

122 FERC ¶ 61,067
UNITED STATES OF AMERICA
FEDERAL ENERGY REGULATORY COMMISSION

Before Commissioners: Joseph T. Kelliher, Chairman;
Sudeen G. Kelly, Marc Spitzer,
Philip D. Moeller, and Jon Wellinghoff.

Midwest Independent Transmission System
Operator, Inc.

Docket No. ER08-269-000

ORDER ON PROPOSED EXTENSION OF MICHIGAN JOINT ZONE

(Issued January 30, 2008)

1. On November 30, 2007, pursuant to section 205 of the Federal Power Act (FPA),¹ Midwest Independent Transmission System Operator, Inc. (Midwest ISO), Wolverine Power Supply Cooperative, Inc. (Wolverine), Michigan Electric Transmission Company, LLC (METC), and Michigan Public Power Agency on behalf of itself and certain of its members (MPPA) (collectively, Applicants) filed an application to amend the Second Amended and Restated Settlement Agreement (Settlement Agreement)² and the Second Revised Michigan Joint Zone Revenue Allocation Agreement (Allocation Agreement)³ (collectively, Michigan Joint Zone Agreements). The proposed amendments would allow the Michigan Joint Zone to remain in place beyond January 31, 2008, under the Midwest ISO Open Access Transmission and Energy Markets Tariff (TEMT), and modify the withdrawal provisions of the two agreements to provide METC with withdrawal rights that are the same as those already provided to Wolverine. For the reasons discussed below, we will accept the proposed amendments.

¹ 16 U.S.C. § 824d (2000 & Supp. V 2005).

² By order issued on August 10, 2007, the Commission conditionally approved the Settlement Agreement between Midwest ISO, MPPA, METC and Wolverine. *Midwest Indep. Transmission Sys. Operator, Inc.*, 120 FERC ¶ 61,148 (2007).

³ The Allocation Agreement is designated as Midwest ISO FERC Electric Rate Schedule No. 11.

I. Background

2. In August 2002, Midwest ISO proposed creation of a new license-plate pricing zone for Wolverine's transmission facilities,⁴ to take effect upon Wolverine becoming a member of Midwest ISO. The Commission rejected the Wolverine pricing zone, without prejudice to Midwest ISO filing to incorporate Wolverine into an existing pricing zone, and it established settlement procedures so the parties could develop a joint pricing zone that would include the transmission facilities of Wolverine and METC.⁵

3. The parties reached an agreement, which was conditionally approved by the Commission. The agreement established the Michigan Joint Zone under Midwest ISO's tariff, to expire January 31, 2008, and included the transmission facilities of Wolverine, MPPA, and METC.⁶ The Michigan Joint Zone was proposed as a pricing zone under Midwest ISO's existing zonal rate design, which the Commission approved for use during an initial six-year transition period ending on January 31, 2008.⁷ The agreement was subsequently revised, and the Michigan Joint Zone is now governed by the Michigan Joint Zone Agreements.⁸

⁴ Under a license-plate rate design, also called zonal rate design, the Regional Transmission Organization's (RTO's) footprint is segregated into a number of transmission pricing zones, typically based on the boundaries of individual transmission owners (TOs) or groups of TOs, and customers taking transmission service for delivery to load within the RTO pay a rate based on the embedded cost of the transmission facilities in the transmission pricing zone where the load is located. Thus, under license-plate rates, customers serving load within the RTO pay for the embedded cost of the transmission facilities in the local transmission pricing zone and receive reciprocal access to the entire RTO grid.

⁵ *Midwest Indep. Transmission Sys. Operator, Inc.*, 101 FERC ¶ 61,004, at P 20-21 (2002). Wolverine's transmission system is connected with and electrically surrounded by METC's transmission system.

⁶ *Midwest Indep. Transmission Sys. Operator, Inc.*, 106 FERC ¶ 61,219 (2004), *order on reh'g*, 112 FERC ¶ 61,351 (2005).

⁷ The Commission directed Midwest ISO and its transmission-owning members to revisit the license-plate pricing structure six months prior to the end of the six-year transition period. *Midwest Indep. Transmission Sys. Operator, Inc.*, 84 FERC ¶ 61,231, at 62,167, *order on reconsideration*, 85 FERC ¶ 61,250, *order on reh'g*, 85 FERC ¶ 61,372 (1998).

⁸ *See Midwest Indep. Transmission Sys. Operator, Inc.*, 120 FERC ¶ 61,148 (2007); *Midwest Indep. Transmission Sys. Operator, Inc.*, 114 FERC ¶ 61,053 (2006).

4. Applicants state that the Michigan Joint Zone Agreements are scheduled to terminate on January 31, 2008, unless extended by mutual agreement of all of the executing parties. They state that because the Michigan Joint Zone Agreements would no longer be necessary (or would require significant amendment) if Midwest ISO were to adopt a system-wide rate after the transition period, the termination date in the Michigan Joint Zone Agreements was tied to the end of the Midwest ISO transition period. However, Applicants note that Midwest ISO and certain Midwest ISO transmission owners have filed a request to extend the existing zonal rate design in the Midwest ISO beyond January 31, 2008, in Docket Nos. ER07-1233-000 and ER07-1261-000. Applicants state that the proposed amendments to the Michigan Joint Zone Agreements will provide them the necessary flexibility to extend participation in the Michigan Joint Zone. Further, the proposed amendments would provide METC with withdrawal rights that are the same as those provided to Wolverine, and ensure that, if withdrawal necessitates a change in the Midwest ISO TEMT pursuant to section 205 of the FPA, such early withdrawal will become effective as of the date such section 205 filing is accepted or approved by the Commission.⁹

II. Notice of Filing and Responsive Pleadings

5. Notice of Applicants' filing was published in the *Federal Register*, 72 Fed. Reg. 70,319 (2007), with interventions and protests due on or before December 21, 2007. On December 20, 2007, the Michigan Public Service Commission (Michigan Commission) filed a notice of intervention, raising no substantive issues. On December 21, 2007, Consumers Energy Company (Consumers Energy) filed a protest and motion to intervene. On January 7, 2008, Wolverine, METC, and MPPA (Joint Zone Members) filed a joint motion for leave to answer and an answer.

6. In its protest, Consumers Energy argues that the Michigan Joint Zone is part of Midwest ISO's six-year transition period for license-plate rates and therefore should not continue beyond that period, which is currently scheduled to end on January 31, 2008.¹⁰ Consumers Energy further asserts that the mechanics of the Michigan Joint Zone involve pancaking of revenue requirements and rates where customers pay charges associated with several transmission owners' facilities, without regard to which transmission owners' facilities the customer is interconnected, in violation of Order No. 2000.¹¹

⁹ Application at 3.

¹⁰ Consumers Energy Protest at 3-5. As noted above, the Commission is currently considering whether to extend the use of license-plate rates under the TEMT beyond January 31, 2008 in Docket Nos. ER07-1233-000 and ER07-1261-000.

¹¹ Consumers Energy Protest at 5-7, *citing Regional Transmission Organizations*, Order No. 2000, FERC Stats. & Regs. ¶ 31,089, at 31,173-74 (1999), *order on reh'g*, Order No. 2000-A, FERC Stats. & Regs. ¶ 31,092 (2000), *aff'd sub nom. Pub. Util. Dist. No. 1 of Snohomish County, Washington v. FERC*, 272 F.3d 607 (D.C. Cir. 2001).

Consumers Energy argues that “[t]he current approach is clearly a form of pancaking, and it should not be allowed to continue past the end of the [Midwest ISO] Transition Period.”¹² Instead, Consumers Energy proposes that a separate pricing zone be established for each of the Joint Zone Members.

7. In their answer, the Joint Zone Members disagree with Consumers Energy’s characterization of rates within the Michigan Joint Zone as pancaked rates and contend that the Michigan Joint Zone is similar to other joint pricing zones under the TEMT.¹³ Moreover, the Joint Zone Members argue that Consumers Energy’s proposed remedy – establishing separate pricing zones for each transmission owner in the Michigan Joint Zone – is inconsistent with the Commission’s policy of promoting fewer, not more, pricing zones.¹⁴ In addition, the Joint Zone Members also argue that the Michigan Joint Zone Agreements allow for extension of the termination date, noting contract language that states: “Termination Date: January 31, 2008, unless extended by mutual agreement of all of the Executing Parties.”¹⁵ Finally, the Joint Zone Members note the proposals pending before the Commission to continue use of the license-plate rate design in Midwest ISO beyond the transition period and assert that the Michigan Joint Zone should continue as long as Midwest ISO’s zonal rate structure is in effect.¹⁶

III. Discussion

A. Procedural Matters

8. Pursuant to Rule 214 of the Commission’s Rules of Practice and Procedure, 18 C.F.R. § 385.214 (2007), the notice of intervention and timely, unopposed motion to intervene serve to make the entities that filed them parties to this proceeding. Rule 213(a)(2) of the Commission’s Rules of Practice and Procedure, 18 C.F.R. § 385.213(a)(2) (2007), prohibits an answer to a protest unless otherwise ordered by the decisional authority. We will accept the Joint Zone Members’ answer because it has provided information that assisted us in our decision-making process.

B. Substantive Matters

9. We find that Applicants’ proposal to extend the Michigan Joint Zone Agreements past their original January 31, 2008 expiration date is just and reasonable. The extension allows Wolverine and MPPA, in particular, to continue their participation in Midwest

¹² Consumers Energy Protest at 7.

¹³ Joint Zone Members Answer at 10, 13-14.

¹⁴ *Id.* at 10, 14.

¹⁵ *Id.* at 11.

¹⁶ *Id.* at 11-13.

ISO as part of the Michigan Joint Zone. As the Commission previously stated, the participation of new transmission owners in Midwest ISO should be encouraged by providing appropriate compensation for their transmission facilities, whether by establishing separate pricing zones for those entities or, as in this case, by incorporating those entities into existing pricing zones.¹⁷

1. Termination Date

10. We disagree with Consumers Energy that neither the parties to the Michigan Joint Zone Agreements nor the Commission contemplated that the Michigan Joint Zone would continue after January 31, 2008. That expiration date is linked to the end of the Midwest ISO transition period since the Michigan Joint Zone might become obsolete if Midwest ISO adopts a system-wide rate at that time. However, as noted above, the Commission is currently considering whether to extend Midwest ISO's zonal rate structure past January 31, 2008. We thus find that it is consistent with the executing parties' intent to allow the Michigan Joint Zone to continue so long as Midwest ISO's zonal rate structure remains in place.¹⁸

11. Furthermore, the Michigan Joint Zone Agreements define the Termination Date as "January 31, 2008, *unless extended by mutual agreement of all of the Executing Parties.*"¹⁹ As such, the Michigan Joint Zone Agreements, as approved by the Commission, expressly contemplate the possibility of extension beyond January 31, 2008. The Commission orders approving the Michigan Joint Zone did not place restrictions on the option to extend the effective dates of the Michigan Joint Zone Agreements. Midwest ISO, Wolverine, METC and MPPA (i.e., the Executing Parties) have agreed to extend the effectiveness of the Michigan Joint Zone, and the proposed extension of the termination date is therefore permitted under the plain language of the Michigan Joint Zone Agreements.

2. Pancaked Rates

12. Consumers Energy incorrectly characterizes the zonal charge in the Michigan Joint Zone as a pancaked rate. The Commission stated in Order No. 2000 that "[r]ate pancaking occurs when a transmission customer is charged separate access charges for each utility service territory the customer's contract path crosses."²⁰ As the Joint Zone

¹⁷ *Midwest Indep. Transmission Sys. Operator, Inc.*, 106 FERC ¶ 61,219 at P 4.

¹⁸ The Michigan Joint Zone Agreements will expire by their own terms if the Commission ultimately approves the elimination of zonal pricing under the Midwest tariff.

¹⁹ Settlement Agreement at 6; Allocation Agreement at 6 (emphasis added).

²⁰ Order No. 2000, FERC Stats. & Regs. ¶ 31,089 at 31,173.

Members correctly point out, the fact that a single access charge (in this case, the Michigan Joint Zone rate) reflects the costs of multiple transmission owners within a zone, and which together own the facilities comprising that zone, does not transform a single charge into multiple or pancaked charges.²¹ Transmission customers serving load within the Michigan Joint Zone will only be subject to a single, non-pancaked rate for transmission service under the TEMT, without regard to how many of the Midwest ISO transmission owners' service territories the customer's contract path crosses. In that respect, the Michigan Joint Zone is no different than the Commission-approved Cinergy Services, Inc. pricing zone, which includes transmission facilities owned by Duke Energy Indiana, Inc., Duke Energy Kentucky, Inc., and Duke Energy Ohio, Inc., affiliates of Duke Energy Shared Services (f/k/a Cinergy Services, Inc.), as well as facilities owned by Indiana Municipal Power Agency and Wabash Valley Power Association.²² In short, a zonal rate that recovers the cost of transmission facilities owned by different entities does not constitute rate pancaking prohibited by the Commission in Order No. 2000.²³

3. Early Withdrawal

13. Applicants also propose to revise the Michigan Joint Zone Agreements to give METC the same early withdrawal rights as Wolverine, the only other Joint Zone Member that is a public utility under the FPA, and to ensure that, if early withdrawal necessitates a change in the Midwest ISO TEMT pursuant to section 205, such early withdrawal will not become effective until such changes are accepted or approved by the Commission.²⁴ We find that the change giving METC early withdrawal rights is reasonable since it simply extends to METC the same rights already afforded Wolverine. In addition, we

²¹ Joint Zone Members Answer at 14.

²² See Midwest ISO TEMT Third Revised Volume No. 1, at Schedule 7.

²³ Although rates in separate pricing zones may be higher or lower than in a joint zone, we note that the Joint Michigan Zone rate is determined pursuant to the Midwest ISO TEMT Attachment O formula rate, which the Commission has approved as appropriate for determining license plate zonal transmission rates under the Midwest ISO TEMT. Consumers Energy does not dispute that the cost of service and resulting rates in the Michigan Joint Zone are the product of the Commission-approved Midwest ISO TEMT Attachment O rate formula, and that Applicants' proposal does not affect that methodology. See, e.g., *Midwest Indep. Transmission Sys. Operator, Inc.*, 117 FERC ¶ 61,323, at P 12 (2006) (noting that a change to what facilities are in pricing zones may cause rates to increase in a particular zone but finding such increase is not a basis to find the rates are unjust and unreasonable).

²⁴ Under the proposed revision, Wolverine and/or METC may withdraw from the Michigan Joint Zone Agreements six months after written notice to the other Joint Zone transmission owner(s).

will accept the additional language that makes explicit the need for Commission approval if any early withdrawal necessitates a change to Midwest ISO's TEMT.

14. Our analysis of Applicants' filing indicates that the proposed amendments to the Michigan Joint Zone Agreements are reasonable and have not been shown to be unjust, unreasonable, unduly discriminatory or preferential, or otherwise unlawful. Accordingly, we will accept the proposed amendments for filing, without hearing or suspension, to become effective on January 31, 2008.

The Commission orders:

Applicants' proposed amendments to the Michigan Joint Zone Agreements are hereby accepted for filing, to become effective on January 31, 2008, without hearing or suspension, as discussed in the body of this order.

By the Commission.

(S E A L)

Kimberly D. Bose,
Secretary.