

113 FERC ¶ 61,054
UNITED STATES OF AMERICA
FEDERAL ENERGY REGULATORY COMMISSION

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

Michigan Electric Transmission Company

Docket No. ER03-1003-002

ORDER ON REMAND

(Issued October 20, 2005)

1. On April 15, 2005, the United States Court of Appeals for the District of Columbia (Court) remanded to the Commission orders that the Commission issued in *Michigan Electric Transmission Company*, 104 FERC ¶ 61,236 (2003), *reh'g denied*, 106 FERC ¶ 61,064 (2004).¹ The Court determined that the Commission did not adequately address claims that the Commission was allowing pass-through of the Commission's annual charges from Michigan Electric Transmission Company (METC) to co-owners of transmission facilities for transmission service taken pursuant to ownership interests rather than to transmission customers taking transmission service provided by a public utility pursuant to a tariff or rate schedule. We find that the existing record is not sufficient for us to make a final determination on the issue presented to us, and therefore we call for additional briefs and supporting evidence from the parties to address the questions presented below.

Background

2. On August 29, 2003, as affirmed on rehearing, the Commission allowed METC to recover charges, including annual charges assessed to it under Midwest Independent Transmission System Operator, Inc.'s (Midwest ISO) Open Access Transmission Tariff (OATT), from certain customers, including the Michigan Public Power Agency and the Michigan South Central Power Agency (collectively, Michigan Agencies) for their use of transmission facilities pursuant to their Ownership and Operating Agreements (O&O Agreements) with METC. The Michigan Agencies claimed that, as co-owners of certain transmission facilities with METC, they were in some cases using transmission facilities pursuant to ownership

¹ *Michigan Public Power Agency and Michigan South Central Power Agency v. FERC*, 405 F.3d 8 (D.C. Cir. 2005).

interests under the O&O Agreements and *not* pursuant to transmission service provided under a filed tariff or rate schedule of Midwest ISO or METC. To the extent they were using transmission facilities pursuant to their ownership interests, the Michigan Agencies claimed that they were not customers of Midwest ISO or METC and should not be required to pay costs reflecting annual charges imposed by the Commission on Midwest ISO and in turn passed through to METC.

3. In response to these claims of the Michigan Agencies, the Commission explained that the Commission's annual charges "may be allocated to [Michigan Agencies] by METC for service provided by METC. METC is being assessed these costs based on the Michigan Agencies' capacity entitlement being transferred 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 assessed by the Midwest ISO in connection with the transmission capacity entitlements."² On rehearing, the Commission stated that "as transmission customers, [Michigan Agencies] may, of course, be charged rates by the transmission provider that reflect annual charges assessed to the transmission provider."³

4. On appeal, the Court determined that the Commission did not address adequately the legitimacy of the pass-through of the Commission's annual charges in light of the Michigan Agencies' status as co-owners of certain METC transmission facilities, and did not address the Michigan Agencies' contention that the Commission's action is a departure from past practice.⁴ Specifically, the Court stated that the Commission had not adequately explained why it allowed METC to recover costs reflecting annual charges from the Michigan Agencies when their use of transmission facilities apparently was pursuant to ownership entitlements, and not pursuant to transmission service provided by METC under a tariff or rate schedule.⁵ The Court remanded the case to the Commission for further explanation of its rationale in the orders on review.

Commission Decision

5. Upon review of the record as it now stands, we request that the parties assist us in making a better record in this proceeding. In so doing, we ask the parties to submit briefs and/or supporting evidence which will address, among such other matters as they believe are relevant, the following questions:

² 104 FERC ¶ 61,236 at P 18.

³ 106 FERC ¶ 61,064 at P 18.

⁵ 405 F.3d at 14-16.

- A. As the Court notes, the Michigan Agencies only object to the pass-through of the Commission's annual charges for their use of transmission facilities pursuant to their ownership interests under the O&O Agreements.⁶ Provide a map of the METC transmission system, which includes the facilities that the Michigan Agencies own in whole or in part under the O&O Agreements.
- B. On the map, identify those facilities that the Michigan Agencies own in whole or in part under each of the O&O Agreements, indicate the Michigan Agencies' percentage ownership share for each facility that they do not wholly own, and indicate the rated capability of each facility. Also indicate the location of the Project I generating plant, Campbell Unit No. 3, and the Belle River Unit Nos. 1 and No. 2, and also show the points at which the Michigan Agencies take delivery from the METC transmission system to serve each of their member participants.
- C. For each of the following periods, indicate the total megawatt hours transmitted by the Michigan Agencies, over the METC transmission system, pursuant to the usage rights set forth in each O&O Agreement: (1) May 1, 2002 through December 31, 2002; (2) January 1, 2003 through December 31, 2003; (3) January 1, 2004 through December 31, 2004; and (4) January 1, 2005 through August 31, 2005.
- D. Of the total megawatt hours that the Michigan Agencies transmitted over the METC transmission system for each period in question (C) above, identify the total megawatt hours transmitted for which their wholly-owned or partially-owned facilities, as designated in their O&O Agreements, formed a complete contract path from the point of receipt to the point of delivery on the METC transmission system.
- E. Can the Michigan Agencies utilize the METC transmission system pursuant to each of their O&O Agreements even if the designated facilities which the Michigan Agencies own in whole or in part under the O&O Agreement do not provide a complete contract path between the point of receipt and point of delivery associated with such utilization of the METC transmission system?
- F. Who has operational control over the facilities, or the portion of the facilities, that the Michigan Agencies own in whole or in part under the O&O Agreements and who coordinates and schedules use of those facilities?

⁶ *Id.* at 12.

- G. Under which transmission provider's OATT is open access transmission service provided over the facilities that the Michigan Agencies wholly or partially own under the O&O Agreements?
- H. Does METC take transmission service as a transmission customer under the Midwest ISO OATT to meet its obligations associated with the Michigan Agencies' use rights under each of the O&O Agreements? If such service that METC takes under the Midwest ISO OATT does not equal the level of utilization reported in response to question (C) above, please indicate the portion of the utilization reported in response to question (C) above for which METC does not take transmission service as a transmission customer under the Midwest ISO OATT and explain why METC does not take transmission service as a transmission customer under the Midwest ISO OATT, citing the relevant provisions of the Midwest ISO OATT exempting METC from the obligation to take transmission service as a transmission customer under the Midwest ISO OATT for such usage.
- I. Was the transmission service taken pursuant to the Michigan Agencies' use rights under each of the O&O Agreements ever included in calculating annual charges assessed by the Commission to Consumers Energy Company, METC's predecessor? If so, did Consumers Energy Company ever pass through to the Michigan Agencies the annual charges associated with the ownership interests? If not, *should* the Commission have included the transmission service taken pursuant to the Michigan Agencies' use rights under each of the O&O Agreements in the calculation of annual charges assessed to Consumers Energy Company.
- J. Indicate the monthly coincident peak load (coincident with the peak load of the METC transmission system) of each of the Michigan Agencies' participants/members for calendar-year 2004. In addition, specify which of those loads is served with network integration transmission service under the Midwest ISO OATT and explain any adjustments that are made to the billing demand for such network transmission service in recognition of the Michigan Agencies' use rights under the O&O Agreements. Explain what limitations, if any, are placed on such network transmission service to reflect any adjustment in billing demand. For example, assume a participant's monthly coincident peak load is 800 megawatts, its usage right under the O&O Agreements is 300 megawatts, and Midwest ISO bills the participant for 500 megawatts of network transmission service. Is the participant's use of the entire Midwest ISO transmission system limited to the 500 megawatts that the participant is billed by the Midwest ISO for network transmission service? Is the remaining 300 megawatts of transmission service that is taken pursuant to the O&O agreements limited

- to use of only the METC transmission system, consistent with the use rights defined in the O&O Agreements? If the participant may source power anywhere on the entire Midwest ISO system, subject to available transfer capability, to serve its full load (in this example, 800 megawatts at the coincident peak hour), explain whether that network transmission service should be considered transmission service provided by public utilities (Midwest ISO and its public utility transmission owning members) and whether all deliveries to that load (again, 800 megawatts at the coincident peak hour) should be included in determining Midwest ISO's annual charge obligation?
- K. To the extent that the Michigan Agencies' deliveries over the METC transmission system pursuant to their use rights under their O&O Agreements require use of facilities other than their wholly-owned or partially-owned facilities, as designated under their O&O Agreements, explain whether such use of METC's transmission facilities constitutes transmission service provided by a public utility, and if not, why not?
- L. Explain why the ownership and use arrangement under the O&O Agreements should not be considered an exchange of transmission service between the Michigan Agencies and METC, whereby the Michigan Agencies provide access to the their wholly-owned or partially-owned facilities, as designated under their O&O Agreements, for use by METC and the Midwest ISO's other customers and, in exchange, the Michigan Agencies receive transmission service over the facilities that METC owns.
- M. To the extent that METC and/or Midwest ISO have operational control over the facilities that the Michigan Agencies wholly or partially own, as designated under their O&O Agreements, explain why the Michigan Agencies use of those facilities does not constitute transmission service provided by a public utility.
- N. Should the Michigan Agencies be charged for costs reflecting the Commission's annual charges assessed to Midwest ISO, and passed through to METC, for transmission taken pursuant to their ownership interests? If so, why? If not, why not?
6. The initial submittals must be filed within 30 days of the date of issuance of this order, and answering/reply submittals must be filed 20 days thereafter.

Docket No. ER03-1003-002

6

The Commission orders:

Parties are hereby directed to file initial and answering/reply submittals on the dates specified, addressing, among such matters as they believe are relevant, the questions identified in the body of this order.

By the Commission.

(S E A L)

Magalie R. Salas,
Secretary.