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UNITED STATES OF AMERICA
FEDERAL ENERGY REGULATORY COMMISSION

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

Wisconsin Public Service Corporation
Complainant,

Docket No. EL03-40-000

v.

Midwest Independent Transmission System
Operator, Inc.

Respondent.

ORDER DENYING COMPLAINT

(Issued March 3, 2003)

1. In this order, the Commission denies the complaint filed on January 13, 2003 by Wisconsin Public Service Corporation (WPSC) against the Midwest Independent Transmission System Operator, Inc. (Midwest ISO). WPSC alleges that the Midwest ISO is violating the terms of its Open Access Transmission Tariff (OATT) and its Business Practices by refusing to allow WPSC to roll over its network transmission service reservation as a complete path from source to sink, and reassign the receipt point for this transmission path to an alternate point. This order benefits customers by providing certainty to the Midwest ISO's customers concerning contractual and rollover rights to transmission capacity.

Background

A. WPSC Complaint

2. WPSC is a network service customer of the Midwest ISO.¹ In its complaint, WPSC identified several agreements that form the basis for this complaint. First, there is a five-year power supply agreement with Northern States Power Marketing (NSPM), an Xcel Energy subsidiary, for the purchase of 150 MW Winter/200 MW Summer of capacity and energy, and with a term expiring May 2003 (Sales Contract). Second, the transmission for this energy transaction is covered by two separate "partial path" transmission service agreements. Prior to the formation of the Midwest ISO, the energy covered under the Sales Contract was delivered by Northern States Power (NSP) to an interconnection point between NSP and the WPSC transmission system pursuant to a long-term point-to-point transmission agreement between NSPM and NSP as the transmission provider (NSPM partial path). To complete the transaction, the transmission of the energy within WPSC's control area was provided under a Network Integration Service Agreement between WPSC and American Transmission Company, LLC (ATCLLC) (WPSC partial path).

3. After the formation of the Midwest ISO, these transmission agreements were assigned to the Midwest ISO and service was then provided under the Midwest ISO OATT.² NSP assigned its transmission service agreement with NSPM to the Midwest ISO effective February 1, 2002 (MISO/NSPM partial path).³ ATCLLC assigned its network service agreement with WPSC to the Midwest ISO on January 29, 2001 (MISO/WPSC partial path).⁴

4. WPSC states that it began looking for another energy supplier in the summer of 2002 when it learned that NSPM could not continue to meet the required level of

¹Service agreement filed in Docket No. ER02-1091-000, and designated as Midwest ISO Service Agreement No. 150.

²On February 1, 2002, the Midwest ISO commenced providing transmission service within its footprint.

³Service agreement filed in Docket No. ER02-951-000, and designated as MISO Service Agreement 250.

⁴Service agreement filed in Docket No. ER02-1091-000, and designated as Midwest ISO Service Agreement No. 150.

capacity to serve WPSC's native load customers under the Sales Contract. WPSC also began discussions with the Midwest ISO about rolling over the two underlying "partial path" transmission agreements, and reassigning the point of receipt to another new supplier that would deliver the capacity and energy over the same transmission path.

5. According to WPSC, however, the Midwest ISO is refusing to permit the rollover of the two "partial path" transmission agreements as one "seamless" transmission reservation. WPSC alleges that, while the Midwest ISO will allow WPSC to roll over and reassign the receipt point related to the MISO/WPSC partial path, the Midwest ISO notified WPSC that it does not have rights to the entire transmission path, and that WPSC will need the consent of NSPM, as the holder of the MISO/NSPM partial path before the Midwest ISO will roll over and reassign the entire transmission path. WPSC states that NSPM refuses to assign this "partial path" transmission path to WPSC.

6. WPSC argues that the Midwest ISO violated its Business Practices which required Midwest ISO to merge these two "partial path" service agreements at the time of the Midwest ISO's formation. WPSC claims it believed the Midwest ISO had in fact, merged the two partial paths because the Midwest ISO treated the two agreements as one seamless reservation for scheduling and operational purposes. In addition to the Midwest ISO treating the transactions as one, WPSC states it has been paying for the MISO/NSPM transmission capacity pursuant to the Sales Contract.

7. Finally, WPSC also argues that it is paying the Midwest ISO twice for transmission service. WPSC explains that prior to the commencement of the Midwest ISO operations, WPSC paid pancaked transmission rates for transmission service from the NSPM network resource to the WPSC network load. WPSC paid the NSP transmission rate to NSPM pursuant to the terms of the Sales Contract, and paid a separate network service charge first to ATCLLC, then to the Midwest ISO. According to WPSC, once the Midwest ISO began operations, WPSC should only be required to pay a single network rate to the Midwest ISO for its network integration transmission service. Instead, WPSC alleges that it is paying the Midwest ISO network service rate, and the point-to-point transmission rate for the MISO/NSPM transmission service.

8. WPSC requests the Commission to order the Midwest ISO to formally merge the two "partial path" transmission agreements, to permit WPSC to roll over the transmission path and reassign the receipt point to an alternate point, and to eliminate the point-to-point transmission charges associated with the MISO/NSPM partial path.

B. The Midwest ISO Answer

9. In its January 27, 2003 answer, the Midwest ISO requests the Commission to dismiss WPSC's complaint and require WPSC to use the Internal Dispute Resolution Procedures in Section 12.1 of the Midwest ISO OATT to resolve this matter. According to the Midwest ISO, the issues raised by WPSC in its complaint are the type of issues the Commission directed ISO's and RTO's to handle through their own dispute resolution mechanism in order to prevent an undue burden being imposed on Commission resources.

10. The Midwest ISO argues that the MISO/NSPM partial path and the MISO/WPSC partial path transmission agreements establish separate rollover rights. The Midwest ISO also argues that it properly did not merge the two "partial paths" because it was dealing with two separate and distinct reservations made by two separate customers, even though the reservations are being used together. The Midwest ISO points out that NSPM has not agreed to a merger of its "partial path" with that of WPSC. The Midwest ISO acknowledges that while the two "partial paths" are treated as a single path for certain operational purposes, this treatment does not affect or change the respective contractual ownership rollover rights of NSPM or WPSC.⁵ The Midwest ISO concludes therefore that NSPM has the right to renew and rollover its right to transmission service over its partial path, as does WPSC over its partial path, and that WPSC's rollover rights extend only over its part of the subject path.

11. Finally, the Midwest ISO argues that it properly accounted for WPSC's payments under separate network service and point-to-point transmission service agreements. The Midwest ISO points out that WPSC has been receiving firm point-to-point transmission from the NSPM under a service agreement that remains in force and effect. In addition, WPSC has been receiving network service from the Midwest ISO pursuant to a Network Interconnection Transmission Service Agreement assigned to the Midwest ISO by ATCLLC. In short, WPSC has received two services for which it is required to pay two separate rates.

12. The Midwest ISO therefore requests the Commission to dismiss the complaint and order the WPSC to use the Dispute Resolution Provisions of the Midwest ISO's OATT or

⁵The Midwest ISO also points out that while it treats the two "partial paths" as a single transmission transaction for the Sales Contract, the NSPM point-to-point transmission path also continues to exist as a separate "partial path" on the Midwest ISO's OASIS.

in the alternative, to affirm that the Midwest ISO has acted in accordance with its OATT and Business Practices by not granting WPSC's request to receive NSPM's rights to the MISO/NSPM partial path.

Notice of Filing and Responsive Pleadings

13. Notice of WPSC's complaint was published in the Federal Register, 68 Fed. Reg. 3878 (2003), with interventions and protests due on or before January 27, 2003. Midamerican Energy Company and Reliant Resources, Inc. filed timely motions to intervene. Wisconsin Electric Power Company filed a timely motion to intervene with comments supporting WPSC's complaint, and requesting the Commission to require the Midwest ISO to merge the two transmission paths as required under the Midwest ISO OATT and Business Practices.

14. Xcel Energy Services, Inc., filing on behalf of Northern States Power Company (Minnesota) and Northern States Power Company (Wisconsin) (collectively, NSP) arguing that NSP properly owns the rollover rights associated with the NSPM "partial path" transmission agreement, that the Midwest ISO properly decided against merging the two separate "partial path" transmission agreements, and that WPSC is not being double charged for the transmission service underlying these two "partial path" transmission agreements. NSP, therefore, requests the Commission to reject WPSC's complaint and to confirm that the Midwest ISO was correct to find that the two "partial path" transmission agreements are separate and distinct and should not be rolled over to WPSC.

15. On February 6, 2003, WPSC filed an answer to the Midwest ISO's answer.

Discussion

A. Procedural Matters

16. Pursuant to Rule 214 of the Commission's Rules of Practice and Procedures,⁶ the timely, unopposed motions to intervene serve to make the entities that filed them parties to this proceeding. Rule 213(a)(2) of the Commission's Rules of Practice and Procedure prohibits an answer unless otherwise permitted by a decisional authority.⁷ We are not persuaded to allow WPSC's answer.

⁶18 C.F.R. § 385.214 (2002).

⁷18 C.F.R. § 385.213(a)(2) (2002).

B. Decision on Complaint

17. We find that the Midwest ISO appropriately followed its Business Practices by not merging the two separate and distinct partial path reservations of NSPM and WPSC. Further, we find that the Midwest ISO did not inappropriately deny rollover rights to WPSC.

18. Under its Business Practices, the Midwest ISO provides only an option to merge partial path reservations that meet specific criteria.⁸ Additionally, under its procedures, the Midwest ISO only merges partial path transactions having the same owner, at the owner's request. The partial paths at issue here involve separate arrangements with different transmission services and customers that can not be merged without the consent of both transmission customers.

19. Given that NSPM, the customer under the MISO/NSPM partial path contract, has not agreed to relinquish these rights, the Midwest ISO is correct to apply transmission rights to the rightful owner of each partial path transmission customer. NSPM has the contractual rights to the point-to-point transmission service across NSP's transmission system. WPSC has the contractual rights to the network transmission service over ATCLLC's transmission system. The fact that the Midwest ISO treated the combined transactions as one for scheduling purposes, and that WPSC reimburses NSPM for the MISO/NSPM partial path transmission service under the terms of the Sales Contract, do not confer contractual rights to the transmission capacity to permit such a merger, as claimed by WPSC. We find that the Midwest ISO has appropriately followed Section 10.1 of its Business Practices and that the transactions do not qualify for merging.

⁸Section 10.1 of the Midwest ISO's Business Practices describes the specific process used to place pre-OATT services on the Midwest ISO OASIS. Under Section 10.1, the Midwest ISO first undertook a conversion process through the use of a merge tool. The Midwest ISO used the following criteria to determine if partial path reservations can be combined: (1) whether the type of services sold is identical; (2) whether the time period of the service originally sold is identical; and (3) whether the reservations identified by the customer form a continuous path.

20. In addition, the Midwest ISO did not inappropriately deny rollover rights to WPSC under its OATT.⁹ Both NSPM and WPSC are entitled to maintain their existing contractual rights and exercise their individual rollover rights with respect to each such partial path agreement. NSPM has the right to renew and rollover its rights to transmission service over the MISO/NSPM partial path, as does WPSC over its partial path. We find that the Midwest ISO can only allow WPSC to rollover its partial path transmission service, consistent with its pre-existing partial path transmission rights on the ATCLLC system.¹⁰

21. Under Section 2.2 of the Midwest ISO OATT, all existing firm service customers with a contract term of one year or more have the right to continue to take service from the Midwest ISO when the contract expires, rolls over or is renewed. In addition, Section 9.3.1 of the Midwest ISO's Business Practices states that the Midwest ISO "will not sell new transmission service that would cause a customer's rollover right to be denied prior to the customer's rollover rights notification deadline." Therefore, the Midwest ISO cannot grant WPSC rollover rights to a transmission path to which WPSC is not entitled to the detriment of NSPM, the party holding such rights.

22. Finally, we find that WPSC paid the appropriate rates for two separate services under two separate agreements. WPSC has been receiving power delivered pursuant to NSPM's firm point-to-point transmission service through a five-year Sales Contract with NSPM. NSPM is the transmission service customer under the Midwest ISO OATT, for which WPSC reimburses NSPM pursuant to the Sales Contract. In addition, WPSC has been receiving network service from the Midwest ISO pursuant to a Network Integration Service Agreement that was assigned by ATCLLC to the Midwest ISO.¹¹ WPSC has been receiving and paying for two distinct services, the point-to-point service (as a customer of NSPM for power supply) and the network service (as a direct customer).

⁹Section 9.3 and 10 establish procedures for implementing rollover rights for long-term firm transmission services under Midwest ISO OATT.

¹⁰On March 1, 2002, the Midwest ISO filed a Notice of Succession for the assignment of certain ATCLLC service agreements to the Midwest ISO OATT. Among these was a partial path Network Integration Transmission Service Agreement between ATCLLC and WPSC which provided service from the NSP/WPSC interface point to WPSC load.

¹¹Midwest ISO Service Agreement No. 150, MISO OATT, Original Sheet No. 534.

23. In addition, we find that the Midwest ISO has not been unjustly enriched under the transactions. Under the license plate rate formula adopted by the Midwest ISO, the revenues associated with the point-to-point transaction are allocated to the transmission owner systems that support the service pursuant to a point-to-point revenue distribution method. Therefore, WPSC will ultimately receive a portion of these revenues. WPSC's network service revenues will also flow back to the transmission owner on whose transmission system the transactions sink.

24. WPSC argues that it will have no other alternative but to construct up to 76 MW of diesel generation in its service territory with the denial of the partial path merger and rollover rights. The Midwest ISO, however, notes that WPSC will continue to have partial path rights to approximately 165-175 MW Winter and 76 MW Summer through ATCLLC as an alternative.

25. The Commission will not require this proceeding to go through dispute resolution procedures as suggested by the Midwest ISO. Timely action is required so that WPSC can make alternative arrangements to serve its native load customers. We believe that the facts as presented in this proceeding are sufficient for the Commission's decision in this instance.

The Commission orders:

WPC's complaint is hereby denied, as discussed in the body of this order.

By the Commission.

(S E A L)

Magalie R. Salas,
Secretary.