

UNITED STATES OF AMERICA
FEDERAL ENERGY REGULATORY COMMISSION

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

DTE Energy Trading, Inc.

Docket No. EL05-63-001

v.

Midwest Independent Transmission System Operator,
Inc.

ORDER ON REHEARING AND CLARIFICATION

(Issued November 29, 2005)

Introduction

1. In this order, we deny Midwest Independent Transmission System Operator, Inc.'s (Midwest ISO) request for rehearing and grant DTE Energy Trading, Inc. (DTE Energy), and Constellation Energy Commodities Group, Inc.'s (Constellation Energy) requests for clarification of the Commission's order in *DTE Energy Trading, Inc. v. Midwest Independent Transmission System Operator, Inc.*, 111 FERC ¶ 61,062 (2005) (April 18 Order). We also deny Midwest ISO's motion for stay.

Background

2. Under section 22.1 of the Midwest ISO open access transmission and energy markets tariff (TEMT),¹ a firm point-to-point transmission service customer may request

¹ The TEMT provides for terms and conditions necessary to implement a market-based congestion management program and energy spot markets. This includes a day-ahead energy market and a real-time energy market, locational marginal pricing, and a market for financial transmission rights. When Midwest ISO commenced operation of financially binding energy markets on April 1, 2005, it also began providing transmission
(continued)

to redirect its scheduled transmission service on a non-firm basis over Receipt and Delivery Points (or source and sink points) other than those originally reserved without incurring additional non-firm point-to-point transmission service charges, except as provided in section 22.1a (which later became section 22.2). If the customer requested to redirect service over a transmission path with a higher cost than the path the customer reserved, former section 22.2 of the Midwest ISO TEMT provided that the customer shall pay “the additional costs (*i.e.*, the difference in the zone rates) associated with the new path.”²

3. DTE Energy filed a complaint asserting that Midwest ISO improperly charged the hourly rate for non-firm point-to-point transmission service when DTE Energy elected to modify the receipt point of its primary firm transmission service reservation pursuant to section 22.1 of the Midwest ISO TEMT.³ According to DTE Energy, the former section 22.2 did not permit Midwest ISO to charge a “higher of” rate for non-firm redirected transmission service, unless the service was redirected to a higher price rate zone. Consequently, DTE Energy argued that Midwest ISO violated its tariff as well as the filed rate doctrine when it applied the hourly non-firm rate to non-firm redirect service that had a delivery point in the same pricing zone as its primary firm transmission reservation.⁴

service under the TEMT instead of the Midwest ISO open access transmission tariff. *See, Midwest Independent Transmission System Operator, Inc.*, 108 FERC ¶ 61,163, *order on reh’g*, 109 FERC ¶ 61,157 (2004), *order on reh’g*, 111 FERC ¶ 61,043 (2005).

² In Docket No. ER05-273-000, the Commission accepted and made subject to refund a revised section 22.2. This order will refer to the language in section 22.2 that was effective during the time period covered by the complaint in this case as “former” section 22.2. *See, Midwest Independent Transmission System Operator, Inc.*, 110 FERC ¶ 61,081 (2005).

³ Constellation Energy intervened in the instant proceeding and requested that the Commission grant it the same relief requested in DTE Energy’s complaint because Midwest ISO overcharged it in the same manner.

⁴ The City of Holland, Michigan (Holland) also filed a complaint seeking the same relief because Midwest ISO violated the former section 22.2 of its TEMT (Docket No. EL05-55-000). The Commission granted that complaint in an order issued concurrently with the April 18 Order. *See, City of Holland, Michigan v. Midwest Independent Transmission System Operator, Inc.*, 111 FERC ¶ 61,076, *order on reh’g and clarification*, 112 FERC ¶ 61,105 (2005) (*Holland*).

4. In the April 18 Order the Commission found, among other things, that Midwest ISO violated the former section 22.2 of its TEMT by assessing the higher hourly non-firm rate to non-firm redirect service taken by DTE Energy under section 22.1 in the same transmission pricing zone.⁵ The Commission noted that former section 22.2 “‘unequivocally’ provided that the Transmission Customer shall pay in addition to the amounts based on its initial reservation the additional costs (*i.e., the difference between the zonal rates*) associated with the new path.”⁶ Accordingly, the Commission concluded that a firm transmission service customer who redirected its service under section 22.1 to secondary receipt and delivery points within the same pricing zone as originally reserved should not incur additional charges, because former section 22.2 stated that any additional costs would be the “difference between the zonal rates.”⁷ As a result, the Commission directed Midwest ISO to refund to each customer improperly charged under the former section 22.2 the difference between the non-firm hourly rate assessed for redirect service within the same pricing zone and the original firm transmission service rate contained in the customer’s primary reservation plus interest.⁸

Requests for Rehearing

5. In its request for rehearing, Midwest ISO asks the Commission to modify the April 18 Order to provide refunds only to DTE Energy and Holland and “other similarly-situated parties . . . who pressed their overcharge claims” and intervened in these proceedings.⁹ Midwest ISO asserts that the Commission’s direction that refunds be provided to all affected Midwest ISO customers is overbroad, unnecessary, not in the public interest and, given the circumstances involved, amounts to an abuse of discretion.

6. DTE Energy filed a request for clarification or in the alternative for rehearing. DTE Energy requests that the Commission clarify that the refunds ordered are for every redirect transaction in which DTE Energy did not change its sink. DTE Energy also requests that the Commission clarify those point-to-point customers who redirected deliveries to higher-cost pricing zones should not have been charged the hourly non-firm

⁵ April 18 Order at P 25.

⁶ *Id.* (emphasis original).

⁷ *Id.*

⁸ *Id.* at P 24.

⁹ Midwest ISO Rehearing Request at 2.

transmission rate. DTE Energy requests clarification that Midwest ISO may only add an additional charge for redirected sinks into higher rate zones that is the differential between the amount due under DTE Energy's initial annual reservation and the annual charge applicable in the new sink zone, pro-rated to reflect the duration of the redirected transaction.¹⁰ DTE Energy also requests clarification that it is entitled to refunds equal to the difference between Midwest ISO's hourly non-firm rate and the charges properly due under the former section 22.2 for all service redirected to higher-pricing zones since 2002 (with interest).¹¹

7. Constellation Energy also filed a request for clarification and alternatively for rehearing. Constellation Energy's request for clarification raises the same issues as DTE Energy.

8. Pending disposition of its request for rehearing, Midwest ISO requests that the Commission stay its order to the extent it requires refunds to any transmission customers other than DTE Energy and Holland and the intervenors in these proceedings who "pressed their claims."¹²

Discussion

9. We will grant Constellation Energy's and DTE Energy's requests for clarification. They raise issues addressed in the April 18 Order and in *Holland*.¹³ Midwest ISO's TEMT rates for redirected transactions are based on the rates for the designated sink point.¹⁴ The rate for redirected transactions does not change if the sink point remains the same.¹⁵ The former section 22.2 makes an additional charge applicable when the redirected transaction sinks into a higher rate zone.¹⁶ Any additional charge can only be the difference between the relevant zonal rates and not the "higher of" non-firm hourly

¹⁰ DTE Energy Clarification Request at 9.

¹¹ DTE Energy Clarification Request at 10.

¹² Midwest ISO Rehearing Request and Motion for Stay at 13.

¹³ See *Holland* at P 12-17.

¹⁴ See April 18 Order at P 3,4.

¹⁵ See *Holland* at P 15.

¹⁶ See *Holland* at P 15.

rate charged by Midwest ISO.¹⁷ Accordingly, we agree with DTE Energy and Constellation Energy and grant their requests for clarification. We also agree that any additional charge must be pro-rated to reflect the duration of the redirected transaction.

10. We will also grant DTE Energy's clarification request regarding the April 18 Order refund requirements. For the reasons stated above, we clarify that DTE Energy is entitled to refunds equal to the difference between Midwest ISO's hourly non-firm rate and the charges properly due under the former section 22 for all service redirected to higher-pricing zones since 2002 (with interest).¹⁸

11. Midwest ISO's request for rehearing and stay are identical to its request for rehearing and stay in Docket No. EL05-55-000. Therefore, we will deny Midwest ISO's request for rehearing and stay for the reasons discussed in *Holland*.

The Commission orders:

(A) Midwest ISO's rehearing request is hereby denied as discussed in the body of this order.

(B) DTE Energy's and Constellation Energy's clarification requests are hereby granted as discussed in the body of this order.

(C) Midwest ISO's motion for a stay is hereby denied as discussed in the body of this order.

By the Commission.

(S E A L)

Magalie R. Salas,
Secretary.

¹⁷ See April 18 Order at P 25.

¹⁸ See *Holland* at P 16.