

103 FERC ¶ 61, 038
UNITED STATES OF AMERICA
FEDERAL ENERGY REGULATORY COMMISSION

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

Midwest Independent Transmission System
Operator, Inc.

Docket Nos. ER98-1438-012,
ER98-1438-013,
ER02-111-004, and
ER02-111-005

ORDER ON RECONSIDERATION AND COMPLIANCE AND
ORDERING FURTHER COMPLIANCE FILING

(Issued April 11, 2003)

Introduction

1. In this order, we conditionally accept proposed tariff revisions and order a further compliance filing. We also deny the requests for reconsideration of our decision that grandfathered wholesale load outside Midwest Independent Transmission System Operator, Inc.'s (Midwest ISO) footprint should also be charged costs under Schedule 10 of the Midwest ISO open access transmission tariff (OATT).¹ The action taken here will help to facilitate the smooth transition of pre-existing contracts for transmission service to uniform service under Midwest ISO's tariff and the expansion of its territory.

Background

2. On October 31, 2002, the Commission issued an order conditionally accepting tariff revisions proposed by Midwest ISO and ordered a further compliance filing requiring that all load, including bundled retail customers and load subject to

¹Schedule 10 of the Midwest ISO OATT (Schedule 10 Cost Adder) was originally designed to recover costs that are not recovered under Schedule 1 (Scheduling, System Control and Dispatch Service). Subsequent revisions have been ordered to the Schedule 10 Cost Adder that are not relevant here.

grandfathered wholesale agreements, be placed and provided under the Midwest ISO's OATT.²

Compliance Filing - Docket No. ER98-1438-012

3. Midwest ISO submitted its compliance filing on November 15, 2002. The proposed compliance filing revises the definition of "Load Serving Entity" and Section 37.3(b) to provide that each TO shall remain responsible for payment of Schedule 10 charges for wholesale loads under grandfathered agreements. The compliance filing eliminates Section 37.3(e) in light of the Commission's holding in Opinion No. 453-A which clarified that the TOs are directly responsible for Schedule 10 charges.³

4. Midwest ISO admits that the proposed filing does not comply with the October 31 Order's directive to revise Section 37.3(c) of the Midwest ISO OATT and the parallel provision in Appendix C, Section II, Paragraph A(3)(c) of the Midwest ISO TOs Agreement. Midwest ISO justifies this omission by stating that it simultaneously filed a request for reconsideration or in the alternative, a request for rehearing and a stay of the directive that it allocate administrative costs to TOs for grandfathered load located outside of Midwest ISO's footprint.

²Midwest Independent Transmission System Operator, Inc., 101 FERC ¶ 61,113 (October 31 Order). In the October 31 Order, the Commission directed Midwest ISO to revise: (1) Section 37.3(b) by stating that the Midwest ISO Transmission Owner (TO) is responsible for payment of the Schedule 10 Cost Adder for grandfathered agreement loads that are under the Midwest ISO OATT; (2) Section 37.3(c) by deleting language concerning the Midwest ISO TO's exemption from responsibility to pay Schedule 10 charges for "transmission service provided as a result of or pursuant to Grandfathered Agreements for load outside of Midwest ISO"; and (3) the definition of "Native Load Customers" in the Midwest ISO OATT. Midwest ISO was ordered to provide a detailed explanation of the language in Section 37.3(e) because it was unclear as to how a customer can be a party to a grandfathered agreement (to which Midwest ISO is not a party) and also a party to an executed or unexecuted service agreement with Midwest ISO. The Commission also directed Midwest ISO to make, where applicable, parallel revisions to the Midwest ISO Transmission Owners Agreement (Midwest ISO TO Agreement).

³See Midwest Independent Transmission System Operator, Inc., 97 FERC ¶ 61,033 (2001) (Opinion 453), order on reh'g, 98 FERC ¶ 61,141 (2002) (Opinion No. 453-A).

Notice and Responses

5. Notice of Midwest ISO's compliance filing was published in the Federal Register, 67 Fed. Reg. 70,726 (2002), with comments, protests and motions to intervene due on or before December 6, 2002.

6. Arkansas Electric Cooperative Corporation (AEECC) filed a timely motion to intervene without substantive comment. Dairyland Power Cooperative (Dairyland), Great River Energy (GRE), and Southern Minnesota Municipal Power Agency (SMMPA) (collectively, Joint Commenters)⁴ each filed comments on a limited aspect of the compliance filing. Wisconsin Public Power Inc. (WPPI) filed comments on the proposed revised definition of "Load Serving Entity".⁵ Wabash Valley Power Association, Inc. (Wabash Valley) filed comments supporting the compliance filing.

Requests for Rehearing or Reconsideration - Docket No. ER98-1438-013

7. Midwest ISO and certain of its TOs⁶ filed a motion for reconsideration, or in the alternative, a request for rehearing and a stay of the Commission's directive that it revise Section 37.3(c) of the OATT and comparable Midwest ISO TO Agreement provisions to delete language regarding the Midwest ISO TOs' exemption from responsibility to pay

⁴Dairyland and GRE previously intervened in Docket No. ER98-1438-000. SMMPA previously intervened in Docket No. ER98-1438-010. Dairyland also previously intervened in Docket No. ER02-111-000.

⁵WPPI previously intervened in Docket No. ER98-1438-000.

⁶Those Midwest ISO TOs consist of: Alliant Energy Corporate Services, Inc., on behalf of its operating company affiliate, Interstate Power and Light Company (f/k/a IES Utilities, Inc. and Interstate Power Company); Ameren Services Company, as agent for Union Electric Company d/b/a Ameren UE and Central Illinois Public Service Company d/b/a Ameren CIPS; Aquila Inc. d/b/a Aquila Networks (f/k/a UtiliCorp United, Inc.); Cinergy Services, Inc. (for the Cincinnati Gas & Electric Company, PSI Energy, Inc., and the Union Light, Heat & Power Company); Hoosier Energy Rural Electric Cooperative, Inc.; Indiana Municipal Power Agency; Lincoln Electric System; LG&E Corporation (for Louisville Gas & Electric Company and Kentucky Utilities Company); Michigan Electric Transmission Company, LLC; Minnesota Power, Inc. (and its subsidiary Superior Water, Light & Power); Montana-Dakota Utilities Company; Otter Tail Power Company; Wabash Valley Power Association, Inc.; and Northern States Power Company and Northern States Power Company (Wisconsin), subsidiaries of Xcel Energy, Inc.

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the Schedule 10 Cost Adder charges "for transmission service provided as the result of or pursuant to grandfathered agreements for load outside of the Midwest ISO."⁷

8. Wabash Valley filed a separate request for rehearing of the same Commission directive challenged by Midwest ISO.

9. Consumers Energy Company (Consumers) filed an answer to Midwest ISO's motion for reconsideration. Consumers supports the Commission's directive to revise Section 37.3(c) and comparable Midwest ISO TO Agreement provisions. Consumers also objects to the request for a stay of the Commission's directive.

Discussion

A. Procedural Issue

10. Pursuant to Rule 214 of the Commission's Rules of Practice and Procedure, 18 C.F.R. § 385.214 (2002), AEECC's timely, unopposed motion to intervene serves to make it a party in the compliance proceeding.⁸

B. Analysis

11. As discussed below, we will conditionally accept Midwest ISO's compliance filing, subject to further revisions.

1. Compliance Filing

a. Section 37.3(c)

i. October 31 Order

12. The October 31 Order directed Midwest ISO to modify Section 37.3(c) for reasons similar to those stated in Opinion No. 453-A. The Commission stated that:

[T]ransmission-owning members will have to take transmission service under the Midwest ISO Tariff for their use of the Midwest ISO transmission system to serve

⁷October 31 Order at P 20.

⁸Consumers' answer is accepted for filing since it responds to the motion for reconsideration.

bundled load and grandfathered agreement customers [T]hese transmission-owning members will be exempt, during the transition period, from rates under the Midwest ISO Tariff for services provided pursuant to the existing agreements, except the Cost Adder which . . . will reimburse the Midwest ISO for the services it performs that benefit all users of the grid. . . Opinion No. 453-A, 98 FERC at 61,413 (emphasis added). . . .

Midwest ISO has not shown why grandfathered loads outside of Midwest ISO, that nevertheless utilize facilities under Midwest ISO's control, for through or out service, should be exempt from the Schedule 10 Cost Adder.⁹

ii. Midwest ISO Proposal

13. Midwest ISO did not submit revisions to Section 37.3(c) because it seeks reconsideration/rehearing of this directive. It requests that the Commission stay its order that Midwest ISO revise this section pending the outcome of that request.¹⁰

iii. Commission Determination

14. Parties petitioning for reconsideration/rehearing raise no new arguments in their filings. Therefore, we again direct Midwest ISO to revise Section 37.3(c) for the reasons stated in the October 31 Order, as well as for the reasons discussed in the section below on reconsideration/rehearing.¹¹

b. Definition of Load Serving Entity

i. October 31 Order

15. The October 31 Order directed Midwest ISO to revise the definition of "Load Serving Entity" in Section 1.16a of the OATT and the corresponding section in the Midwest ISO TO Agreement to make the definition consistent with the definition of

⁹See October 31 Order at P 20.

¹⁰ Wabash Valley requests that the Commission defer implementation of the compliance directed in the October 31 Order relating to Section 37.3(c) pending Commission action on the rehearing.

¹¹In light of this decision, we do not reach the merits of Midwest ISO's motion for a stay and it is therefore moot.

"Native Load Customers" in those documents. The Commission ordered this revision in order to address a protester's concern that Midwest ISO's proposed definition could be construed to mean that only entities that actually provide electric energy to end users are "Load Serving Entities" who must take transmission under the OATT. The Commission agreed that the definition must be revised to address the protester's concern.

ii. Proposed Revision

16. In its compliance filing, Midwest ISO proposes to revise the proposed definition of Load Serving Entity as follows:

Any party, including any Transmission Owners taking Transmission Service on behalf of wholesale and retail customers, who has undertaken an obligation to provide or obtain electric energy for end-use customers by statute, franchise, regulatory requirement or contract for load located within or attached to the Transmission System.¹²

iii. Parties' Arguments

17. WPPI asserts that the revised definition does not achieve the intended purpose. WPPI points out that a transmission dependent utility, that is not a TO and that has not agreed to provide or obtain electric energy for end-use customers, would not meet the revised definition of "Load Serving Entity".

18. WPPI states that it does not believe that Midwest ISO intends to require WPPI's distribution members to separately take service directly under the Midwest ISO OATT, rather than through WPPI's service agreements and grandfathered contracts. WPPI requests that Midwest ISO confirm that WPPI correctly understands its intent and provide clarification and modification to the revised definition.

19. The Joint Commenters assert that the revised language is ambiguous. They request that Midwest ISO be directed to revise the proposed language so that if they choose to participate in TRANSLink Transmission Company, LLC, they will not be considered to be Midwest ISO TOs but will nonetheless be eligible to be considered

¹²The underlined language represents revisions to the language originally proposed in this proceeding.

"Load Serving Entities" under the Midwest ISO OATT for their respective distribution cooperatives and municipal utility systems.¹³

iv. Commission Determination

20. We believe that the definition of "Load Serving Entity" is still unclear and should be revised to make clear that it is not limited to a TO taking transmission service on behalf of its wholesale and retail power customers. We agree with Joint Commenters and WPPI that such a limitation is too restrictive. Thus, the definition of "Load Serving Entity" should also include any transmission dependent entity responsible for obtaining electric energy for its wholesale and/or retail customers. We find that the proposed revision submitted by Joint Commenters and WPPI is reasonable. Midwest ISO is hereby directed to amend the definition of "Load Serving Entity" to incorporate the language proposed by WPPI and Joint Commenters into its OATT and the Midwest ISO TO Agreement in the compliance filing ordered below.

c. Section 37.3(e)

i. October 31 Order

21. The October 31 Order found that Section 37.3(e) was unclear and directed Midwest ISO to provide a detailed explanation, "addressing among other things, how a customer can be a party to a grandfathered agreement (to which Midwest ISO is not a party) and also a party to an executed or unexecuted service agreement with Midwest ISO."¹⁴

¹³Joint Commenters and WPPI propose that the definition be revised to state:

Load Serving Entity: Any entity that has undertaken an obligation to provide electric energy to end-use customers by statute, franchise, regulatory requirement or contract for load located within or attached to the Transmission System. Where a distribution cooperative or a municipal distribution system otherwise covered by the prior sentence is a wholesale customer of a G&T cooperative or a municipal joint action agency, the G&T cooperative or municipal joint action agency may act as the Load Serving Entity for such distribution cooperative or municipal distribution system.

¹⁴October 31 Order at P 21.

ii. Midwest ISO Proposal

22. Midwest ISO proposes to delete Section 37.3(e) in light of the Commission's holding in Opinion No. 453-A.

iii. Parties' Arguments

23. No party filed comments on this proposal.

iv. Commission Determination

24. We find that Midwest ISO's proposal is consistent with our policy and prior orders.

2. Reconsideration/Rehearing Requests**a. October 31 Order**

25. The October 31 Order required Midwest ISO, among other things, to modify Section 37.3(c) to delete language concerning the Midwest ISO TOs' exemption from responsibility to pay Schedule 10 Cost Adder charges for transmission service provided as a result of or pursuant to grandfathered agreements for loads outside of Midwest ISO.

b. Parties' Arguments

26. Midwest ISO and the TOs object to the allocation of administrative costs to TOs for their grandfathered load located outside Midwest ISO's footprint because a similarly situated non-transmission owner is not subject to the same costs. They argue that these additional administrative costs were not contemplated when the grandfathered agreements were negotiated. Midwest ISO and the TOs further argue that it is unfair to subject TOs to the Schedule 10 Cost Adder since this grandfathered load is likely to be assessed a similar cost adder once this load is included in another independent transmission provider's or a Regional Transmission Organization's (RTO) footprint. Finally, they assert that the revenue in this subset of Midwest ISO's transactions is extremely small, and the cost of accounting and collection likely will exceed the revenue generated.

27. Wabash Valley supports Midwest ISO's and the TO's position. According to Wabash Valley, under the provisions in Section 37(c) negotiated with Midwest ISO, it

would not have had to pay the Schedule 1-10 costs for service going out of Midwest ISO to serve only Wabash Valley's loads. However, as a result of the October 31 Order, Wabash Valley will be required to pay the Schedule 10 Cost Adder for through and out transactions to its member loads under grandfathered contracts located outside Midwest ISO's footprint.

28. In Consumers' answer, it points out that the services that Midwest ISO performs benefit the users of Midwest ISO's transmission system and that the grandfathered load for through and out service uses the transmission system even if that load is outside of Midwest ISO's footprint. In addition, Consumers argues that Midwest ISO's assertion that another Independent Transmission Provider may impose a similar cost adder for administrative costs, resulting in pancaked rates, is based on conjecture and should not be given any weight.

c. Commission Determination

29. Contrary to the parties' assertions, imposing an obligation on the TOs to pay the Schedule 10 Cost Adder for grandfathered loads outside of Midwest ISO's footprint is a reasonable allocation of costs. In a recent order, the Commission affirmed that the Schedule 10 Cost Adder should include in its calculation all loads using the regional grid that Midwest ISO operates.¹⁵ Furthermore, we agree with Consumers that since grandfathered loads served by through and out transactions utilize Midwest ISO's grid, they benefit from Midwest ISO's operational and planning responsibilities and should share in Midwest ISO's costs.

30. Midwest ISO has provided no evidence to substantiate its claim that the revenue involved in this subset of load transactions is de minimus when compared to the higher costs of accounting and collection. We share Wabash Valley's concern about potential liability for pancaked RTO cost adder charges.¹⁶ We will consider this matter as part of the ongoing proceeding in Docket No. EL02-111-000.

31. Midwest ISO has not presented any new arguments that would justify granting rehearing or reconsideration of the issues discussed above; therefore we deny those

¹⁵Midwest ISO Independent Transmission System Operator, Inc., 102 FERC ¶ 61,192 (2003) (Remand Order).

¹⁶According to Wabash Valley, some of its load outside Midwest ISO's footprint may become subject to an additional RTO cost adder, e.g., at the time AEP's transmission facilities are controlled by PJM RTO.

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requests. As was directed in the October 31 Order, we again direct Midwest ISO to revise Section 37.3(c) of the Midwest ISO OATT and where applicable, make parallel revisions to the Midwest ISO TO Agreement in the compliance filing ordered below.

The Commission orders:

(A) The requests for reconsideration/rehearing are hereby denied for the reasons stated herein.

(B) Midwest ISO's Compliance Filing is hereby conditionally accepted subject to the modifications discussed herein and ordered below.

(C) Within 15 days of the date of this order, Midwest ISO shall make a compliance filing modifying the proposed revision in accordance with the discussion in the body of this order.

By the Commission.

(S E A L)

Magalie R. Salas,
Secretary.