

104 FERC ¶ 61,236
UNITED STATES OF AMERICA
FEDERAL ENERGY REGULATORY COMMISSION

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

Michigan Electric Transmission Company, LLC Docket Nos. ER03-688-001 and
ER03-1003-000

ORDER ACCEPTING AMENDMENTS TO
TRANSMISSION AGREEMENTS AND COMPLIANCE FILING

(Issued August 29, 2003)

Introduction

1. In this order, we accept for filing amendments to Transmission Ownership and Operating Agreements (Operating Agreements) which will allow recovery of certain regional transmission organization (RTO) charges established under schedules of the Midwest Independent Transmission System Operator, Inc.'s (Midwest ISO) open access transmission tariff (OATT). Additionally, the amendments provide for reimbursement of the Commission's annual charges assessed pursuant to 18 C.F.R. § 382.201, in connection with each party's load.

2. The Commission accepts the proposed amendments to the Operating Agreements. The action taken here will allow the Michigan Electric Transmission Company, LLC (METC) to recover certain costs associated with the provision of transmission service to Michigan Public Power Agency (MPPA); Michigan South Central Power Agency (MSCPA) (collectively, Michigan Agencies) and Wolverine Power Supply Cooperative, Inc. (Wolverine), that could not be recovered otherwise. In this order, we also accept METC's compliance filing in Docket No. ER03-688-001, effective April 1, 2003.

Background

3. METC is a transmission-owning member of the Midwest ISO, with transmission facilities located in the lower peninsula of Michigan. Transmission service is provided pursuant to the rates, terms and conditions of the Midwest ISO OATT. MSCPA and MPPA are Michigan municipal power agencies that purchase transmission service for their members located within the METC pricing zone. Wolverine Power Supply

Cooperative, Inc.¹ is a Michigan corporation that purchases transmission service for its members also located within the METC pricing zone. The Operating Agreements amended here are grandfathered agreements under the Midwest ISO OATT, pursuant to which MSCPA, MPPA and Wolverine acquired an interest in and use rights over the METC transmission system.

Compliance Filing

4. By order issued May 19, 2003 in Docket No. ER03-688-000, Michigan Electric Transmission Company, LLC, 103 FERC ¶ 61,195 (2003) (May 19 Order), the Commission accepted a similar amendment to a MSCPA Operating Agreement. A new Article 20 provided for the payment by MSCPA of certain charges assessed to METC. The amendment provided for the reimbursement of three cost recovery adders assessed to METC by the Midwest ISO, under Schedules 10, 16, and 17 of the Midwest ISO OATT.² In addition, Article 20 provided for reimbursement by MSCPA for other similar charges, assessments or fees under the Midwest ISO OATT, or any other applicable OATT that may be accepted by the Commission in the future. The Commission conditionally accepted the proposed amendment to the Operating Agreement, effective April 1, 2003, providing that METC remove the language providing for reimbursement of "any similar charges, assessments or fees under any applicable OATT."

5. Accordingly, METC submitted a compliance filing in that docket on June 3, 2003, removing the language identified in the May 19 Order. Notice of the filing was published in the Federal register, 68 FR 35394 (June 13, 2002), with comments and interventions due June 24, 2002. None were filed.

Operating Agreements Amendment Filing

6. On June 30, 2003, METC proposed to amend five Operating Agreements, including two Wolverine grandfathered capacity entitlement agreements, by adding new

¹Northern Michigan Electric Cooperative, Inc. and Wolverine Electric Cooperative, Inc. merged together and became one entity.

² Schedule 10 - ISO Cost Recovery Adder; Schedule 16 – Financial Transmission Rights Administrative Service Cost Recovery Adder; Schedule 17 – Energy Market Support Administrative Service Cost Recovery Adder.

or revised Article 20)or new Article 21³⁾ "RTO Charges" to the Operating Agreements. The proposal provides for the reimbursement of three cost recovery adders assessed to METC by the Midwest ISO, under Schedules 10, 16, 17 of the Midwest ISO OATT, the same charges accepted by the Commission in the May 19 Order.⁴ In addition, METC is proposing to assess the Commission's annual charges to the Michigan Agencies and Wolverine based on each customer's load.

7. METC states that, under Article 9 of the Operating Agreements, it has the right to make a unilateral rate filing under Section 205 of the Federal Power Act, 16 U.S.C. § 824d (2000), to collect these costs from MSCPA, MPPA and Wolverine since they are costs of providing service to the parties. METC states it has attempted to negotiate this matter with the parties, but has been unsuccessful, and therefore, requests that the Commission accept the amendments to allow it to recover these costs.⁵

8. METC requests an effective date of July 1, 2003, for the proposed amendments to the Operating Agreements and requests waiver of the Commission's prior notice requirement in order to allow an effective date of July 1, 2003.

9. Notice of the filing was published in the Federal Register, 68 FR 41333 (2003), with interventions and protests due on or before July 21, 2003. A timely notice of intervention was filed by the Midwest ISO. The Michigan Agencies and Wolverine filed timely protests and motions to intervene. On August 5, 2003, METC filed a response to the protests. On August 14, 2003, the Michigan Agencies and Wolverine filed an answer to METC answer.

³Article 21 in the two Wolverine Operating Agreements.

⁴METC also notes that Article 20 of the MSCPA Operating Agreement refers to RTO or "ITP" charges. In light of the Commission's April 28, 2003 "White Paper Wholesale Power Market Platform" in the standard market design rulemaking, in which the Commission indicated it would not require transmission owners to join an independent transmission provider, METC has removed the ITP references from Article 20.

⁵METC asserts that the Commission has recently approved a similar proposal regarding passthrough of ISO costs in Louisville Gas and Electric Co., 101 FERC ¶ 61,182 (2002).

10. The Michigan Agencies are not opposed to the reimbursement of charges assessed to METC by the Midwest ISO under Schedules 10, 16 and 17 of the Midwest ISO OATT. However, Michigan Agencies argue that they are co-owners of METC transmission system not customers, and therefore, they are not liable for the Commission's annual charges. Specifically, as co-owners of the METC transmission system, Michigan Agencies argue it is unlawful to pass through to MPPA and MSCPA the Commission's annual charges assessed to METC. They further contend, because the Michigan Agencies are non-jurisdictional entities, their ownership interest in the METC system is not subject to the Commission's annual charges.

11. In its protest, Wolverine primarily argued: (1) the Wolverine contracts are transmission facility ownership and operating agreements, and therefore, the passthrough of transmission charges are improper and (2) the Commission order METC relied on to make its case allowed the amendment of grandfathered transmission service agreements only to add the passthrough of Schedule 10 charges to grandfathered loads.⁶

Discussion

12. Pursuant to Rule 214 of the Commission's Rules of Practice and Procedure, 18 C.F.R. § 385.214 (2003), the notice of intervention of the Midwest ISO and the timely, unopposed motions to intervene of the Michigan Agencies and Wolverine make them parties to Docket No. ER03-1003-000. Answers to protests and answers to answers are prohibited by Rule 213(a)(2) of the Commission's Rules of Practice and Procedure⁷ unless otherwise ordered by the decisional authority. We find that good cause exists to allow METC's response and the answers of Michigan Agencies and Wolverine as they provide additional information that assists the Commission in the decision-making process.

13. This proceeding involves amendments to Operating Agreements between METC and the Michigan Agencies and Wolverine, to allow passthrough of RTO charges assessed to METC under schedules of the Midwest ISO OATT and to allow recovery of the Commission's annual charges assessed to the Midwest ISO and charged, in turn, to METC. METC's justification for assessing these costs is that METC is being assessed these costs based on MSCPA's, MPPA's and Wolverine's capacity entitlements being transferred over the Midwest ISO Transmission System, within the METC pricing zone.

⁶Louisville Gas & Electric Company, 101 FERC ¶ 61,182 (2002).

⁷18 C.F.R § 385.213(a)(2) (2003).

14. We accept these amendments, as they reflect the cost of providing service over the METC transmission system. Further, our May 19 Order accepted an amendment providing for the passthrough of the Schedule 10, 16, and 17 charges.

15. We note that the Michigan Agencies do not object to the passthrough of the Schedule 10, 16, and 17 charges. And we find that Wolverine along with the Michigan Agencies should be subject to the passthrough of the cost recovery adders. Wolverine's capacity entitlements under the Operating Agreements should not be treated differently than any other parties in the METC pricing zone under similar conditions and it is required to pay its share of the costs.

16. We reject Wolverine's arguments that it should not be required to reimburse METC for RTO charges because the Operating Agreements are not transmission service agreements. We find that the Operating Agreements clearly involve the delivery of transmission service. Proposed Article 20 in the Operating Agreement serves notice that if the capacity entitlements of the Michigan Agencies or Wolverine are treated under the Midwest ISO OATT as load served by the METC system, such that the Midwest ISO imposes charges on METC in connection with such entitlements, the charges will be passed through to the involved parties. Operating Agreements generally contain the terms and conditions applicable to each party. In this case, the party responsible for payment of a passthrough is clearly defined in the Operating Agreement.

17. The Michigan Agencies contend that METC's proposed amendments to pass through the Commission's annual charges assessed to METC pursuant to 18 C.F.R. § 382.201 (2003), are not permitted because the Michigan Agencies are not public utilities. We find that our annual charges may ultimately be recovered from non-jurisdictional entities. We have specifically addressed and rejected arguments that annual charges should not be passed through to non-jurisdictional entities.⁸ In the April 11 Order, petitioners were concerned that we were assessing annual charges to non-jurisdictional utilities. That is not the case, and, indeed, this claim reflects a fundamental misunderstanding of our annual charges regulations. Our regulations assess annual charges to public utilities, which are jurisdictional. Compare 18 C.F.R. § 382.201 (2003) with 16 U.S.C. § 824 (2000). How the cost is recovered is a matter of the public utility's ratemaking. Just as a public utility recovers its other transmission-related costs in its rates, so a public utility's annual charges may be recovered in its rates. That the entity

⁸See Midwest Independent Transmission System Operator, Inc., et al., 103 FERC ¶ 61,048 at P 13-15 (2003) (April 11 Order).

paying these rates may not itself be jurisdictional does not mean it should not have to pay these rates.

18. The Michigan Agencies further contend that they are not "customers" of METC under the Operating Agreements, but rather are co-owners of the transmission facilities involved. Therefore, the Michigan Agencies state that, as co-owners, and as municipal agencies, they are not subject to the Commission's annual charges. Again, we find that, whether Michigan Agencies are considered customers or co-owners of the METC transmission system, the Commission's annual charges may be allocated to them by METC for service provided by METC. METC is being assessed these costs based on the Michigan Agencies' capacity entitlement being transmitted by the Midwest ISO over the Midwest ISO transmission system, under the Midwest ISO OATT, within the METC pricing zone. METC is merely recovering those costs it is being allocated by the Midwest ISO in connection with the transmission capacity entitlements.⁹

The Commission orders:

(A) METC's proposed amendments to the Operating Agreements are hereby accepted, effective July 1, 2003. Waiver of the prior notice requirement is hereby granted.

(B) METC's compliance filing in Docket No. ER03-688-001 is hereby accepted, effective April 1, 2003.

By the Commission.

(S E A L)

Linda Mitry,
Acting Secretary.

⁹METC reports the Michigan Agencies capacity entitlements to the Midwest ISO as megawatts. The Midwest ISO then converts those megawatts to megawatt hours and includes those megawatts hours in assessing annual charges to METC.