

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. ER04-446-003

ORDER ON REHEARING

(Issued October 17, 2006)

**I. Introduction**

1. In this order, we grant in part and deny in part Holland Board of Public Works' (Holland's) request for rehearing of the Commission's decision in *Midwest Independent Transmission System Operator, Inc.*, 113 FERC ¶ 61,238 (2005) (December 2 Order).

**II. Background**

2. Michigan Electric Transmission Company, LLC (METC) is a wholly-owned operating subsidiary of Michigan Transco Holdings Limited Partnership (Michigan Transco). METC's only business is the independent ownership of more than 5,400 miles of high-voltage transmission lines in Michigan's Lower Peninsula.<sup>1</sup> METC is a transmission-owning member of Midwest Independent Transmission System Operator, Inc. (Midwest ISO), and transmission service over its transmission facilities is provided pursuant to the Midwest ISO Open Access Transmission and Energy Markets Tariff (Tariff).<sup>2</sup>

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<sup>1</sup> By order dated September 21, 2006, the Commission conditionally approved the acquisition of Michigan Transco by ITC Holdings Corp. *See, ITC Holdings Corp.*, 116 FERC ¶ 61,271, *Order Revising Ordering Paragraph*, 116 FERC ¶ 61,278 (2006).

<sup>2</sup> See *Midwest Independent Transmission System Operator, Inc.*, 102 FERC ¶ 61,181, order granting clarification, 104 FERC ¶ 61,027 (2003).

3. METC owns the transmission facilities formerly owned by Consumers Energy Company (Consumers). The Commission conditionally authorized METC's purchase of Consumers' transmission facilities pursuant to sections 203 and 205 of the Federal Power Act (FPA),<sup>3</sup> in an order dated February 13, 2002.<sup>4</sup> As part of that transaction, METC proposed under section 205 of the FPA to set the zonal rate it would charge for transmission service at the same level as the rates charged by Consumers prior to the transfer of assets, for service over those facilities. METC also proposed a moratorium on those rates. The Membership Interests Purchase Agreement (MIPA) executed by Consumers and Michigan Transco established the terms and conditions governing the sale and transfer of transmission assets from Consumers to METC. In that agreement, METC committed to charge all customers a "black box" stated rate of \$0.98/kW/month (referred to herein as the \$0.98 rate) for transmission service over the transferred assets and to freeze that rate until December 31, 2004.<sup>5</sup> The rate Consumers was charging for the same service prior to the transfer was also \$0.98/kW/month.<sup>6</sup>

4. In Order No. 641, the Commission revised the method of calculating FERC annual charges and changed, in certain cases, the entity responsible for paying those charges.<sup>7</sup> Among other things, Order No. 641 determined that a Regional Transmission

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<sup>3</sup> 16 U.S.C. §§ 824(b), (d) (2000).

<sup>4</sup> *Trans-Elect, Inc.*, 98 FERC ¶ 61,142, *order on reh'g*, 98 FERC ¶ 61,368 (2002).

<sup>5</sup> This rate moratorium was extended to December 31, 2005. *See Michigan Electric Transmission Co., LLC*, 107 FERC ¶ 61,206 (2004). METC proposed in a separate proceeding to change from the \$0.98 rate to the formula rate contained in Attachment O of the Midwest ISO TEMA to establish its revenue requirement and rates for the METC pricing zone effective January 1, 2006. *See, Michigan Electric Transmission Co., LLC*, 113 FERC ¶ 61, 343 (2005) (suspending proposed rates for a nominal period, to become effective January 1, 2006, subject to refund, and establishing hearing and settlement judge procedures), *order on reh'g*, 116 FERC ¶ 61,164 (2006).

<sup>6</sup> In Docket No. OA94-77-000, Consumers filed for approval of a \$0.98/kW/month rate based on a 1995 test year supported by a cost-of-service analysis. Consumers' \$0.98/kW/month rate was accepted, subject to refund, pending the outcome of an evidentiary hearing.

<sup>7</sup> *See Revision of Annual Charges 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 at pp. 31,841-42 (2000), *reh'g denied*, Order No. 641-A, 66 Fed. Reg. 15,793 (March 21, 2001), 94 FERC ¶ 61,290 (2001).

Organization (RTO), and not the individual transmission owning members of the RTO, will be assessed FERC annual charges on all transmission that the RTO provides pursuant to its tariff.<sup>8</sup> The Commission also found in the December 2 Order that FERC annual charges assessed to an RTO are the RTO's costs.<sup>9</sup> Midwest ISO, an RTO, is assessed FERC annual charges and in-turn assesses METC its share of annual charges pursuant to Schedule 10-FERC of the Midwest ISO Tariff.<sup>10</sup>

5. On January 20, 2004, in the instant proceeding, Midwest ISO submitted Schedule 10 FERC-METC, which is designed to allow METC to recover from METC zonal customers the FERC annual charges invoiced to METC by Midwest ISO under Schedule 10-FERC.<sup>11</sup> The Commission accepted the proposed Schedule 10 FERC-METC, suspended it, subject to refund, and established hearing and settlement judge procedures.<sup>12</sup> Some parties settled their disputes regarding their respective responsibilities for FERC annual charges.<sup>13</sup>

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<sup>8</sup> Order No. 641 at 31,855.

<sup>9</sup> See December 2 Order 113 FERC ¶ 61,238 at P 32, note 44, *citing Midwest Independent Transmission System Operator, Inc.*, 103 FERC ¶ 61,048 at P 15, *reh'g denied* 104 FERC ¶ 61,060 (2003).

<sup>10</sup> See, *Midwest Independent Transmission System Operator, Inc.*, 105 FERC ¶ 61,144 (2003) (October 28 Order), *reh'g denied*, 106 FERC ¶ 61,255 (2004). The Commission accepted Schedule 10-FERC but did not determine ultimate cost responsibility for the FERC annual charges. The October 28 Order directed Midwest ISO to bill METC for FERC annual charges under Schedule 10-FERC, and on rehearing, the Commission clarified that the October 28 Order did not preclude METC from seeking to pass through the FERC annual charges to its customers. METC sought to do so in the instant proceeding.

<sup>11</sup> Midwest ISO made the filing at METC's request and as the administrator of the Tariff; Midwest ISO took no position on the filing.

<sup>12</sup> *Midwest Independent Transmission System Operator, Inc.*, 106 FERC ¶ 61,256 (2004).

<sup>13</sup> The Commission issued an order approving that partial uncontested settlement in *Midwest Independent Transmission System Operator, Inc.*, 109 FERC ¶ 61,229 (2004). The settling parties are METC, Michigan Public Power Agency, Michigan South Central Power Agency, and Wolverine Power Supply Cooperative, Inc.

6. The remaining parties, Consumers and Holland, submitted their dispute to the Commission in a paper hearing. They objected to the proposed Schedule 10 FERC-METC arguing that the METC zonal rate that they pay included a cost component to recover FERC annual charges. They asserted that METC's \$0.98 zonal rate, adopted as part of the transfer of Consumers' jurisdictional transmission assets to METC, already included FERC annual charges because that rate was the same rate used by METC's predecessor, Consumers. Consumers and Holland argued that Consumers' rate included a provision for the collection of FERC annual charges, as shown in Consumers' cost-of-service filed in Docket No. OA96-77-000. They asserted that if METC is allowed to pass on to them the FERC annual charge costs through the proposed Schedule 10 FERC-METC, they would be subject to a double charge for FERC annual charges.

**A. December 2 Order**

7. In the December 2 Order, the Commission determined that the proposed Schedule 10 FERC-METC is just and reasonable and not unduly discriminatory. The order found that: (1) the proposed Schedule 10 FERC-METC will not double recover FERC annual charges; (2) the moratorium rate of \$0.98 is a "black-box" stated rate; and (3) nothing in the record demonstrates that FERC annual charges are included in this "black box" rate. The Commission determined that Order No. 641 established that FERC annual charges are the costs of the transmission provider<sup>14</sup> (in this case Midwest ISO), and therefore the FERC annual charges are not subject to the rate moratorium. The Commission also addressed the issue of whether the MIPA "black box" rate provided for the recovery of FERC annual charges. The Commission said:

The MIPA does not explicitly stipulate that FERC annual charges are costs included in the rate moratorium or otherwise explicitly specify who will pay the FERC annual charges after the transfer of Consumers' transmission assets to METC. However, the MIPA was negotiated during a period when FERC annual charges had been determined to be costs of the RTO. Order No. 641 was issued almost a year before the rate moratorium was established by the execution of the MIPA, the MIPA contemplated METC's participation in an RTO, and the record shows that the \$0.98 rate was negotiated and proposed to be exclusive of RTO charges. Accordingly, it is reasonable to conclude that the rate moratorium does not

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<sup>14</sup> See *supra*, notes 7 and 8.

apply to RTO costs, and, therefore, it is appropriate for customers in the METC pricing zone to pay FERC annual charges under Schedule 10-FERC-METC. [footnotes omitted]

December 2 Order, 113 FERC ¶ 61,238 at P 35.

### **B. Request for Rehearing**

8. Holland filed a request for rehearing, arguing that the Commission erred because it did not find that Schedule 10 FERC-METC results in the double recovery of FERC annual charges. It also argues that the MIPA cannot be used to justify the application of Schedule 10 FERC-METC to all of METC's customers. Holland points out that the MIPA is an agreement between METC and Consumers and therefore applies only to them. Holland argues that the MIPA cannot govern the terms of service for customers other than Consumers.

### **III. Discussion**

#### **A. Schedule 10 FERC-METC does not result in the double recovery of FERC annual charges.**

9. Holland asserts that METC's recovery of annual charges, through Schedule 10 FERC-METC, constitutes double recovery of those charges because the \$0.98 rate is a "continuation," through the transfer of facilities from Consumers to METC, of Consumers' rate. Holland contends that METC's \$0.98 rate already recovers FERC annual charges because Consumers' original \$0.98 rate was based on Consumers' 1995 test year cost support that included FERC annual charges. Holland also argues that Order No. 641 is not applicable to situations, such as the one here, where a moratorium is placed on a transmission rate that includes FERC annual charges previously recovered by the predecessor transmission owner. Holland relies on general statements made by METC<sup>15</sup> to support its contention that METC's \$0.98 rate moratorium was a continuation of the same rate that Consumers had on file with the Commission.

10. We will not grant Holland's request for rehearing on this issue. Holland has not raised any new arguments or pointed out any new evidence that was not considered in the December 2 Order. Holland misinterprets the basis of our decision. The Commission

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<sup>15</sup> Holland also relies on statements of the applicants involved in the transfer of facilities from Consumers to METC in the proceeding where the Commission accepted METC's \$0.98 rate.

found that while METC's \$0.98 zonal rate was set at the same level as the Consumers rate that was then on file, there is no clear evidence to indicate that the rates have the same cost components.

11. Holland suggests that allowing FERC annual charges to be assessed in addition to the \$0.98 rate renders the rate moratorium meaningless. We disagree. In the December 2 Order, the Commission found that the record showed that the \$0.98 rate was negotiated and proposed to be exclusive of RTO charges. Thus, the Commission concluded that the rate moratorium does not apply to RTO costs, and, therefore, it is appropriate for customers in the METC zone to pay FERC annual charges under Schedule 10 FERC-METC.<sup>16</sup> Components of the \$0.98 rate would not be subject to increase during the moratorium.

12. In addition, Holland continues to assert that Order No. 641 is not relevant to this case because Order No. 641 was issued after Consumers filed the original \$0.98 rate. In the December 2 Order, the Commission explained that METC's \$0.98 rate was negotiated during a period when, pursuant to Order No. 641, FERC annual charges had been determined to be costs of the RTO. Order No. 641 clearly states that the RTO as the transmission provider, and not the transmission owning member of the RTO, will be assessed FERC annual charges; this put all on notice that that FERC annual charges were no longer to be included as a part of rate for a transmission owner in an RTO. Order No. 641 was issued almost a year before the rate moratorium was established.<sup>17</sup> In other words, the METC \$0.98 rate was negotiated and accepted by the Commission when it had already been established that FERC annual charges were costs of the RTO and not of, in this case, METC.

13. We also note that the Commission accepted the METC zonal rate of \$0.98 for filing without suspension, as requested. No cost support was submitted, as the proposed rate was a "black box" negotiated rate. Holland seeks to have the Commission infer that FERC annual charges were included because they were in the original Consumers transmission rate or possibly because FERC annual charges were considered a traditional cost component of a filed rate. The Commission cannot make such an inference here.

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<sup>16</sup> December 2 Order, 113 FERC ¶ 61,238 at P 35.

<sup>17</sup> *Id.*

**B. The MIPA does not govern the terms of service between METC and any customer other than Consumers.**

14. Holland asserts that the Commission erred when it dismissed the argument that the MIPA terms do not govern the terms of service between METC and Holland.

15. Upon reflection we will grant Holland's request for rehearing on this issue. The MIPA, the agreement between Consumers and METC, does not contain a rate of general applicability and therefore does not govern the rates, terms and conditions of service provided to a customer that is not a signatory to the MIPA. METC also filed the \$0.98 rate outlined in the MIPA pursuant to section 205 of the FPA. The Commission accepted that rate and it became the generally applicable zonal rate for the METC zone.<sup>18</sup> This \$0.98 rate filed by METC became the rate applicable to METC customers that are not signatories to the MIPA (e.g., Holland). That the MIPA itself does not govern the rates, terms and conditions for Holland is not relevant to the Commission's finding that the record indicates that the \$0.98 rate for customers in the METC zone does not include RTO costs. Thus, the discussion above and findings in the December 2 Order, unrelated to the MIPA, provide independent and sufficient reason to accept for filing Schedule 10 FERC-METC.

The Commission orders:

Holland's rehearing request is hereby granted in part and denied in part, as discussed in the body of this order.

By the Commission.

( S E A L )

Magalie R. Salas,  
Secretary.

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<sup>18</sup> See *Trans-Elect, Inc.*, 98 FERC 61,142 (2002).