

106 FERC ¶ 61,255
UNITED STATES OF AMERICA
FEDERAL ENERGY REGULATORY COMMISSION

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

Midwest Independent Transmission System Operator, Inc. Docket No. ER03-1277-003

ORDER ON REHEARING

(Issued March 19, 2004)

Introduction

1. In this order we grant Michigan Electric Transmission Company, LLC's (METC) untimely motion to intervene and grant in part, METC's request for rehearing of the Commission's October 28 Order.¹

Background

2. In August 2003, Midwest Independent Transmission System Operator, Inc. (Midwest ISO) filed proposed revisions to Midwest ISO OATT, Schedule 10-FERC, which contains, among other things, Midwest ISO's proposed formulae for collecting the costs associated with FERC annual charges.²

3. As a result of Section 3401 of the Omnibus Budget Reconciliation Act of 1986,³ the Commission is required to recover its costs through, among other means, its annual charges.⁴ The Commission's electric annual charges (annual charges) in any fiscal year are based on its estimated electric regulatory program costs for that year (that are not otherwise recovered through, for example, filing fees), and during the next fiscal year, the

¹ Midwest Independent Transmission System Operator, Inc., 105 FERC ¶ 61,144 (2003) (October 28 Order).

² See Revision of Annual Charges Assessed to Public Utilities, Order No. 641, 65 Fed. Reg. 65,757 (November 2, 2000), FERC Statutes and Regulations, Regulations Preambles July 1996-December 2000 ¶31,109 (2000), reh'g denied, Order No. 641-A, 66 Fed. Reg. 15793 (March 21, 2001), 94 FERC ¶61,290 (2001).

³ 42 U.S.C. § 7178 (2000).

⁴ See 18 C.F.R. Part 382 (2003).

Commission adjusts the annual charges up or down to eliminate any over- or under-recovery by recalculating the annual charges and carrying any over- or under-charge from the prior year as a credit or debit on the next fiscal year's bill.

4. In the October 28 Order, the Michigan Public Power Agency and the Michigan South Central Power Agency (collectively, Michigan Agencies) objected to paying the proposed Schedule 10 fees because they were already paying METC a stated rate that allegedly included FERC annual charges. Consequently, Michigan Agencies argued that the proposed Schedule 10 would constitute double billing. The Commission, among other things, conditionally accepted the proposed Schedule 10 and held that Midwest ISO, as transmission provider, is responsible for the Commission's annual charges. The Commission also stated that Midwest ISO should in turn bill METC, as a transmission owner, for the annual charges assessed. The Commission further stated that if the parties continue to believe that they are being double billed for the annual charges that they could file a complaint under Section 206 of the Federal Power Act against METC with the Commission.⁵

Motion to Intervene Out-of-time and Rehearing Request

5. METC filed a motion to intervene out-of-time, a few days before the October 28 Order was issued. It asserted that it did not intervene in a timely fashion because it is a transmission-owning entity only and the proposed charge would only be assessed on transmission customers taking service under Midwest ISO's OATT. According to METC, only after some of its customers filed a protest based upon alleged double billing of the FERC annual charges did it become aware of the need to intervene.

6. In addition, METC later filed a motion for clarification or alternatively a request for rehearing of the October 28 Order. METC argues that the order is unclear as to its right to recover the FERC annual charges that Midwest ISO bills to it.

7. On December 11, 2003, Consumers Energy Company (Consumers) and Michigan Agencies filed responses in opposition to METC's request for clarification and alternative request for rehearing.

8. On December 19, 2003, METC filed answers to Consumers' and Michigan Agencies' opposing responses.

METC's Request for Rehearing

9. In their protest to Midwest ISO's Schedule 10 filing, Michigan Agencies asserted that they pay the METC rate of \$0.98/Kw/mo that already includes a component for FERC annual charges. Therefore, if they were, in turn, charged the Midwest ISO

⁵ See October 28 Order at P 34.

Schedule 10, they would essentially be ‘double charged’ for the FERC annual charges.⁶ They argue that METC, as the transmission owner, should be the entity subject to the proposed Schedule 10 assessment of FERC annual charges.

10. In response to Michigan Agencies’ claim, METC requests rehearing and/or clarification that the October 28 Order does not preclude METC from passing through the Schedule 10 charges to its customers.⁷ METC also requests clarification as to what vehicle it should use to pass through the Schedule 10 charges to its customers, in light of the fact that METC does not have a tariff on file for transmission service with the Commission.⁸

Discussion

Procedural Matters

11. Pursuant to Rule 214(d) of the Commission’s Rules of Practice and Procedure,⁹ given its interest in this proceeding, the stage of the proceeding, and the absence of undue prejudice or delay, we find good cause to grant METC’s untimely motion to intervene. Rule 713¹⁰ of the Commission’s Rules of Practice and Procedure prohibits answers to rehearing. Accordingly, we will reject all answers to METC’s rehearing request. METC’s answer is therefore moot.

Analysis

12. On rehearing, METC argues that in its October 28 Order, the Commission gave no guidance with regard to METC’s right to recover Midwest ISO annual charge assessments from Michigan Agencies or other customers within the METC pricing zone. We now grant rehearing in part and clarify that our October 28 Order does not preclude METC from seeking to pass through the Schedule 10 charges to its customers. Here, as we did in the October 28 Order, we are reserving judgment on the ‘double charge’ claim and who should ultimately be financially responsible for the FERC annual charges related to transmission service in the METC pricing zone. We note that we are providing parties with a venue to address these issues in a related order being issued concurrently.¹¹

⁶ See October 28 Order at PP 32-34.

⁷ We view METC’s request for rehearing and/or clarification as a request for rehearing.

⁸ See METC Rehearing Request at 5.

⁹ 18 C.F.R. §385.214(d) (2003).

¹⁰ 18 C.F.R. §385.713 (2003).

¹¹ The Commission order that is being issued concurrently in Docket No. ER04-446-000 addresses these issues.

13. METC also states that the October 28 Order did not identify the billing or tariff mechanism by which METC should pursue collection of these Schedule 10 charges, since METC does not provide transmission service under any tariff on file with the Commission. Although the October 28 Order did not identify a billing mechanism, the Commission explained that should METC be able to demonstrate a just and reasonable mechanism by which to pass through these charges, we will consider it in the context of that proposal. We note that Midwest ISO, on behalf of METC, has filed such a proposal with the Commission.¹²

The Commission orders:

- (A) METC's untimely motion to intervene is hereby granted.
- (B) METC's request for rehearing is hereby granted in part, as discussed herein.
- (C) The answers to METC's rehearing request are hereby rejected, as discussed herein.

By the Commission.

(S E A L)

Linda Mitry,
Acting Secretary.

¹² See Filing submitted by Midwest Independent Transmission System Operator, Inc. on January 20, 2004 in Docket No. ER04-446-000.