

106 FERC ¶ 61, 203  
UNITED STATES OF AMERICA  
FEDERAL ENERGY REGULATORY COMMISSION

Before Commissioners: Pat Wood, III, Chairman;  
Nora Mead Brownell, Joseph T. Kelliher,  
and Suedeen G. Kelly.

Wisconsin Public Service Corporation

Docket No. EL03-40-001

v.

Midwest Independent Transmission System  
Operator, Inc.

ORDER DENYING REQUEST FOR REHEARING

(Issued March 3, 2004)

1. This order denies Wisconsin Public Service Corporation's (WPSC) request for rehearing of the Commission's order issued in this proceeding.<sup>1</sup> This order benefits customers by providing certainty to the Midwest Independent Transmission System Operator, Inc.'s (Midwest ISO) customers concerning contractual and rollover rights to transmission capacity.

**BACKGROUND**

2. On March 3, 2003, the Commission denied a complaint brought by WPSC against the Midwest ISO that alleged that the Midwest ISO violated 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 its transmission path to an alternate point.

3. In its complaint WPSC identified several agreements that formed the basis for its complaint: (1) a five-year power supply agreement with Northern States Power Marketing (NSPM) for the purchase of 150 MW Winter/200 MW Summer of capacity and energy (Power Sales Contract); and (2) two separate partial path transmission service agreements that provided the transmission for this energy transaction. WPSC explained

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<sup>1</sup> See *Wisconsin Public Service Corporation v. Midwest Independent Transmission System Operator*, 102 FERC ¶ 61,255 (2003) (March 3 Order).

that, prior to the formation of the Midwest ISO, the energy under the Power Sales Contract was delivered by Northern States Power (NSP) to an interconnection point between NSP and WSPC under a long-term point-to-point transmission agreement between NSPM and NSP (the so-called NSPM partial path). To complete the transaction, the transmission of the energy within WSPC's control area was provided under a Network Integration Service Agreement between WSPC and American Transmission Company LLC (ATCLLC) (the so-called WSPC partial path).<sup>2</sup> In the March 3 Order, the Commission noted that after the formation of the Midwest ISO, the transmission agreements were assigned to the Midwest ISO and service was then provided under the Midwest ISO OATT.<sup>3</sup>

4. In response to WSPC's complaint, the Commission found that the Midwest ISO appropriately followed its Business Practices by not merging the two separate and distinct partial path reservations and that in denying rollover rights the Midwest ISO did not inappropriately deny such rights.<sup>4</sup> The Commission explained that, under its Business Practices, the Midwest ISO provided an option to merge only partial path reservations that met specific criteria. The Commission stated that the partial paths at issue here involved separate arrangements with different transmission services, and these partial paths could not be merged without the consent of both transmission customers.<sup>5</sup>

5. The Commission explained that NSPM had the contractual rights to the point-to-point transmission service across NSP's transmission system, and WSPC had the contractual rights to the network transmission service over ATCLLC's transmission system. The Commission also explained that the customer under the Midwest ISO/NSPM partial path contract had not agreed to relinquish these rights and the Midwest ISO was correct to assign the transmission rights to the partial path's transmission customer, *i.e.*, as relevant here, to NSPM and not to WSPC. Furthermore, the Commission stated that the Midwest ISO treated the two transmission agreements as one for scheduling purposes and that WSPC reimbursed NSPM for the Midwest ISO/NSPM partial path transmission service did not confer contractual rights to the transmission capacity to permit such a merger, as claimed by WSPC. Therefore, the

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<sup>2</sup> March 3 Order at P 2.

<sup>3</sup> NSP assigned its transmission service agreement with NSPM to the Midwest ISO effective February 1, 2002 (Midwest ISO/NSPM partial path). ATCLLC assigned its network service agreement with WSPC to the Midwest ISO on February 26, 2002 (Midwest ISO/WSPC partial path).

<sup>4</sup> March 3 Order at P 17.

<sup>5</sup> March 3 Order at P 18.

Commission found that the Midwest ISO had appropriately followed section 10.1 of its Business Practices and that the two transactions did not qualify to be treated as one.<sup>6</sup>

6. The Commission went on to find that the Midwest ISO had not inappropriately denied rollover rights to WPSC under its OATT. The Commission reasoned that both NSPM and WPSC were entitled to maintain their existing contractual rights and to exercise their rollover rights with respect to each such partial path agreement. The Commission stated that NSPM had the right to renew and roll over its rights to transmission service over the Midwest ISO/NSPM partial path, as did WPSC over its partial path. Thus, the Commission found that the Midwest ISO could allow WPSC to roll over its partial path transmission service, consistent with its pre-existing partial path transmission rights on the ATCLLC system, but only its partial path transmission service and not NSPM's.<sup>7</sup>

7. In the March 3 Order, the Commission noted that, under section 2.2 of the Midwest ISO OATT, as relevant here, all existing firm service customers with a contract term of one year or more had the right to continue to take service from the Midwest ISO when the contract rolled over. Furthermore, the Commission noted that section 9.3.1 of the Midwest ISO's Business Practices stated 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." Thus the Commission found that the Midwest ISO could not grant WPSC rollover rights to a transmission path to which WPSC was not entitled, to the detriment of NSPM, the party that held such rights.<sup>8</sup>

8. The Commission also found that WPSC had paid the appropriate rates for the two separate transmission services under the two separate transmission service agreements. The Commission noted that WPSC had been receiving power under a point-to-point arrangement where NSPM and not WPSC was the transmission service customer under the Midwest ISO OATT, for which WPSC reimbursed NSPM. The Commission also noted that WPSC had been receiving power from the Midwest ISO under a network arrangement with ATCLLC that had been assigned by ATCLLC to the Midwest ISO. Thus, the Commission found that WPSC had been receiving and paying for two distinct services.<sup>9</sup>

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<sup>6</sup> March 3 Order at P 20.

<sup>7</sup> March 3 Order at P 20.

<sup>8</sup> March 3 Order at P 21.

<sup>9</sup> March 3 Order at P 22.

9. In the March 3 Order the Commission also concluded that the Midwest ISO had not been unjustly enriched. The Commission noted that under the license plate rate formula adopted by the Midwest ISO the revenues associated with the point-to-point transaction were allocated to the transmission systems that support the service. Similarly, network service revenues also flow back to the transmission owners on whose transmission system the transactions sink.<sup>10</sup>

10. In response to WPSC's argument that it would 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 Commission noted that WPSC will continue to have partial path rights to approximately 165-175 MW Winter and 76 MW Summer through ATCLLC.<sup>11</sup>

11. On a procedural issue, the Commission rejected WPSC's answer, referring to Rule 213(a)(2) of the Commission's Rules of Practice and Procedure that prohibits an answer unless permitted by the decisional authority.<sup>12</sup>

#### **WPSC'S REQUEST FOR REHEARING AND MOTION TO RESPOND**

12. WSPC filed a request for rehearing of the March 3 Order, arguing that the Commission erred: (1) when it determined that denying WPSC the right to roll over the entire transmission path from source to sink preserves the existing rights of the parties regarding the transmission path; (2) when it concluded that the Midwest ISO's Business Practices require consent before merging partial path transmission reservations and that such practices only permit the Midwest ISO to merge partial path transactions having the same owner and at the owner's request; (3) by failing to reconcile its conclusion that the Midwest ISO need not merge the two partial path transactions with the fact that for operational purposes the Midwest ISO treats the entire transmission path as a seamless transaction; (4) by finding that the Midwest ISO had not been unduly enriched and that WPSC had not been double paying for transmission service; (5) by failing to accept WPSC's answer; and (6) when it failed to find, at a minimum, that WPSC had raised issues of material fact that warrant investigation in a hearing.

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<sup>10</sup> March 3 Order at P 23. We noted that WPSC would receive a portion of the revenues.

<sup>11</sup> March 3 Order at P 24.

<sup>12</sup> March 3 Order at P 16.

13. On April 17, 2003, Xcel Energy Services Inc. (Xcel), on behalf of its utility operating company affiliates Northern States Power Company and Northern States Power Company (Wisconsin) filed a motion for leave to respond and a response to WSPC's request for rehearing filed in this proceeding.

## DISCUSSION

14. We deny WSPC's request for rehearing. We find that the arguments WSPC made in its rehearing request are essentially the same arguments that WSPC made in its complaint, which were rejected by the Commission in the March 3 Order.

15. First, WSPC claims that the Commission improperly denied WSPC the right to roll over the entire transmission path from source to sink, and that the Commission improperly found that this would preserve the existing rights of the parties regarding the transmission path. WSPC contends that as a network integration transmission service customer of the Midwest ISO it pays a network rate for transmission of its designated network resources from source to sink, and that it has rights to use the transmission system to integrate its resources with its load and pays a premium for this right. WSPC argues that it has lost all of the elements of the premium service it receives for its premium rate and is left worse off than NSPM.

16. We addressed these concerns in the March 3 Order when we determined that the Midwest ISO had not inappropriately denied rollover rights to WSPC under its OATT. WSPC fails to understand that both NSPM and WSPC have, and are entitled to maintain, their separate contractual rights and exercise their individual rollover rights with respect to each partial path arrangement. It was NSPM that had the right to roll over transmission service over the Midwest ISO/NSPM partial path, as did WSPC over its partial path. Thus, as we stated in the March 3 Order, the Midwest ISO could allow WSPC to roll over only its partial path transmission service consistent with its pre-existing partial path transmission rights on the ATCLLC system.<sup>13</sup> In addition, consistent with section 2.2 of the Midwest ISO OATT and section 9.3.1 of the Midwest ISO Business Practices, the Midwest ISO could not grant WSPC rollover rights to a transmission path to which WSPC was not entitled, to the detriment of NSPM, the party holding such rights.<sup>14</sup>

17. In addition, WSPC has not lost elements of its network service; rather, the Midwest ISO has followed its OATT and Business Practices to facilitate transmission service for all of its customers. For operational and reliability purposes the Midwest ISO

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<sup>13</sup> See March 3 Order at P 20.

<sup>14</sup> See March 3 Order at P 21.

allowed WPSC to schedule transmission service with a point of receipt indicating a designated network resource within the NSP Control Area to a point of delivery of WPSC's, based upon WPSC's and NSP's representation that the point of receipt was backed by a firm point-to-point transmission service request and as such qualified as a network resource. When NSPM failed to roll over that portion of the transmission service needed to move power, it expired. Thus, WPSC's request to roll over the entire reservation was treated by the Midwest ISO as a request to renew just one of the two partial path agreements (the WPSC/ATCLLC network service) and the Midwest ISO reassigned the receipt point of that partial path service. This treatment rightfully placed WPSC's transmission at the back of the queue for the purpose of determination of available transmission capacity over the constrained interface of the Midwest ISO between Minnesota and Wisconsin. If the Midwest ISO were to allow both partial path reservations to have source to sink rights over the constrained interface, this would in effect, double existing transmission rights which could degrade transmission reliability over the interface.

18. Second, WPSC asserts that the Commission improperly found that both the Midwest ISO's Business Practices required consent before merging partial path transmission transactions and that such practices only permit the Midwest ISO to merge partial path transactions involving the same owner and at the owner's request. WPSC maintains that neither the Midwest ISO's Business Practices nor the Midwest ISO OATT contains such a requirement. Upon further consideration, we agree that the Midwest ISO Business Practices do not require that merged partial path transactions must have the same owner and that it can be done only at the owner's request.<sup>15</sup> However, that does not change our conclusion. The Midwest ISO's Business Practices still provide only an option to merge partial path transactions, they do not require it. In this proceeding, the Midwest ISO had before it two separate and different transactions involving two different customers, both with valid transmission rights in their respective transmission service arrangements. The partial paths in this proceeding were not identical; the partial paths at issue here involved separate arrangements for different transmission services with different parties.<sup>16</sup> To rule otherwise would ignore the existing contractual rights of one of the parties, as relevant here, NSPM. NSPM had the contractual right to the point-to-point transmission service across NSP's transmission system while WPSC had the contractual rights to the network transmission service over ATCLLC's transmission

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<sup>15</sup> The procedures for a customer to identify reservations to be combined are found in section 10.3 of the Midwest ISO Business Practices. The criteria for this determination are as follows: (1) The type of service sold is identical; (2) The time period of the service originally sold is identical; and (3) The reservations identified by the customers form a continuous path

<sup>16</sup> See March 3 Order at P 18.

system. The Commission rightly explained in its March 3 Order that since NSPM, the customer under the Midwest ISO/NSPM partial path contract, had not agreed to relinquish its rights, the Midwest ISO was correct to assign the transmission rights to their rightful holder.<sup>17</sup>

19. Third, WPSC claims that the Commission erred by failing to reconcile its conclusion that the Midwest ISO need not merge the two partial path transactions with the fact that for operational purposes the Midwest ISO treats the entire transmission path as a seamless transaction. WPSC contends that, because the Midwest ISO “tags” the two transactions as one, the two partial paths constitute a single seamless merged transaction. That the Midwest ISO treated the two transactions as one for scheduling purposes, and that WPSC reimbursed NSPM for the Midwest ISO/NSPM partial path transmission service does not confer contractual rights to the transmission capacity, *i.e.*, cannot transfer NSPM’s contractual rights from NSPM to WPSC, to permit such a merger as claimed by WPSC.<sup>18</sup> Similarly, we find that the operational activities of the Midwest ISO in tagging the transaction as a single transaction for the purposes of scheduling and delivery cannot and do not change the respective contractual rights of the involved parties. Neither any scheduling arrangements between WPSC and NSPM, nor any tagging by the Midwest ISO can confer on WPSC any rights that belong to NSPM.

20. Fourth, WPSC asserts that the Commission erred by finding that the Midwest ISO had not been unduly enriched and that WPSC had not been double paying for transmission service. WPSC contends that it is not paying appropriate rates because it is paying premium rates for premium (network) service and that the Midwest ISO cannot collect two transmission charges since the WPSC transmission reservation is scheduled as one seamless path. WPSC also argues that, contrary to the Commission’s suggestion in the March 3 Order, since it does not own transmission assets, it is not a transmission owner and receives no transmission revenues.

21. In the March 3 Order the Commission determined that WPSC had paid the appropriate rates for the two separate services under the two separate agreements. Contrary to WPSC’s assertion that it is only paying for network service, WPSC was receiving and so should be paying for two distinct services, the point-to-point service, as a customer of NSPM and the network service, as a direct customer of the Midwest ISO.<sup>19</sup>

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<sup>17</sup> See March 3 Order at P 19.

<sup>18</sup> See March 3 Order at P 19.

<sup>19</sup> See March Order at P 22.

22. In the March 3 Order the Commission also found that the Midwest ISO had not been unjustly enriched under the transactions. The Commission noted that 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 systems that support the service. Similarly, WPSC's network service revenues also flow back to the transmission owner on whose transmission system the transactions sink.<sup>20</sup> We agree that WPSC will not directly receive these revenues.<sup>21</sup> The critical issue which we have addressed, however, is that the Midwest ISO will not retain these revenues either and so will not be unjustly enriched.

23. Fifth, WPSC argues that the Commission erred by failing to accept WPSC's answer. However, in the March 3 Order the Commission properly rejected the answer, referring to Rule 213(a)(2) of the Commission's Rules of Practice and Procedure, which expressly prohibits an answer unless the Commission should so order to the contrary.<sup>22</sup> The Commission acted, consistent with, and within its discretion under the regulations.

24. Lastly, WPSC claims that it raised issues of material fact and that the Commission should have set the proceeding for hearing. We disagree. As we discussed in the March 3 Order and above, the complaint did not raise issues of material fact, but rather issues that could be resolved on this record. Therefore, the Commission properly found that there was no need for such a hearing.

25. Finally, we will deny Xcel's motion to respond. Under Rule 713(d) of the Commission's Rules of Practice and Procedure, the Commission does not permit answers to requests for rehearing.<sup>23</sup>

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<sup>20</sup> See March 3 Order at P 23.

<sup>21</sup> We recognize that, while ATCLLC receives the revenues from the latter transaction, WPSC as a partial owner of ATCLLC ultimately may receive a portion of these revenues indirectly.

<sup>22</sup> See March 3 Order at P 16.

<sup>23</sup> See 18 C.F.R. § 385.713(d) (2003).

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The Commission orders:

(A) WPSC's request for rehearing is hereby denied, as discussed in the body of this order.

(B) Xcel's motion to respond is hereby denied.

By the Commission.

( S E A L )

Linda Mitry,  
Acting Secretary.