

124 FERC ¶ 61,180
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.

Michigan South Central Power Agency

v.

Docket No. EL08-63-000

Midwest Independent Transmission
System Operator, Inc.

ORDER ON COMPLAINT

(Issued August 22, 2008)

1. On May 23, 2008, the Michigan South Central Power Agency (Michigan South Central) filed a complaint against the Midwest Independent Transmission System Operator, Inc. (Midwest ISO) requesting that the Commission authorize and direct the Midwest ISO to re-settle and refund certain Revenue Sufficiency Guarantee (RSG) charges. The Midwest ISO assessed these charges on virtual transactions by Michigan South Central following the implementation of the Midwest ISO's Day 2 energy markets. Michigan South Central states that it engaged in the transactions that triggered the RSG charges because Constellation Energy Commodities Group (Constellation) delivers power to it under a seller's-choice contract using procedures that do not permit Michigan South Central to utilize its carved-out Grandfathered Agreement (GFA) No. 266 (GFA No. 266)¹ to deliver that power to its member's load centers.

2. As further detailed below, in this order the Commission denies the relief requested in Michigan South Central's complaint.

¹ The Midwest ISO's tariff defines GFA(s) as an agreement or agreements executed or committed to prior to September 16, 1998. Carved-out GFA(s) are those that the Commission has identified as not subject to physical scheduling requirements of the Midwest ISO's Day 2 energy markets. *See Midwest Independent Transmission System Operator, Inc.*, 108 FERC ¶ 61,236 (2004), *order on reh'g*, 111 FERC ¶ 61,042 (2005) (GFA Rehearing Order).

I. Background

3. Michigan South Central's GFA No. 266 is a transmission service agreement under which it has an undivided ownership interest in, and associated use rights over, the transmission facilities of Michigan Electric Transmission Company LLC (METC). Michigan South Central also is party to a seller's-choice contract with Constellation executed on December 12, 2001, and effective from January 1, 2002 through December 31, 2008. Under the seller's-choice contract, Constellation is required to provide 30 MW of power around the clock to Michigan South Central. Constellation, as the seller, is free to source that power from wherever it wishes, as long as it delivers the power "into METC," the designated delivery point under the contract. Constellation is responsible for all transmission service it needs to make these deliveries.

4. Prior to the implementation of the Midwest ISO Day 2 energy markets, Michigan South Central used GFA No. 266 to move the 30 MW of power delivered by Constellation from the METC border to Michigan South Central's members' load centers on the METC system. Since the start of the Midwest ISO Day 2 energy markets, however, Michigan South Central has been unable to use GFA No. 266 to deliver this power from the METC border to its members' load centers. This is because the Midwest ISO's Day 2 scheduling rules require a GFA party to identify, on a day-ahead basis, the physical source of the power. Michigan South Central states that it has been unable to provide such day-ahead schedules to the Midwest ISO because Constellation has refused to identify the source of the power on a day-ahead basis. Michigan South Central alleges that since the start of Day 2 energy markets, Constellation has made financial rather than physical deliveries, although Constellation is contractually obligated to make the physical deliveries under the seller's choice contract.

5. Michigan South Central states that in light of these circumstances, it re-converted the real-time commodity to a day-ahead commodity. Michigan South Central also used day-ahead virtual supply transactions to move its price exposure from the real-time energy market to the day-ahead energy market.

6. In the RSG proceeding, Michigan South Central raised the issue of RSG charges that the Midwest ISO had assessed on transactions under carved-out GFAs, and the Commission ruled that Michigan South Central is exempt from all RSG charges under its carved-out GFA.² In January 2007, the Midwest ISO refunded to Michigan South Central all RSG charges it had previously paid for transactions under carved-out GFAs from market inception on April 1, 2005, with interest. A few months later, Michigan

² See *Midwest Independent Transmission System Operator, Inc.*, 115 FERC ¶ 61,108, at P 135 (2006) (RSG Order); *reh'g granted in part and denied in part*, 117 FERC ¶ 61,113 (2006) (RSG Rehearing Order), *order denying reh'g* 118 FERC ¶ 61,212 (2007).

South Central received invoices from the Midwest ISO assessing new RSG charges. Michigan South Central States that as of April 31, 2008, the amount of RSG charges to be re-settled and refunded is \$366,611.

II. Complaint

7. Michigan South Central asks the Commission to authorize and direct the Midwest ISO to resettle and refund the new RSG charges. It notes that in the RSG proceeding, the Commission ruled that Michigan South Central is exempt from all RSG charges under its carved-out GFA. Michigan South Central maintains that the new RSG charges at issue here appear to be due to the Midwest ISO's interpretation of the Commission's holding in the Midwest ISO RSG Proceeding that RSG charges should be calculated and assessed on parties who participate in virtual transactions.

8. Michigan South Central states that in the RSG proceeding, it asked the Commission to direct the Midwest ISO to provide scheduling rules that would address the inability of parties that receive power under seller's-choice agreements to know the source of that power on a day-ahead basis. It notes that the Commission issued a deficiency letter to the Midwest ISO in which it directed the Midwest ISO to respond to Michigan South Central's concerns and to explain the options available that would allow Michigan South Central to schedule its seller's-choice agreement amounts under its GFA to avoid RSG charges. Michigan South Central states that the Midwest ISO's response did not address its situation, so it again requested that the Commission direct the Midwest ISO to explore its options.³

9. Michigan South Central states that its only alternative under the circumstances was to re-convert the real-time commodity to a day-ahead commodity. To obtain better price certainty, Michigan South Central used day-ahead virtual supply transactions to move its price exposure from the real-time energy market to the day-ahead energy market. It did this to mimic as closely as possible the carved-out treatment it maintains it should have obtained.

10. Michigan South Central notes that it cleared virtual supply transactions made at a node that is a valid sink and registered as such under GFA No. 266. It maintains that the use of this sink, combined with any other sinks specified under GFA No. 266, is consistent with the terms of the GFA and is inherent to the exercise of Michigan South Central's existing rights under GFA No. 266, or is consistent with Constellation's real-time deliveries to Michigan South Central. Michigan South Central states that upon

³ Michigan South Central states that the Commission ultimately ruled that parties to carved-out GFAs are not subject to RSG charges and specifically identified Michigan South Central A as one of the parties that are not subject to RSG charges. RSG Order, 115 FERC ¶ 61,108 at P 135.

receiving the invoices assessing the new RSG charges, it promptly discontinued its virtual trading activity. Michigan South Central maintains that its limited virtual trading activity was a mitigation measure used to address the absence of any meaningful solution to ensure that it received the benefit of its carved-out GFA and the Commission's prior directives.

11. Michigan South Central argues that although it cleared virtual supply transactions and withdrew energy in the real-time market, all of its virtual scheduling activity was associated with the amounts it would have scheduled under the seller's choice agreement and GFA No. 266. It also maintains that the Midwest ISO failed to take into account Michigan South Central's specific circumstances when it applied the general rule on RSG charges set forth in the RSG Rehearing Order and that the Midwest ISO did not consider the Commission's specific directive in the same proceeding that Michigan South Central was not to be subject to RSG charges.

III. Answers and Comments

12. Notice of Michigan South Central's complaint was published in the *Federal Register*, 73 Fed. Reg. 31,452 (2008), with interventions and answers due on or before June 12, 2008. The Midwest ISO filed an answer. Motions to intervene were filed by Ameren Services Company, Constellation Energy Commodities Group, Inc. and Constellation NewEnergy, Inc., and Exelon Corporation.

13. In its answer, the Midwest ISO states that it defers to the Commission on the issue of whether it would be appropriate to resettle Michigan South Central's RSG charges. Midwest ISO believes that to resolve Michigan South Central's claim, it is necessary to determine the interrelation between the two Commission rulings pertaining to RSG charges. The first is the ruling that carved-out GFAs, including GFA No. 266, are not subject to RSG charges with respect to transactions under those GFAs. The second is the Commission's directive that RSG charges should apply to virtual transactions on days when the parties to those transactions make physical withdrawals of energy in real time.

14. The Midwest ISO states that the RSG charges involved in the complaint were assessed as a result of the second ruling to the extent that Michigan South Central engaged in virtual transactions and physical withdrawals ensued. The Midwest ISO states that Michigan South Central invokes the first ruling with regard to its virtual transactions, claiming that those transactions should be accorded carved-out GFA treatment because they were undertaken only in connection with its deliveries from Constellation relating to GFA No. 266.

IV. Discussion

A. Procedural Matters

15. Pursuant to Rule 214 of the Commission's Rules of Practice and Procedure, 18 C.F.R. § 385.214 (2008), the timely, unopposed motions to intervene serve to make the entities that filed them parties to this proceeding.

B. Analysis

16. We deny the relief requested in Michigan South Central's complaint. The Commission stated, in its order on GFA treatment in the Day 2 energy market, that "an entity that does not want to become a market participant for purposes of a carved-out GFA cannot avoid an obligation to become a market participant for transactions not related to a carved-out GFA."⁴ Michigan South Central attempts to show that its virtual scheduling activity was related to GFA No. 266 by arguing that this activity was "associated with" the amounts it would have scheduled under its seller's choice agreement and GFA No. 266. This argument fails to acknowledge that carved-out GFAs are agreements for transmission service, and they therefore do not encompass virtual supply offers and bids such as those Michigan South Central made in the Midwest ISO energy market. Those offers and bids are energy market activities that are subject to the terms and conditions of the Midwest ISO Transmission and Energy Markets Tariff (TEMT), whereas carved-out GFAs are older transmission agreements that are not subject to the certain energy market scheduling and financial settlement provisions of the TEMT.

17. Under Michigan South Central's argument, any steps it took to compensate for its inability to utilize GFA No. 266 would be "related to" that agreement in some sense. While we agree that the transmission service provided under the GFAs is typically associated with a supply arrangement, we do not consider virtual transactions to be part of the carved-out GFA service. Rather, the supply arrangement associated with carved-out GFAs is assumed to be the scheduling of physical supply in a process that occurs outside the energy market framework.⁵ Therefore, to the extent Michigan South Central was unable to obtain energy from Constellation in a timely manner, its remedy would be to obtain other physical supply from other suppliers.

18. Michigan South Central did not obtain alternative physical supplies here. It instead engaged in arbitrage activities to manage price risk. These activities are entirely

⁴ GFA Rehearing Order, 111 FERC ¶ 61,042 at P 330.

⁵ As noted in n.1 above, a carved-out GFA is defined as an agreement that is not subject to the *physical* scheduling requirements of the Day 2 energy market.

separate from the provision of energy supplies for transmission service, and they therefore cannot be considered to be part of the carved-out GFA service. Like any other virtual supply offer, the virtual offers made by Michigan South Central caused RSG costs to be incurred, and it therefore was appropriate for the Midwest ISO to assess RSG charges.

The Commission orders:

The relief requested in Michigan South Central's complaint is hereby denied, as discussed above.

By the Commission.

(S E A L)

Kimberly D. Bose,
Secretary.