. In addition, the Staff disagreed with the Joint Applicants' claim that it violated FERC's comparability test because it did not compare the Morenci Project to a 69 kV to 12.47 kV line. The Staff asserted that the Morenci Project "fits the classification of 138 kV to under 25 kV and does not fit the 69 kV to 12.47 kV classification." Staff's initial brief, p. 12.

In reply to Consumers' claim that the Morenci Project must be classified as distribution because of its radial design set forth in the one-line diagram, the Joint Applicants contended that the one-line diagram "provided in the MTEP process does not (and was never intended to) represent the full picture, whereas Joint Applicants' diagram subsequently made available to Consumers Energy in this docket, Exhibit JA-1, provides that necessary detail." Joint Applicants' reply brief to Consumers, p. 11. The Joint Applicants also reiterated that Consumers failed to acknowledge that its Vernon substation, which is classified as transmission, is operated exactly like the Morenci Project.

In response to the Staff, the Joint Applicants alleged that the Staff "relies on a one line diagram that only shows a portion of the interconnection, the portion that only contains the transmission facilities. Staff's analysis does not utilize Staff's own Confidential Exhibit 2.0 which shows that the underlying distribution network is looped, which is the exact same as Case No. U-17598 (even the Vernon assets) and Case No. U-17742." Joint Applicants' reply brief to Staff, p. 9. In the event of a single contingency outage event, the Joint Applicants asserted that load can be served by other substations because of the looped distribution system. Finally, the Joint Applicants contended that the Staff inappropriately relied on Wolverine's internal e-mail that stated the Morenci Project is not looped; the comments in the e-mail were preliminary and not in response to the final proposal for the Morenci Project.

3. Power flows into local distribution systems; it rarely, if ever, flows out.

The Joint Applicants explained that power flow models are used to determine if there is a change in flows, either by fluctuation or bi-directionality, and often include higher voltage facilities but less commonly lower voltage facilities. In the Joint Applicants' opinion, ME&C's:

> looped distribution system falls under the latter category and has not been modeled in the PSS®E [Siemens Power System Simulator for Engineering] software, therefore, Mr. Marshall, based on his expert knowledge and knowledge of the diagram in Exhibit JA-1, testified that he expects the Morenci Project will see a change in flows due to the looped configuration of ME[&]C's distribution system. This result would be expected because, under certain system and load conditions, the Morenci substation could utilize other transmission assets to serve ME[&]C's distribution network when portions of the transmission system are unavailable. (2 Tr 134).

Joint Applicants' initial brief, p. 34. In addition, the Joint Applicants asserted that, in Case No. U-17598, many of Consumers' assets that are classified as transmission do not have bi-directional power flow. As a result, the Joint Applicants contended that the Morenci Project should be classified as transmission under factor (3).

Consumers disagreed that the Morenci Project will have a change in power flow. Consumers stated that it "reviewed the model data submitted by METC to MISO in support of the EPR request, and determined that all power on the Morenci Project will flow from a single transmission tap into a confined geographic area of Midwest Energy's local distribution system, where it will serve only the load of a single distribution provider, and from which it will not and cannot 'flow out.'" Consumers' initial brief, p. 25, quoting 2 Tr 202-203. Additionally, Consumers pointed out that the Joint Applicants admitted that ME&C's distribution system had not been modeled in software to show that the Morenci Project would have power flow changes, only that it was possible for the system to be looped and, as a result, could experience power flow changes. 2 Tr 233-235.

The Staff agreed with Consumers that the MISO models show that power will only flow from existing transmission to the proposed Morenci substation. 2 Tr 202-203. Responding to the Joint Applicants' claim that the Morenci Project will experience bi-directional power flows in the distribution system, the Staff stated that it "requested verification of this claim through discovery and in response, the Joint Applicants conceded that they have not said there would be bi-directional flow on the proposed Morenci line." Staff's initial brief, p. 13; Exhibit S-2.3. The Staff asserted that the Joint Applicants' expectation that there will "be changes in flow is entirely speculative . . . . and lacks evidentiary support." *Id.* The Staff contended that the Joint Applicants have failed to show that the Morenci Project should be classified as transmission under factor (3).

The Joint Applicants confirmed that they never claimed that the Morenci Project would have bi-directional power flow. Rather, Joint Applicants stated that they "used electrical engineering knowledge and characteristics to explain that flows will change when a normally-open line is closed in to make a loop," and "under certain system and load conditions, the Morenci Project can

be used to support, or be supported by, other assets to serve ME[&]C's distribution network, which would result in such changes. Based on these expected changes in flow due to ME[&]C's looped distribution system having access to multiple higher voltage sources, the Morenci Project is transmission." Joint Applicants' reply brief to Consumers, p. 12; Joint Applicants' reply brief to Staff, pp. 10-11.

In response, Consumers contended that the Joint Applicants never "identify or explain the 'certain system and load conditions' under which the Morenci Project would experience changes in power flow." Consumers' reply brief to Joint Applicants, p. 17. Consumers argued that the Joint Applicants' expectations of power flow changes do not provide sufficient evidentiary support to demonstrate that the Morenci Project should be classified as transmission.

4. When power enters a local distribution system, it is not reconsigned or transported on to some other market.

The Joint Applicants averred that the Morenci Project transports 100% of the wholesale electricity from Wolverine to ME&C, where it is resold at retail to end-use customers. 2 Tr 134-135; Joint Applicants' initial brief, p. 36. Therefore, the Joint Applicants asserted that the Morenci Project should be classified as transmission under factor (4).

Consumers stated that the Morenci Project should be classified as distribution because: (1) the entire facility is located within ME&C's service territory in Lenawee County, Michigan; (2) 93% of the load to be served is in one industrial park; (3) the remaining load will be consumed within a six-mile radius of the industrial park; and (4) because ME&C's system is not looped and will not have bi-directional power flow, "all of the power that leaves METC's existing looped transmission system at the Morenci Project tap will be delivered to the new Wolverine distribution substation for the sole use of Midwest Energy end users." Consumers' initial brief, p. 27; 2 Tr 236; 2 Tr 262

(Confidential). Consumers averred that the power entering the Morenci Project will not be reconsigned or transported to another market.

Consumers also asserted that the Morenci Project may be distinguished from Consumers' other assets where power may be reconsigned or transported to another market.

> [T]here is a clear contrast between the Morenci Project and the Consumers Energy facilities classified as transmission in Case No. U-17598. That is because "the assets to be classified as transmission in [Case No. U-17598] actually provided power to both Consumers Energy retail customers and other municipal electric systems and electric cooperatives." 2 TR 236.

Consumers' initial brief, p. 27. In addition, Consumers noted that "the alleged wholesale sales to be made across the Morenci Project would be made between affiliates. CE Br at 29. Under MISO's interpretation of the Seven Factor Test, radial facilities used to make wholesale sales between affiliates are not classified as transmission." Consumers' reply brief to Joint Applicants, pp. 19-20. Consumers stated that ME&C and Wolverine are affiliates and all power entering the Morenci Project will be consumed on ME&C's distribution system; no power will be reconsigned or transported to another market.

Moreover, in Consumers' opinion, "[t]he Seven Factor Test is a measure of facility design rather than the nature of the transactions that may be made using a given facility." 2 Tr 193. Consumers noted that it delivers wholesale power to ME&C through Consumers' distribution facilities pursuant to a wholesale distribution service agreement on file at MISO. Consumers explained that, although FERC has jurisdiction over the terms and conditions of wholesale sales, it does not mean that the facilities used to make the wholesale sales are transmission facilities. If it were decided otherwise, Consumers stated that it would "wrest any facility used for wholesale distribution service from the Commission's jurisdiction over local distribution facilities – contrary to the jurisdictional divide mandated by the Federal Power Act." Consumers' initial brief, p. 29.

In addition, Consumers asserted that the Joint Applicants have not stated that ME&C is a wholesale supplier or that it delivers any power to another market. Consumers averred that ME&C sells all power that enters the Morenci Project to its retail customers at a retail rate. 2 Tr 76, 134-135, 235-236. Therefore, Consumers argued that the Commission should find that the Morenci Project is distribution under factor (4).

The Staff agreed with Consumers that ME&C will sell all the power that enters the Morenci Project to its retail customers and no power will be resold to any other wholesale market. The Staff also noted that "[t]he Morenci project would transport power 10.5 Miles [sic] which is a short distance when compared to the 32-mile average distribution line length of ME[&]C's service territory." Staff's initial brief, p. 15. Based on these considerations, the Staff contended that the Morenci Project should be classified as distribution under factor (4).

In response to Consumers and the Staff, the Joint Applicants disputed that ME&C's service territory is "the market" in this case. By comparison, the Joint Applicants explained that, in Case No. U-17598, Consumers' service territory was "the market" because it "was the owner of the asset in the reclassification and therefore it was their market at issue in that docket. Here, however, METC is the owner of the Morenci Project (not ME[&]C) and therefore, it is METC's market at issue, not ME[&]C's." Joint Applicants' reply brief to Staff, p. 11. And, contrary to Consumers' claim that the Morenci Project will only serve a small number of ME&C's retail customers, the Joint Applicants averred that it is "designed to serve existing (and more) customers, well beyond the Industrial Park." Joint Applicants' reply brief to Consumers, p. 13.

In response to the Staff's claim that the length of the Morenci Project is short compared to ME&C's other distribution lines, the Joint Applicants stated that the comparison should be to

transmission lines, not distribution, and that the length of transmission lines vary in the MJZ from a quarter of a mile to many tens of miles. Joint Applicants' reply brief to Staff, p. 11.

5. Power entering a local distribution system is consumed in a comparatively restricted geographical area.

On page 37 of their initial brief, the Joint Applicants explained that:

> Retail end-use customers do not directly consume power from the Morenci Project. Power passes from generators across the various transmission systems of the utilities in Michigan that own transmission, including Wolverine's facilities, which are dedicated to serving its members and are similar to the Morenci Project. (2 Tr 135). The electricity is then transformed to a lower voltage, i.e., the ME[&]C 12.47kV distribution system and is further transformed for consumption at retail.

Then, according to the Joint Applicants, the Morenci Project will distribute the power to over 50 retail customers that are not located in close proximity to the facility. The Joint Applicants stated that their discovery response, shown in Confidential Exhibit JA-1, "clearly depict[s] and describe[s] the number of customers that will be served beyond the one-mile radius." *Id*., p. 38; 2 Tr 164. Furthermore, the Joint Applicants asserted that, similar to the standard used in Case Nos. U-11283 and U-17598, they used a customer count methodology within a one-mile radius to determine that the power entering the Morenci Project will not be consumed in a geographically restricted area. As a result, the Joint Applicants argued that the Morenci Project should be classified as transmission under factor (5).

Consumers reiterated that 93% of the load to be served by the Morenci Project is located in one industrial park where the new Wolverine distribution substation will be located, which in Consumers' opinion means that the power will be consumed in a relatively restricted geographical area. In response to the Joint Applicants' claim "that the Morenci Project will 'serve end-use customers well beyond' a one-mile radius from the new Wolverine distribution substation," Consumers asserted that the Joint Applicants failed to provide any support for this claim and,

instead, only provided unsupported testimony that ME&C "operates a 'looped distribution system.'" Consumers' initial brief, p. 31, quoting 2 Tr 135.

In addition, Consumers disputed the Joint Applicants' claim that the Morenci Project will potentially serve over 50 customers. Although the Joint Applicants provided an exhibit showing the total number of ME&C's customers in the Morenci, Michigan area, Consumers argued that the exhibit does not show which customers "beyond that one-mile radius will be served by the Morenci Project, and Exhibit JA-1 certainly does not say so." *Id*., p. 32. Consumers contended that the Joint Applicants' position on this issue is premised on the unproven presumption that the Morenci Project will be looped, and they rely on "certain system reconfiguration conditions" that have not been identified. Consumers' reply brief to Joint Applicants, p. 20. Therefore, Consumers asserted that the evidence demonstrates that all of the power entering the Morenci Project will be consumed in a comparatively restricted geographical area.

The Staff asserted that the Seneca substation is approximately six miles from the proposed Morenci substation and the total line length of the Morenci Project is 10.5 miles. The Staff contended that these distances are within the 11-mile definition of a restricted geographical area that was approved by the Commission in Case No. U-11283. Staff's initial brief, p. 17. In addition, the Staff stated that Consumers "currently has numerous 138kV distribution lines that serve less load within a one-mile radius than the proposed Morenci project, meaning that the Morenci project would serve load in a geographical area consistent with existing high voltage distribution lines" and should be classified as distribution. *Id*., p. 16.

Responding to the Joint Applicants' claim that, in Case Nos. U-11283 and U-17598, the Commission established a customer count methodology and a one-mile radius to define the restricted geographical area, the Staff reiterated that Case No. U-17598 was resolved by settlement

agreement and that the Commission did not explicitly approve a customer count methodology. The Staff also asserted that "[c]ustomer counts were not utilized in Case No. U-11283 for the purpose of defining a comparatively restricted geographical area under Factor Five." *Id.*

In response to Consumers, the Joint Applicants contended that Consumers did not apply the correct test to show that all of the power entering the Morenci Project will be consumed by end-users in a geographically restricted area. The Joint Applicants stated that "[t]he proper test, as applied in the past, is the one-mile radius test as determined by information from evidence in Factor One above. This is exactly how Consumers Energy applied it in Case No. U-17598." Joint Applicants' reply brief to Consumers, p. 14. Moreover, the Joint Applicants asserted that the correct ratio to be applied is a customer number ratio and not a load percentage ratio.

The Joint Applicants also disputed the Staff's calculation of load that would be consumed within a one-mile radius. The Joint Applicants contended that, rather than using the historically approved customer percentage comparison, the Staff is attempting to present a new load percentage comparison. The Joint Applicants explained that, in this case, the Staff compared the percentage of load inside and outside the one-mile radius, whereas, in Case Nos. U-11283 and U-17598, the number of customers inside and outside the one-mile radius were compared. Finally, the Joint Applicants asserted that the Staff's comparison to Case No. U-11283 should be rejected because the January 14 order was issued before the MJZ was formed and, as a result, Case Nos. U-17598 and U-17742 are more relevant to this case.

6. Meters are based at the transmission/local distribution interface to measure flows into the local distribution system.

The Joint Applicants stated that for the Morenci Project, "[t]here will be a meter at [the] bulk power station between the transmission system to the ME[&]C distribution system–the high side of substation is transmission and the low side of substation is distribution. The meter separates

transmission from distribution." Joint Applicants' initial brief, p. 39; 2 Tr 135. According to the Joint Applicants, the meter will record the wholesale transmission charges to the bulk power substations and the locations provide the metering boundary, "which are the only location to measure the flow of power into the local distribution system." *Id*. In addition, the Joint Applicants noted that the Morenci Project is located within the metered bulk electric power boundary of MISO, which assures MISO operational control. Based on these factors, the Joint Applicants contended that the Morenci Project should be classified as transmission under factor (6).

Consumers stated that the Joint Applicants are raising form over function. In its initial brief, Consumers contended that:

> the location of the meter is secondary to its purpose, which is to "measure the amount of power leaving the transmission system and entering the distribution system." 2 TR 240, 2 TR 266 (Confidential). As Joint Applicants admit, that is exactly the purpose of the meter on the Morenci Project. 2 TR 136, 166. The meter, as both Mr. Marshall and Mr. King explain, is designed "to measure the flow of power into the local distribution system." *Id*.

Consumers' initial brief, p. 34 (emphasis in original). Consumers asserted that the only difference between power measured at the Wolverine distribution substation and power measured at the Morenci Project tap is an adjustment for losses along the 10-mile line, which is made using "a well-known and easily calculated formula." 2 Tr 240. Consumers averred that, after compensating for losses, the flow of power leaving METC's transmission system at the Morenci Project tap is the same as the flow of power entering ME&C's distribution system and, therefore, the Morenci Project should be considered distribution under factor (6).

Because the Joint Applicants have the ability to choose where to place the meter, the Staff believes that the meter location was selected for billing purposes. The Staff stated that, "[w]hile the Joint Applicants claim that 'at the meter point MISO Transmission Service ends' as a reason

this meter point was chosen . . . , Staff points out that this is only the case if the project is presupposed to be transmission." Staff's initial brief, p. 17.

According to the Joint Applicants, Consumers' claim that the purpose of the meter is to measure the flow of power from the transmission system into the distribution system contradicts Consumers' position in Case No. U-17598. The Joint Applicants stated that, "[h]ad Consumers Energy used this purported methodology in the case for Case No. U-17598, Consumers Energy would have continued to use the meter location at the upstream 138kV interface with the looped 138kV system as they had been using since 1998. However, they instead used the meter location at the 138/46kV direct interface." Joint Applicants' reply brief to Consumers, p. 15. The Joint Applicants contended that the meter location for the Morenci Project was chosen because it is common utility practice to place the meter at the location where power flows into the distribution system.

The Joint Applicants also objected to the Staff's claim that "'gaming' is taking place with the location of the meter." Joint Applicants' reply brief to Staff, p. 13. The Joint Applicants contended that the meter must be located where it is designed to be placed and, in this case, the placement of the meter demonstrates that the Morenci Project is transmission. The Joint Applicants claimed that the Staff admitted this fact.

7. Local distribution systems will be of reduced voltage.

The Joint Applicants stated that the Morenci Project will be operated at 138 kV and ME&C's local distribution system operates at 12.47 kV. The Joint Applicants asserted that "the voltage level of the facility [will] be a magnitude of 11.1 times higher than the local distribution system's voltage. (*Id.*). This order of magnitude shows that the Morenci Project is not of a reduced voltage as compared to the local distribution system it serves" and, therefore, is transmission. Joint

Applicants' initial brief, p. 41; 2 Tr 136. The Joint Applicants also noted that Wolverine's 69 kV and two 138 kV lines that went to 12.47 kV looped systems were classified as transmission in Case No. U-17742. The Joint Applicants argued that the Morenci Project is similar to Wolverine's transmission assets in Case No. U-17742 and, therefore, should be classified as transmission under factor (7).

Consumers asserted that the Joint Applicants failed to provide persuasive evidence that the Morenci Project should be classified as transmission due to its voltage. Consumers stated that, "[b]ecause the Morenci Project would be a 138 kV radial line serving a distribution substation with a secondary voltage below 25 kV, 'the overall scheme and purpose of the project suggests it is akin to Consumers Energy's 138 kV lines classified as distribution.'" Consumers' initial brief, p. 35. And, in response to the Joint Applicants' claim that the Morenci Project is similarly configured to Wolverine's 69 kV and 138 kV lines to 12.47 kV looped systems that were classified as transmission in Case No. U-17742, Consumers argued that neither the Morenci Project nor ME&C's distribution system are looped and, therefore, are not comparable.

Although the Staff would concede that 138 kV is not reduced voltage, the Staff asserted that the Morenci Project is radial and should be classified as distribution. The Staff noted that, in Case No. U-11283, the Commission found that 138 kV radial lines connecting to 46 kV or less were distribution. And, the Staff averred that the settlement agreement in Case No. U-17598 stated that "all radial lines of 138 kV connecting to voltages above 25 kV would be classified as transmission. This leaves in place the Commission ruling that radial lines of 138 kV connecting to 25 kV and below remains distribution." Staff's initial brief, p. 19. In response to the Joint Applicants' claim that the Morenci Project is comparable to Wolverine's 69 kV to 12.47 kV transmission line, the

Staff argued that it would be more accurate to compare 138 kV radial lines that deliver power to 25 kV lines.

The Joint Applicants alleged that Consumers and the Staff did not properly compare the Morenci Project to other assets classified as transmission in the MJZ. In addition, the Joint Applicants argued that whether the Morenci Project is "radial or looped has nothing to do whatsoever with voltage level and Factor Seven." Joint Applicants' reply brief to Staff, p. 14. According to the Joint Applicants, the Morenci Project fails to meet the distribution criteria of factor (7) because it is not of reduced voltage; therefore, it must be classified as transmission.

D. Other Issues

In addition to the seven-factor test, the Joint Applicants asserted that other factors weigh in favor of classifying the Morenci Project as transmission. The Joint Applicants stated that because the Morenci Project will not provide local distribution service and will not be used to make sales of electric energy to end users, the project should be classified as transmission. According to the Joint applicants, the Morenci Project will be used to provide wholesale transmission service. The Joint Applicants also averred that the Morenci Project "will provide transparent and non-discriminatory access to the wholesale power market for Wolverine, ME[&]C, and ME[&]C's retail customers. This facilitates a wholesale customer that already takes MISO transmission service and further integrates that customer's loads and resources. Local distribution facility designation is not appropriate if such participation is involved for sellers and buyers." Joint Applicants' initial brief, pp. 42-43.

In addition, the Joint Applicants asserted that Consumers and the Staff disregard the comparability analysis and fail to acknowledge that both Consumers and Wolverine are Network Integration Transmission Service (NITS) customers of MISO, owners of transmission facilities in

the MJZ, and retail sellers. The Joint Applicants argued that if Consumers' and the Staff's positions are accepted by the Commission, "Wolverine as a NITS customer [must] take a back seat to the interest of Consumers Energy's retail customers. Moreover, Staff concludes that regardless of the facility classification, Consumers Energy's retail customers should not pay for socialized grid costs associated with the Morenci Project." Joint Applicants' initial brief, p. 43. Therefore, if the Commission approves Consumers' and the Staff's positions in this case, the Joint Applicants alleged that it would lead to a discriminatory result wherein ME&C's retail customers would be required to bear the entire cost of a project that should be classified as transmission located in the MJZ.

Furthermore, the Joint Applicants asserted that the Staff's position in this case produces anticompetitive impacts for customers and the market. The Joint Applicants explained that the Staff's proposal to reduce the size of the facility used to serve ME&C results in less transmission access for ME&C. And, if Consumers controlled the facility that allows ME&C to access the MISO market, the Joint Applicants contended that it will limit their opportunities in relation to expanded wholesale power supply and purchase agreements.

Finally, the Joint Applicants asserted that, according to FERC, the primary functionality of a facility (i.e., its purpose for wholesale or retail services) is significant, along with whether "the collection of facility costs are reflected in retail rates." Joint Applicants' initial brief, p. 44. The Joint Applicants averred that there is no retail service associated with the Morenci Project.

> The Staff and Consumers Energy distribution "solution" creates fatal concerns that ME[&]C or third party IPP [independent power producer] suppliers located behind a ME[&]C load retail meter or on ME[&]C's retail system would be able to access the MISO market. Favoring the retail customers of Consumers Energy over the interests of wholesale customers is inconsistent with FERC Order 888 and the Commission's policy objectives. It is not a simple matter of costs and size of a facility.

Id.

In response to the Joint Applicants, Consumers asserted that it is not attempting to block ME&C's access to the transmission system. Rather, Consumers contended that the basis of its efforts are to ensure that the Morenci Project is properly classified under the seven-factor test. Consumers' reply brief to Joint Applicants, p. 24. Consumers also stated that, in the event the Morenci Project is not constructed, customers in the Morenci area will have the ability to access transmission service. Consumers explained that the Joint Applicants may propose an appropriately classified transmission project or they could pursue transmission service in conjunction with a wholesale distribution alternative. Consumers stated that, in any event, "Midwest Energy's customers already have access to wholesale distribution service, and the Morenci Project is not the only facility that could be constructed to bring additional wholesale power to the Morenci area." Consumers' initial brief, p. 5.

In response to the Joint Applicants' claim that the Morenci Project is necessary to permit third-party IPP suppliers and distributed energy resources (DER) to access the MISO market, Consumers stated that the Joint Applicants' argument on this issue is completely speculative and unsupported by evidence. Consumers' reply brief to Joint Applicants, p. 29. Consumers argued that the Joint Applicants failed to explain how those programs depend upon program participants having direct access to the MISO market and why the Morenci Project is the only option for this access. And, according to Consumers, DER on ME&C's system already have access to the MISO market because Consumers "is also the wholesale supplier to Midwest Energy in areas outside of Morenci, including through two other interconnections just in Lenawee County. See 2 TR 189, 219." *Id*. Therefore, Consumers asserted that the Commission should disregard the Joint Applicants' claims on these issues.

Commission Determinations

A. Preliminary Issues

The Joint Applicants alleged that Consumers refused to answer certain discovery questions, delayed the Morenci Project in bad faith, and attempted to poach ME&C's customers. Joint Applicants' initial brief, pp. 20-21. The Commission reviewed the claims and finds that, other than testimony from a witness expressing concern about these issues, the Joint Applicants failed to provide evidence to support the claims. *See*, 3 Tr 320. In addition, the Commission finds that Consumers persuasively refuted the Joint Applicants' claims in its reply brief. *See*, Consumers' reply brief, pp. 24-28.

B. Comparability Standard

Prior to applying the seven-factor test to determine whether the Morenci Project should be classified as transmission or distribution, the Joint Applicants asserted that "consistent comparability of assets is critical to classification." Joint Applicants' initial brief, p. 23. Accordingly, the Joint Applicants contended that the Morenci Project must "be classified in a similar manner to facilities that the Commission has approved as transmission for other Michigan utilities" in the MJZ. *Id.*, p. 28. In response to Consumers' claim that it owns more than 150 line segments configured exactly like the Morenci Project that are classified as distribution under the seven-factor test, the Joint Applicants argued that there are no distribution facilities in the MJZ – only transmission facilities – and, therefore, Consumers inappropriately compared the Morenci Project to distribution assets. The proper test, according to the Joint Applicants, is to compare only the assets that have been classified/reclassified as transmission in the MJZ to the Morenci Project. *See*, Joint Applicants' reply brief, p. 4.

In support of their argument, the Joint Applicants rely on a very specific excerpt from *MISO I*, which states that "comparability requires that all of the facilities included in the Joint Zone be classified as transmission facilities with similar application of the seven factor test." *MISO I* at 53; Joint Applicants' initial brief, pp. 22-23. First, the Commission notes that the Joint Applicants' argument seems to presuppose that the Morenci Project is transmission because, as pointed out by the Joint Applicants, "facilities included in the Joint Zone" can only be transmission facilities. Second, even if the Morenci Project is not presumed to be transmission, the Commission declines to adopt the Joint Applicants' interpretation of *MISO I*. According to the Joint Applicants, any proposed facility that happens to be located in the geographical area of the MJZ *must* be compared with an asset classified as transmission. The Commission disagrees.

MISO I involved the establishment of a new joint pricing zone (i.e., the MJZ) and the question of whether FERC should accept the Commission's seven-factor determination classifying Wolverine's facilities as transmission and, as a result, whether Wolverine's facilities were appropriately included in the new joint pricing zone. FERC stated that:

> it is important that Wolverine and MPPA (participants in the joint pricing zone with METC) be compensated for their transmission facilities on a basis comparable to the compensation received by METC. This comparability requires that all of the facilities in the Joint Zone be classified as transmission facilities with similar application of the seven factor test. We note that it was the Michigan Commission that performed the seven factor test that was used by [FERC] to classify the facilities now owned by METC. Therefore, we find it reasonable, as we did in Midwest ISO-Wolverine, to require that other facilities in the Joint Zone with METC meet the requirements of the seven factor test as applied by the Michigan Commission to classify the facilities now owned by METC. The combined nature of the Joint Zone here justifies our giving considerable weight to the Michigan Commission's application of the seven factor test. We reviewed the Michigan Commission's August 26 Order and we believe the conclusion reached in classifying Wolverine's facilities is comparable to the conclusion reached when the Michigan Commission classified the METC (formerly Consumers) facilities. The seven factor test as interpreted in the GDS [Associates, Inc.] study may be appropriate under different circumstances; however we reiterate that comparability of facilities is the key factor here because the relevant facilities are part of a joint

> pricing zone and not a single pricing zone. We emphasize that we are accepting the conclusions of the seven factor test as interpreted by the Michigan Commission here for pricing purposes in the Joint Zone because of the decisions already made regarding pricing for the METC system. *We are making no determination as to how we will perform or interpret the seven factor test for purposes other than those presented to us in the instant case*.

MISO I, at 53-54 (emphasis added). Therefore, the Commission finds that FERC stated that the Commission must apply the seven-factor test in a similar manner to facilities requesting classification. However, there is no language limiting the Commission to use, for comparison purposes, only those facilities that have already been classified/reclassified as transmission in the MJZ.

The purpose of comparability is to ensure consistent application of the seven-factor test throughout the pricing zone. This necessarily involves examination of facilities classified as distribution and transmission under the seven-factor criteria. And, as demonstrated in the seven-factor analysis below, even if the Commission were to only consider previously-classified transmission facilities (and disregard facilities classified as distribution, as suggested by the Joint Applicants), the final determination would still be the same and it is comparable to other Commission decisions.

C. The Seven-factor Analysis

In Order 888, FERC explained that the seven-factor test is "seven indicators of local distribution" that are "to be evaluated on a case-by-case basis." 61 Fed Reg 21619, 21620. According to FERC, the intent behind the seven-factor test is to assist the Commission and FERC in sorting facilities into distribution and transmission categories for jurisdictional purposes. *Id*. at 21627. FERC stated that it "will give deference to [the states'] determinations as to which facilities are transmission and which are local distribution, provided that the states, in making such determinations, apply the seven criteria discussed in the NOPR . . . ." *Id*. at 21625. Accordingly,

the Commission applied "the seven criteria discussed in the NOPR" to the evidence provided by the parties in this case, as set forth below.

1. Local distribution facilities are normally in close proximity to retail customers.

The Joint Applicants asserted that the Commission established a one-mile radius test in Case No. U-11283 to determine whether a facility was in close proximity to retail customers and, therefore, a distribution facility. The Commission's January 14 order did not explicitly establish a one-mile radius test. Instead, the source of the purported one-mile radius test in Case No. U-11283 is factor (1) of Consumers' seven-factor analysis, which is set forth in its application:

> Indicator 1: Local distribution facilities are normally in close proximity to retail customers. Lines with nominal voltages of 120 kV and above are generally not routed in close proximity to retail customers. In contrast to lines with higher nominal voltages, the 46 kV lines (and lines with lower nominal voltages) have been intentionally routed as close to retail customers as practical. ***Over sixty percent of Consumers Power's load is located within one mile of 46 kV lines.*** This indicator supports a conclusion that Consumers Power's 46 kV lines should be classified as local distribution facilities, while lines with nominal voltages of 120 kV and above should, with the exception of approximately 180 miles of 138 kV radial lines, be classified as transmission facilities.

Consumers' application, Case No. U-11283, p. 5 (emphasis added).

The January 14 order did not provide a robust analysis of factor (1) and, instead, simply stated that "[t]he Commission is persuaded that the FERC's seven factors support a determination that Consumers' 46 kV facilities should be classified as distribution. As Consumers observes, factors (1) and (6) support this finding." January 14 order, p. 7. Therefore, the January 14 order did not establish a bright-line test for factor (1) that involves a one-mile radius; rather, the Commission found *persuasive* that over 60% of Consumers' customers were located within one mile of its 46 kV lines, which *supported* the distribution criteria set forth in factor (1).

In this case, the Commission finds persuasive Consumers' and the Staff's arguments regarding factor (1). It is undisputed that ME&C's proposed load growth is located entirely in Lenawee

County, Michigan. Joint Applicants' application, p. 3; 2 Tr 199. And, pursuant to confidential exhibits and testimony provided by Consumers and the Joint Applicants, the Commission finds that 93% of the project's customers will be in the same industrial park where the Morenci substation will be located. 2 Tr 101, 236; 2 Tr 263-264 (Confidential); Confidential Exhibit CE-19. And, as noted by the Staff, ME&C has three distribution substations near the proposed Morenci substation that have "a lower percentage of customers served within one mile of the substation than the 3.5% of customers within one mile that the Joint Applicants' [sic] use as a benchmark." Staff's initial brief, p. 6, citing 2 Tr 72-73.

By comparison, the only evidence offered by the Joint Applicants that customers are not within close proximity to the Morenci Project is: (1) a geographical analysis showing that only 1.0% of ME&C's customers are within one mile of the project, (2) the Morenci Project is comparable to Consumers' assets classified as transmission in Case No. U-17598, and (3) the much lower impedance of ME&C's assets shows that retail customers are not in close proximity electrically to the Morenci Project. 2 Tr 132.

The Commission finds that the Joint Applicants' geographical analysis of the Morenci Project is not akin to the geographical analysis performed by Consumers in Case No. U-17598. In that case, Consumers analyzed the percentage of customers located within one mile of the assets as a whole rather than the percentage of customers within one mile of one part of the asset – the substation – as was done by the Joint Applicants in this case. 2 Tr 226-227; 2 Tr 252-254 (Confidential). In addition, the Commission notes that Case No. U-17598 was concluded by settlement agreement and, therefore, it does not contain a record based on a fully litigated case and the October 16 order does not include Commission determinations for each factor of the seven-

factor test. As a result, the October 16 order also does not have specific language establishing a benchmark or bright-line test for customer proximity.

Furthermore, the Commission agrees with Consumers that the Joint Applicants' electrical proximity test is flawed. The Joint Applicants claimed that the common impedance of ME&C's 12.47 kV distribution system is 137 times greater than the Morenci Project's 138 kV impedance, which, according to the Joint Applicants, makes it comparable to the assets classified as transmission in Case No. U-17598. 2 Tr 132. However, as noted by Consumers, the analysis in Case No. U-17598 involved distribution facilities operated at 25 kV and below, which were then compared to 138 kV lines being reclassified as transmission. Conversely, if the Joint Applicants were attempting to compare the Morenci Project with the 46 kV facilities classified as transmission in Case No. U-17598, the Commission finds that the 46 kV lines have an impedance of only six times that of Consumers' 138 kV system. 2 Tr 229. In either scenario, the Morenci Project does not have similar impedance characteristics to the assets classified as transmission in Case No. U-17598.

In sum, the Commission finds that based on the above facts and analysis, the Morenci Project should be classified as distribution under factor (1).

2. Local distribution facilities are primarily radial in character.

The Commission agrees with the Staff and Consumers that the Morenci Project is radial in nature. As noted by the Staff, the single-line diagram in Confidential Exhibit S-2.1 shows that the Morenci Project will operate as distribution. In addition, the MTEP18 EPR submitted by METC states that it "proposes to build a new single 10.5 miles of 138kV radial line by tapping Moore Road – Beecher line following the Wolverine's 10 MW of load interconnection request." Exhibit CE-5, p. 4. Furthermore, the Commission finds that the following other factors demonstrate that

the Morenci Project is radial: (1) the Joint Applicants and MISO acknowledge that the distribution system is not looped; (2) METC did not propose a three-breaker 138 kV ring station for the Morenci Project, so the project must not qualify as a networked third terminal; and (3) a single contingency outage would result in loss of load for customers served by the Morenci Project. *See*, Exhibit CE-18, p. 1; 2 Tr 201; Exhibit CE-22.

Although the Joint Applicants claimed that they provided one-line diagrams showing that the underlying distribution/sub-transmission network *can* be looped, the Commission finds that the Joint Applicants failed to demonstrate that the Morenci Project, as currently designed, is *actually* looped. 2 Tr 159; Confidential Exhibit S-2.1; 2 Tr 98 (Confidential). In addition, the Joint Applicants admitted that the Morenci Project is a single 138 kV circuit and, if there was a single contingency outage event, all customers served by the project would initially experience an outage. The Joint Applicants alleged that "there is the ability to perform switching operations to restore customers and provide service via the 46kV system." Exhibit CE-22. However, the Commission reviewed the Joint Applicants' testimony and exhibits and finds that they have failed to explain or demonstrate that the Morenci Project is capable of performing the proposed switching operations.

Finally, the Joint Applicants claimed that the Morenci Project is comparable to Consumers' transmission assets in Case No. U-17598, Wolverine's transmission assets in Case No. U-17742, and Consumers' Vernon substation. However, the Commission agrees with Consumers that the Joint Applicants improperly compared the Morenci Project, which is not looped, to assets that are looped in Case Nos. U-17598 and U-17742. *See*, 2 Tr 133; Joint Applicants' initial brief, p. 34, n. 30; Consumers' reply brief to Joint Applicants, pp. 12-13.

Consumers also explained that the Morenci Project is not comparable to the Vernon substation.

> The Vernon Substation is served by a 138 kV line, and the substation transforms 138 kV to 46 kV (the 46 kV is then further transformed to distribution voltages of less than 25 kV). Because the Vernon Substation first transforms to 46 kV, it was classified as transmission in Case No. U-17598, consistent with Consumers Energy's other 138 kV lines that terminate at bulk power substations with a secondary voltage of 46 kV. This is unlike the Morenci Project which is a 138 kV radial line that will serve a distribution substation that directly transforms the voltage from 138 kV to less than 25 kV (specifically, 12.47 kV).

2 Tr 232. The Commission finds that the Joint Applicants failed to provide testimony or exhibits to refute Consumers' testimony on this issue.

The Commission also agrees with the Staff that Case Nos. U-17598 and U-17742 are not useful for comparability purposes because both cases were resolved by settlement agreement, do not contain fully litigated records, and do not include Commission determinations for each factor of the seven-factor test.

Therefore, based on the above facts and analysis, the Commission finds that the Morenci Project is radial in character pursuant to factor (2) and should be classified as distribution.

3. Power flows into local distribution systems; it rarely, if ever, flows out.

Consumers noted that, in the model data submitted with the EPR request to MISO, "power flows into the Morenci Project towards the new Morenci Substation. With only load – and no generation or additional 138 kV lines connecting to the Morenci Substation – there can be no power flowing out of the Morenci Project back onto METC's looped transmission system." 2 Tr 202-203; Confidential Exhibit CE-3, p. 4; Exhibit CE-5, p. 4; Consumers' initial brief, p. 25.

According to the Joint Applicants, they never claimed that the Morenci Project would have bi-directional power flow; rather, they asserted that "under certain system and load conditions, the Morenci Project can be used to support, or be supported by other assets to serve ME[&]C's

distribution network . . . ." Joint Applicants' reply brief to Consumers, p. 12. However, the Commission finds that the Joint Applicants did not provide testimony, evidence, or discovery responses explaining the "certain system and load conditions." *Id*; *see*, Staff's initial brief, p. 13; Consumers' reply brief to Joint Applicants, p. 17; Exhibit S-2.3.

The Joint Applicants also claimed that many of Consumers' assets in Case No. U-17598 that are classified as transmission do not have bi-directional power flow. Consumers responded that, in Case No. U-17598, it demonstrated power flow changes through modeling. Consumers' reply brief to Joint Applicants, p. 17. The Commission notes that the Joint Applicants admit that they have not modeled the Morenci Project to show bi-directional power flow. Instead, the Joint Applicants relied on expert knowledge and Confidential Exhibit JA-1 to demonstrate the expectation that the Morenci Project will experience a change in power flow if the ME&C distribution system is looped. Joint Applicants' initial brief, p. 34.

The Commission agrees with Consumers and the Staff that the Joint Applicants have failed to demonstrate that the Morenci Project or the ME&C distribution system is looped. Therefore, the Joint Applicants' expectation that the Morenci Project will experience a change in power flow is unproven through modeling and, therefore, is speculative. *See*, Staff's initial brief, p. 13; Consumers' reply brief to Joint Applicants, p. 17. In sum, the Commission finds that the above facts and analysis support the conclusion that power can only flow through the Morenci Project to ME&C's distribution system for consumption by retail end users, thus demonstrating that the Morenci Project should be classified as distribution under factor (3).

4. When power enters a local distribution system, it is not reconsigned or transported on to some other market.

The Joint Applicants stated that the "Morenci Project solely transports wholesale power and reconsigns 100% of the wholesale power that flows across it from Wolverine to ME[&]C." Joint

Applicants' initial brief, p. 36. However, the Commission agrees with Consumers that the Joint Applicants' market analysis under factor (4) is misleading. Consumers explained that the Joint Applicants' "analysis focuses on the ownership of two parts of a single electric circuit or path between METC's existing 138 kV system and Midwest Energy's existing (or expanded) 12.47 kV system. The mere fact that Joint Applicants have elected to divide ownership of the facilities required to serve the load in this manner is not sufficient to argue for the creation of multiple 'markets.'" 2 Tr 236.

Although Consumers provided several persuasive reasons that the Morenci Project should be classified as distribution under factor (4), the Commission finds most persuasive Consumers' assertion that "*all of the power* leaving METC's existing looped transmission system and *entering the Morenci Project will be consumed by end users on Midwest Energy's distribution system*." 2 Tr 236 (emphasis added); *see*, 2 Tr 199, 230, 234, 237-238; *see*, Consumers' initial brief, pp. 27-29. As set forth in factor (3) above, as it is currently designed, the Morenci Project is not looped. Therefore, as noted by Consumers, all of the power flowing through the Morenci Project and entering ME&C's distribution system will be delivered to ME&C's end users and the power cannot be reconsigned or transported to another market. The Staff agreed with Consumers.

Consumers contended that the Morenci Project is not comparable to the assets classified as transmission in Case No. U-17598 because those assets provided power to Consumers' retail customers and other municipal electric systems and electric cooperatives. Therefore, in that case, a portion of the power flowing through the assets was reconsigned to another market. *See*, 2 Tr 236; Consumers' initial brief, p. 27. The Commission agrees.

The Commission notes that MISO's Business Practice Manual (BPM) states that a radial facility may be considered transmission if it "deliver[s] power to two or more wholesale customers

(distribution providers) who are not affiliates of each other." 2 Tr 209, quoting MISO's BPM-028, Section 3.1. According to the Joint Applicants, ME&C is a member of Wolverine's cooperative. Joint Applicants' initial brief, p. 4. In this case, the Joint Applicants provided no evidence that ME&C and Wolverine would not be considered affiliates in this scenario. Thus, the Commission finds that the alleged wholesale sales that would be made across the Morenci Project would be sales between affiliates and the Morenci Project should not be classified as transmission.

Therefore, the Commission finds that because all of the power leaving METC's existing looped transmission system, passing through the Morenci substation, and entering ME&C's distribution system will not be transported or consigned to another market, the Morenci Project is distribution under factor (4).

5. Power entering a local distribution system is consumed in a comparatively restricted geographical area.

The Joint Applicants claimed that the Morenci Project will distribute power to over 50 retail customers that are not located in close proximity to the facility. In support of their claim, the Joint Applicants asserted that Confidential Exhibit JA-1 specifically shows the number of customers that will be served beyond a one-mile radius around the Morenci Project. The Joint Applicants also stated that they used a customer count methodology within the one-mile radius, similar to the methodology used by Consumers in Case Nos. U-11283 and U-17598, to demonstrate that the power entering the Morenci Project will not be consumed in a geographically restricted area.

The Commission agrees with Consumers that, although Confidential Exhibit JA-1 shows the total number of customers in the Morenci, Michigan area, it does not differentiate between the customers to be served by the Morenci Project and the customers who will continue to be served by other substations. Therefore, it is impossible to discern whether power will be consumed beyond the immediate area around the Morenci Project.

The Commission also agrees with the Staff that, although Consumers may have employed a customer-count-within-a-one-mile-radius methodology for factor (1) in Case No. U-11283, the Commission did not establish this methodology as the standard for factor (5) in the January 14 order. Rather, for factor (5) in Case No. U-11283, the Commission focused on the average line length of Consumers' 46 kV lines and the average distance of flows over those lines and found that MPPA/Michigan South Central Power Agency failed to demonstrate that Consumers' 46 kV system should be classified as transmission under factor (5). *See*, January 14 order, pp. 4-7.

And, as discussed in factor (1) above, Case No. U-17598 was concluded by settlement agreement, does not contain a record based on a fully litigated case, and does not include Commission determinations for each factor of the seven-factor test. As a result, the October 16 order does not contain specific language establishing a benchmark or bright-line test for customer proximity or a geographically restricted area.

Even though the customer-count-within-a-one-mile-radius methodology was not explicitly adopted by the Commission as the standard for factor (5), the Joint Applicants and Consumers relied on the methodology in presenting their positions on this factor. Therefore, in order to make a determination for this factor, the Commission shall review and analyze the parties' customer-count-within-a-one-mile-radius positions. However, the Commission would like to be clear that it is not adopting the customer-count-within-a-one-mile-radius methodology as the standard or as a bright-line test for factor (5). The Commission finds that the methodology is a useful reference but should not be the only consideration for this factor.

Turning to the parties' positions, in the discovery response in Exhibit CE-25, the Joint Applicants state that there are four customers located within one mile of the new Morenci substation and that they expect that all four customers will be served by the Morenci Project.

Consumers further explained that 93% of the total load to be served by the Morenci Project is in one industrial park where the new Morenci substation will be located. 2 Tr 237; 2 Tr 263 (Confidential). The Joint Applicants do not dispute this. Therefore, the Commission finds that most of the power entering ME&C's distribution system will be consumed in a comparatively restricted geographical area.

6. Meters are based at the transmission/local distribution interface to measure flows into the local distribution system.

The Joint Applicants contended that the meter location – the high side of the substation – demonstrates that the Morenci Project should be classified as transmission under factor (6). Consumers disagreed, asserting that the location of the meter is unimportant compared to its function. The function, according to Consumers, is to measure the amount of power leaving the transmission system and entering the distribution system. Therefore, Consumers asserted that the Morenci Project should be classified as distribution. In the Staff's opinion, the Joint Applicants chose the meter location for billing purposes.

The Commission finds Consumers' position on this issue most persuasive. Consumers stated that the only difference between the power measured at the Wolverine substation and the power measured at the Morenci tap is an adjustment for losses, which is calculated using "a well-known and easily calculated formula." 2 Tr 239-240. Otherwise, the flow of power leaving the METC transmission system is the same as the flow of power entering ME&C's distribution system and it matters not where the meter is placed. As noted by the Staff, the Joint Applicants have the ability to choose where to locate the meter and, therefore, the outcome of this factor can be predetermined. Therefore, based on the facts and analysis set forth above, the Commission finds that the Morenci Project should be classified as distribution under factor (6).

7. Local distribution systems will be of reduced voltage.

METC explained that the Morenci Project will be a 138 kV radial line serving a distribution substation with a secondary voltage of 12.47 kV. *See*, Exhibit CE-5, p. 4. Therefore, according to the Joint Applicants the voltage of the Morenci Project will be of a magnitude of 11.1 times higher than the voltage of ME&C's distribution facility and should be classified as transmission.

Consumers contended that it has 209 miles of radial 138 kV lines – the vast majority of which serve distribution substations with secondary voltages below 25 kV – that are classified as distribution under the seven-factor test. 2 Tr 206-207. Thus, as noted by Consumers, the Morenci Project is directly comparable to those radial 138 kV lines in the MJZ. 2 Tr 207. The Staff agreed.

The Joint Applicants also asserted that the voltage configuration of the Morenci Project is similar to Wolverine's looped transmission assets in Case No. U-17742. However, as pointed out by Consumers, neither the Morenci Project nor ME&C's distribution system are looped and, as a result, are not comparable. 2 Tr 201; 2 Tr 256-258 (Confidential); Consumers' initial brief, pp. 15, 35.

The Commission finds Consumers' position persuasive on this issue. Because the Morenci Project is appreciably comparable to Consumers' radial 138 kV lines that serve distribution systems with secondary voltage of 25 kV or below and that are classified as distribution, the Commission finds that the Morenci Project is of reduced voltage and should be classified as distribution under factor (7).

D. Other Issues

In Order 888, FERC stated that "we recognize that in some cases the Commission's seven technical factors may not be fully dispositive and that states may find other technical factors that

may be relevant." 61 Fed Reg 21619, 21627. In addition, FERC stated that "[f]or unbundled retail wheeling, the NOPR proposed to apply a combination functional-technical test that would take into account technical characteristics of the facilities used for the wheeling." *Id*. at 21619. Accordingly, in the January 14 order, the Commission adopted an approach that, in combination with the seven-factor test, classifies facilities on a case-by-case basis consistent with the functional use of the facility.

The Joint Applicants alleged that the Morenci Project will provide transparent and non-discriminatory access to the wholesale power market for Wolverine, ME&C, and ME&C's retail customers; therefore, if buyers and sellers are involved, the purpose of the Morenci Project is transmission.

The Commission agrees with Consumers that "[t]he Seven Factor Test is a measure of facility design rather than the nature of the transactions that may be made using a given facility." 2 Tr 193. Although wholesale transactions occur at the Morenci facility, it does not mean that its function is a transmission facility. Consumers' initial brief, pp. 28-29. Rather, as discussed in factor (4) above, the function of the Morenci Project is to deliver the power leaving METC's looped transmission system to ME&C's distribution system for exclusive consumption by ME&C's retail end users. In addition, as set forth in factor (4) above, the Morenci Project does not transport or reconsign power to another market. Therefore, the Commission finds that pursuant to the functional-use approach, the Morenci Project is distribution.

The Joint Applicants also contended that Consumers' and the Staff's positions in this case ignore the comparability standard, improperly recommend that the Morenci Project be classified as distribution, and require ME&C retail customers to cover the entire cost of the Morenci Project, which is "unduly discriminatory." Joint Applicants' initial brief, p. 43. Consumers responded that

its "concern in this case has always been to ensure that the Morenci Project is properly classified as distribution under the Seven Factor Test and this Commission's longstanding framework for applying that test. . . . Consumers does not dispute the principle of transmission cost allocation among Michigan Joint Zone members, but it does object to the mis-classification of the Morenci Project as transmission." Consumers' reply brief to Joint Applicants, p. 24. The Commission agrees with Consumers and finds that, if the Morenci Project is properly classified pursuant to FERC's seven-factor test and the Commission's framework, the outcome is not discriminatory.

In addition, the Joint Applicants claimed that the Staff's proposal to downsize the facility to serve ME&C would reduce the transmission access capacity available to ME&C. The Staff disagreed, arguing that the Joint Applicants misconstrue the Staff's position. The Staff clarified that the Joint Applicants could pursue a lower voltage solution and still ensure that ME&C has adequate access to transmission. 2 Tr 80. The Commission agrees with the Staff. The Commission finds that, other than the statement offered on page 44 of their initial brief, the Joint Applicants failed to provide evidence that the Staff's proposal would decrease ME&C's ability to access transmission capacity.

Finally, the Joint Applicants alleged that Consumers' and the Staff's distribution solution will prevent third-party IPP suppliers and DER on ME&C's system from accessing the MISO market. Consumers responded that the Joint Applicants' argument is entirely speculative. The Commission agrees. *See*, 3 Tr 321. The only evidence offered by the Joint Applicants to support their claim was Exhibit JA-2, which is a portion of ME&C's tariff that describes existing net metering and green pricing programs. As noted by Consumers, the Joint Applicants do not explain how these programs are dependent upon program participants having direct access to the MISO

market or how the Morenci Project is the only option for providing market access. Consumers' reply brief to Joint Applicants, p. 29; 3 Tr 321.

E. Conclusion

Based on the facts and analysis set forth in the seven-factor test discussion, the functional-use approach, and the other issues discussed above, the Commission finds that the Morenci Project should be classified as distribution.

Additionally, the Commission notes that, prior to filing an application in this case, the Joint Applicants applied to, and received approval from, the MISO Board of Directors to construct the Morenci substation as a transmission project. According to Consumers, it provided several objections during the MISO process and prior to the inclusion of the Morenci Project in MTEP18. After MISO approved the Morenci Project for inclusion in MTEP18, Consumers filed a complaint with FERC, alleging that the Morenci Project should be classified by the Commission as distribution and that MISO inappropriately and prematurely included the Morenci Project in MTEP18. FERC found that Consumers' complaint should be held in abeyance until the Commission issues an order in this case. The Commission notes that, following approval of this order, it will be filed in FERC Docket No. EL19-59 for FERC's review. The Commission requests that, in addition to addressing Consumers' complaint, FERC provide more clarification regarding the transmission/distribution classification procedure under the current RTO process.

In Order 888, FERC provided a framework for classifying facilities as transmission or local distribution for jurisdictional purposes. Along with the seven-factor test and the functional-use approach, FERC provided a basic description of the process for transmission/distribution classifications, stating that:

> As a means of facilitating jurisdictional line-drawing, we will entertain proposals by public utilities, filed under section 205 of the FPA, containing classifications

> and/or cost allocations for transmission and local distribution facilities. However, as a prerequisite to filing transmission/local distribution facility classifications and/or cost allocations with [FERC], utilities must consult with their state regulatory authorities. If the utility's classifications and/or cost allocations are supported by the state regulatory authorities and are consistent with the principles established in the Final Rule, [FERC] will defer to such classifications and/or cost allocations. We encourage regulatory authorities to attempt to agree to utility-specific classifications and allocations that the utility may file at [FERC].

61 Fed Reg 21619, 21627. However, this description does not include, or refer to, the regional transmission organization (RTO) or its role in the process. Accordingly, the Commission finds that it would assist the Commission and owners and operators of transmission and distribution systems if FERC would provide greater clarification regarding the process for transmission/distribution determinations. Specifically, the Commission requests that FERC determine if, and when, in the transmission/distribution classification process it would be appropriate for a utility or MISO to request a state commission determination of whether or not a project is transmission and, thus, eligible to be included in MTEP.

Furthermore, the Commission notes that it recently issued a Statewide Energy Assessment – Final Report (SEA Report), which included recommendations for mitigating risks to electric reliability in Michigan. Section 9.3.1, E-8 of the SEA Report states that "[t]ransmission planning takes place separately from generation and distribution planning making the consideration of transmission options in integrated resource plans limited." SEA Report, Case No. U-20464, p. 196. Section 9.3.1, E-13 of the SEA Report also states that:

> Outside projects eligible for cost sharing, the MISO process for approving transmission projects between 69kV and 345 kV is based exclusively upon a review from a reliability perspective rather than a cost perspective. This limited assessment criteria may prevent from consideration other alternatives such as generation or distribution solutions that could be preferred from a cost, reliability, or resiliency perspective. This is important because transmission projects below 345 kV are not subject to MPSC review and approval under Act 30 of 1995 [MCL 460.561 *et seq*.).

Id., p. 198. In the SEA Report, the Commission recommended, among other things, that the "Staff should work with RTOs and stakeholders to ensure non-transmission alternatives are considered in a fair and equitable manner through the RTO transmission planning process" and that, prior to approving new transmission, MISO should consider alternatives to transmission line projects based on cost, reliability, and resiliency considerations. *Id*., pp. 197-198. Additionally, the Commission recently announced the MI Power Grid initiative, a focused, multi-year stakeholder initiative to maximize the benefits of the transition to clean, distributed energy resources for Michigan residents and businesses. Optimizing grid investments and performance is one focus area of MI Power Grid, which aims to engage stakeholders in an integrated planning process for resource, transmission, and distribution. The goal is to evaluate alternatives that provide the best value and result in a more efficient system and lower costs for customers. The Commission encourages the owners and operators of transmission assets to work with generation and distribution owners and operators to ensure that transmission, generation, and distribution planning is wisely, prudently, and cost-effectively coordinated.

THEREFORE, IT IS ORDERED that:

A. The request by Michigan Electric Transmission Company, LLC, Wolverine Power Supply Cooperative, Inc., and Midwest Energy & Communications to classify a 138-kilovolt facility in Morenci, Michigan as transmission is denied.

B. Pursuant to the Federal Energy Regulatory Commission's seven-factor test, the 138-kilovolt facility in Morenci, Michigan is classified as distribution.

The Commission reserves jurisdiction and may issue further orders as necessary.

Any party desiring to appeal this order must do so in the appropriate court within 30 days after issuance and notice of this order, pursuant to MCL 462.26. To comply with the Michigan Rules of Court's requirement to notify the Commission of an appeal, appellants shall send required notices to both the Commission's Executive Secretary and to the Commission's Legal Counsel. Electronic notifications should be sent to the Executive Secretary at mpscedockets@michigan.gov and to the Michigan Department of the Attorney General - Public Service Division at pungp1@michigan.gov. In lieu of electronic submissions, paper copies of such notifications may be sent to the Executive Secretary and the Attorney General - Public Service Division at 7109 W. Saginaw Hwy., Lansing, MI 48917.

MICHIGAN PUBLIC SERVICE COMMISSION

Sally A. Talberg, Chairman

Daniel C. Scripps, Commissioner

Tremaine L. Phillips, Commissioner

By its action of November 14, 2019.

Lisa Felice, Executive Secretary

PROOF OF SERVICE

STATE OF MICHIGAN)

Case No. U-20497

County of Ingham)

Brianna Brown being duly sworn, deposes and says that on November 14, 2019 A.D. she electronically notified the attached list of this **Commission Order via e-mail transmission**, to the persons as shown on the attached service list (Listserv Distribution List).

Brianna J. Brown

Brianna Brown

Subscribed and sworn to before me
this 14th day of November 2019.

Angela P. Sanderson

Angela P. Sanderson
Notary Public, Shiawassee County, Michigan
As acting in Eaton County
My Commission Expires: May 21, 2024

Service List for Case: U-20497

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