154 FERC ¶ 61,204
UNITED STATES OF AMERICA
FEDERAL ENERGY REGULATORY COMMISSION

Before Commissioners: Norman C. Bay, Chairman;
Cheryl A. LaFleur, Tony Clark,
and Colette D. Honorable.

City of Holland, Michigan EL05-55-003
v.
Midwest Independent Transmission
System Operator, Inc.

EL05-63-005
DTE Energy Trading, Inc.
v.
Midwest Independent Transmission
System Operator, Inc.

ORDER DENYING REQUEST FOR REHEARING AND GRANTING CLARIFICATION

(Issued March 17, 2016)

1. In this order we deny Midwest Independent Transmission System Operator, Inc.'s (MISO)[1] June 19, 2008 request for rehearing of the Commission's May 20, 2008 order that conditionally accepted MISO's refund reports in these proceedings.[2] In addition, we

[1] Effective April 26, 2013, MISO changed its name from "Midwest Independent Transmission System Operator, Inc." to "Midcontinent Independent System Operator, Inc."

[2] *City of Holland, Michigan v. Midwest Indep. Transmission Sys. Operator, Inc.*, 123 FERC ¶ 61,187 (2008) (Refund Reports Order). The Commission had directed MISO to provide refunds and file refund reports in earlier orders that granted complaints brought by the City of Holland, Michigan (Holland) and DTE Energy Trading, Inc. (DTET). *See City of Holland, Michigan v. Midwest Indep. Transmission Sys. Operator, Inc.*, 111 FERC ¶ 61,076 (Holland Complaint Order), *order on reh'g*, 112 FERC ¶ 61,105 (2005) (Holland Rehearing Order); *DTE Energy Trading, Inc. v. Midwest Independent Transmission System Operator, Inc.*, 111 FERC ¶ 61,062 (DTET Complaint

(continued ...)

grant MISO's request for clarification regarding the applicable refund period and methodology.

I. Background

A. Complaint Orders

2. In its January 14, 2005 complaint, Holland alleged that MISO violated sections 22.1 and 22.2[3] of MISO's Open Access Transmission Tariff (Tariff) by charging the hourly rate for non-firm point-to-point transmission service when Holland redirected the receipt point of its firm transmission service. DTET's February 16, 2005 complaint contained similar allegations.

3. On April 18, 2005, in both orders on the complaints, the Commission found that MISO violated section 22.2 of the Tariff by assessing the higher hourly non-firm rate for firm point-to-point transmission service that was redirected on a non-firm basis within the same transmission pricing zone. The Commission added that it could order refunds for past periods where a public utility had either misapplied a formula rate or otherwise charged rates contrary to the filed rate.[4] Therefore, the Commission directed MISO to refund, with interest, to Holland, DTET, and other similarly situated customers "the difference between the non-firm hourly rate assessed to [such customers] for redirect service within the same pricing zone and the original firm transmission service rate contained in [such customers'] primary reservation[s]."[5] The Commission also directed

---

Order), *order on reh'g*, 113 FERC ¶ 61,214 (2005) (DTET Rehearing Order), *order on reh'g*, 119 FERC ¶ 61,109 (2007) (Second DTET Rehearing Order).

[3] Section 22.1 of the Tariff later became section 22.2. Holland Complaint Order, 111 FERC ¶ 61,076 at P 4.

[4] Holland Complaint Order, 111 FERC ¶ 61,076 at P 24; DTET Complaint Order, 111 FERC ¶ 61,062 at P 28 (citing *San Diego Gas & Electric Co. v. Sellers of Energy and Ancillary Services into Markets Operated by the California Independent System Operator and the California Power Exchange*, 93 FERC ¶ 61,121 (2000)).

[5] Holland Complaint Order, 111 FERC ¶ 61,076 at P 24; DTET Complaint Order, 111 FERC ¶ 61,062 at P 28.

MISO to make such refunds within 30 days of the date of the order, and to submit a refund report no later than 15 days after the date refunds are made.[6]

B. Holland and DTET Rehearing Orders

4. On May 18, 2005, MISO filed requests for rehearing of both the Holland Complaint Order and DTET Complaint Order, which were denied.[7] On May 18, 2005, Holland and Cargill Power Markets, LLC (Cargill) filed requests for clarification of the Holland Complaint Order.[8] On July 25, 2005, the Commission granted Holland's and Cargill's clarification requests. First, regarding Holland's request for clarification, the Commission stated that a different zonal rate would apply to a redirected transaction only if the sink point were moved to a higher priced zone. Thus, if only the source point of the firm reservation was redirected and the sink point remained the same, or the sink point was redirected to another point within the same pricing zone (or a pricing zone of the same cost), no additional costs should have been incurred.[9] With respect to Cargill's request, the Commission found that MISO was required to provide refunds for any higher non-firm charges imposed on redirected service within the same pricing zone, regardless of whether the non-firm redirect was hourly, daily, weekly, or monthly.[10] The Commission further clarified that, with respect to the base rate to be used in calculating the refunds: "[t]o effectively calculate refunds for the inappropriate additional charges

---

[6] Holland Complaint Order, 111 FERC ¶ 61,076 at Ordering Paragraphs (B), (C), and (D); DTET Complaint Order, 111 FERC ¶ 61,062 at Ordering Paragraphs (B), (C), and (D).

[7] MISO had requested that the Commission limit the pool of transmission customers entitled to a refund to Holland, DTET, and "other similarly-situated parties . . . who pressed their overcharge claims." Holland Rehearing Order, 112 FERC ¶ 61,105 at P 7; DTET Rehearing Order, 113 FERC ¶ 61,214 at P 5. The Commission determined that MISO would not be unduly burdened by having to review all reservations in order to determine if refunds were in order. In addition, the Commission determined that "it would be inequitable to require [MISO] to provide a remedy to only four of its customers, when potentially many other customers were also impacted by its violation of the filed rate doctrine." Holland Rehearing Order, 112 FERC ¶ 61,105 at P 11. *See* DTET Rehearing Order, 113 FERC ¶ 61,214 at P 11.

[8] Holland Rehearing Order, 112 FERC ¶ 61,105 at PP 12-14.

[9] *Id.* P 15.

[10] *Id*. P 16.

that MISO applied to redirect service that was not the higher cost pricing zone . . . the base rate to be used by MISO should be a restated calculation of the Transmission Customer's original firm reservation on a monthly, weekly, daily or hourly basis."[11]

5. On May 18, 2005, DTET and Constellation Energy Commodities Group, Inc. (Constellation Energy) filed requests for clarification of the DTET Complaint Order. Specifically, DTET requested that the Commission clarify that the refunds ordered were for every redirect transaction in which there was no change in the sink. DTET noted that MISO apparently believed that it need not consider in its refund calculations the hourly ancillary service rates that MISO charged DTET in connection with DTET's redirect transactions because these hourly charges would somehow have been assessed regardless of MISO's erroneous billings for redirect service. DTET asserted that this was incorrect because DTET became subject to MISO's highest-priced hourly charges for ancillary services only as a result of MISO's decision to erroneously charge its highest-priced non-firm hourly rate for non-firm redirect service. DTET argued that MISO could not expect to benefit from the unlawful application of its hourly non-firm rate for redirect service by keeping the difference between the hourly ancillary service rates it charged DTET and annual ancillary service rates applicable to DTET's annual firm reservation.[12]

6. On November 29, 2005, in the DTET Rehearing Order, the Commission clarified that the rate for redirected transactions was based on the rate for the designated sink point and did not change if the sink point remained the same.[13] The Commission stated that any additional charge must be the difference between the relevant zonal rates and not the "higher of" non-firm hourly rate charged by MISO. The Commission also stated that any additional charge must be prorated to reflect the duration of the redirected transaction.[14] The Commission clarified that DTET was entitled to refunds equal to the difference between MISO's hourly non-firm rate and the charges properly due under the former

---

[11] *Id*. P 17.

[12] DTET Request for Clarification at 8, n. 6.

[13] DTET Rehearing Order, 113 FERC ¶ 61,214 at P 9.

[14] *Id*.

section 22[15] for all service redirected since 2002, with interest.[16] The Commission did not address whether any party was entitled to any refunds of its ancillary services charges.

C. Second DTET Rehearing Order

7. On December 29, 2005, the Midwest Stand-Alone Transmission Companies (Transmission Companies) and the MISO Transmission Owners (MISO TOs) filed requests for rehearing of the DTET Rehearing Order.[17]

8. On May 2, 2007, the Commission denied the Transmission Companies' and the MISO TOs' requests for a second rehearing of the DTET Complaint Order. First, the Commission stated that it disagreed with the Transmission Companies' position that the record did not support DTET's claim that MISO's pricing of inter-zonal redirect violated the Tariff. The Commission found, among other things, that if MISO wanted to charge "higher of" pricing for redirected transmission services, it could have done so when it proposed the initial Tariff section 22.2 or could have made a filing proposing to do so at any time.[18] In addition, the Commission disagreed with the Transmission Companies' argument that MISO's interpretation and application of the "higher of" rate to inter-zonal redirects was a reasonable interpretation of the Tariff. The Commission stated that Order No. 888 established the right to redirect on a non-firm basis as an integral feature of firm

---

[15] In Docket No. ER05-273-000, the Commission accepted and made subject to refund, a revised section 22.2. The orders in these proceedings refer to the language in section 22.2 that was effective during the time period covered by the complaints as "former" section 22.2. *See Midwest Indep. Transmission Sys. Operator, Inc.*, 110 FERC ¶ 61,081 (2005).

[16] DTET Rehearing Order, 113 FERC ¶ 61,214 at P 10.

[17] Second DTET Rehearing Order, 119 FERC ¶ 61,109 at PP 6-8.

[18] *Id.* P 17 (citing DTET Complaint Order, 111 FERC ¶ 61,062 at P 26).

point-to-point transmission service.[19] The Commission concluded that MISO's interpretation was not reasonable and was inconsistent with Order Nos. 888 and 888-A.[20]

9. Regarding refunds, the Commission noted that the Transmission Companies and the MISO TOs were parties to and participated in Holland's complaint proceeding and that, in that proceeding, the Commission ordered MISO to pay retroactive refunds for intra-zonal redirects, plus interest.[21] Finally, the Commission clarified that the refunds ordered in DTET Complaint Order and the DTET Rehearing Order were applicable to all customers who have been assessed the higher non-firm rate for redirect service.[22]

D. Refund Reports and Responses

10. On July 18, 2005, MISO filed an interim report on the status of refunds directed by the Commission in the Holland and DTET Complaint Orders. On July 20, 2005, DTET filed comments to the refund status report. DTET stated that the only issues still in dispute that would change the level of refunds related to the proper calculation of: (1) ancillary service charges assessed as part of customers' redirect service; and (2) redirect charges for "inter-zonal" changes in sink (delivery point).

11. On September 16, 2005, MISO filed a refund report in EL05-55-002 and EL05-63-002 (September 2005 Refund Report). The report summarized the refunds provided to all affected customers, regardless of their participation in these proceedings. MISO stated that it made available to the affected customers and transmission owners individual files containing all of the data that is specific to them and identified the calculations performed to arrive at the results. MISO added that the refunds were effectuated on

---

[19] Second DTET Rehearing Order, 119 FERC ¶ 61,109 at P 18 (citing *Promoting Wholesale Competition Through Open Access Non-Discriminatory Transmission Services by Public Utilities; Recovery of Stranded Costs by Public Utilities and Transmitting Utilities*, Order No. 888, FERC Stats. & Regs. ¶ 31,036 (1996), *order on reh'g*, Order No. 888-A, FERC Stats. & Regs. ¶ 31,048 (1997), *order on reh'g*, Order No. 888-B, 81 FERC ¶ 61,248 (1997), *order on reh'g*, Order No. 888-C, 82 FERC ¶ 61,046 (1998), *aff'd in relevant part sub nom. Transmission Access Policy Study Group v. FERC*, 225 F.3d 667 (D.C. Cir. 2000), *aff'd sub nom. New York v. FERC*, 535 U.S. 1 (2002)).

[20] Second DTET Rehearing Order, 119 FERC ¶ 61,109 at P 18.

[21] *Id.* P 20.

[22] *Id*. P 21.

September 8, 2005, as part of an August 2005 transmission settlement, and that they included interest.[23] MISO also stated that refunds of any ancillary services charges were not included because none of the Commission's orders required such refunds.[24]

12. On September 26, 2005, DTET filed comments on the September 2005 Refund Report, and asked the Commission to rule on two issues. First, with regard to redirect transactions involving changes in a sink zone, DTET asked the Commission to direct MISO to refund the difference between the hourly non-firm rates assessed and the charges authorized under the applicable MISO Tariff.[25] Second, DTET asked the Commission to direct MISO to refund the difference between the high-priced hourly ancillary service charges assessed in conjunction with firm point-to-point customers' redirected transactions and the ancillary service charges properly applicable to such transactions.[26] DTET also attached its May 18, 2005 request for clarification and its June 6, 2005 motion for leave to file an answer and answer.

13. DTET argued that:

> [T]he proper charges for ancillary services provided in conjunction with redirect service would have recognized the fact that "the transmission service those ancillaries were associated with" was NOT hourly non-firm service, but rather was firm point-to-point service: just as redirecting customers were supposed to have been charged, for the duration of the redirect, the applicable firm point-to-point rate in the redirected or primary zone (whichever was higher), they likewise should have been charged the *ancillary service rate attendant to that firm* [*point-to-point*] *rate.*
>
> At bottom, [MISO's] unlawful characterization and treatment of non-firm redirect service as a separate *hourly* transmission service necessarily rendered its imposition of *hourly* ancillary service charges unlawful as well under the Commission's [DTET Complaint Order].[27]

---

[23] MISO September 2005 Refund Report at 6.

[24] *Id.*

[25] DTET Comments on September 2005 Refund Report at 4-5.

[26] *Id*. at 2.

[27] *Id.* at 6 (emphasis in original).

14. DTET filed supplemental comments on the September 2005 Refund Report. After further examination of the raw data that MISO submitted in that report, DTET concluded that MISO "appears to have failed to include within the scope of transactions covered by the Commission's refund directive in Docket No. EL05-63-000 an entire category of redirect transactions sinking within the same pricing zone.[28] Specifically, DTET requested that the Commission direct MISO to refund all amounts charged to DTET for non-firm redirect service where DTET redirected from one MISO-border sink (external interface sink) to another MISO-border sink.[29]

15. On May 18, 2006, MISO filed a refund report in Docket No. EL05-63-004, in compliance with the DTET Rehearing Order (May 2006 Refund Report).[30] According to the report, refunds were paid on May 15, 2006. MISO stated that, pursuant to the DTET Rehearing Order, any additional charge under former section 22.2 was required to be based on the difference between the two firm zonal rates and must be pro-rated to reflect the duration of the redirected transaction. MISO asserted that the Commission did not provide guidance on prorating where the initial reservation is other than yearly, so MISO devised a method for calculating refunds for monthly, weekly, and daily reservations as well. According to MISO, the Commission-authorized charge for a given hourly redirect was compared with the non-firm hourly charge the customer actually paid for the redirect in that hour. MISO stated that if the Commission-authorized charge was lower than the previously assessed redirect charge, the difference was refunded, with interest.[31]

16. Addressing DTET's concerns about refunds stemming from MISO's non-firm redirects from one outside sink to another outside sink, MISO stated that such redirects were treated as inter-zonal redirects and that any refunds with such out-of-footprint redirects would be effectuated under the DTET Rehearing Order. As such, MISO stated

---

[28] DTET Supplemental Comments on September 2005 Refund Report at 2.

[29] *Id*. at 3-4.

[30] On May 5, 2006 MISO filed a Refund Status Report and a Request for Expedited Action on Rehearing Requests pending for the DTET Rehearing Order. In that status report, MISO advised the Commission that it would effectuate the refunds ordered in the DTET Rehearing Order by May 18, 2006. However, MISO pointed out that significant issues that directly affect the ordered refunds remain pending on rehearing. Therefore, MISO requested that the Commission dispose of the outstanding issues in advance of the May 18, 2006 refund deadline. DTET filed an answer opposing the motion for expedited action.

[31] MISO May 2006 Refund Report at 4.

that the refunds for redirects between outside sinks were calculated in the same manner as the refunds for inter-zonal redirects and were included in the May 2006 Refund Report.[32]

17. Regarding ancillary services, MISO asserted that neither the DTET Complaint Order nor the DTET Rehearing Order provided for refunds of MISO's ancillary service charges, and DTET did not request rehearing or clarification with respect to the refund directives set forth in the DTET Rehearing Order. MISO further stated that no refunds of any ancillary services charges were included in the May 2006 Refund Report.[33]

II. Refund Reports Order

18. On May 20, 2008, the Commission conditionally accepted the September 2005 and May 2006 Refund Reports.[34] The Commission noted that, in DTET's comments on the September 2005 Refund Report, DTET argued that, in the DTET Complaint Order, the Commission required MISO to refund all amounts overcharged for transactions redirected to different sink zones. The Commission stated that DTET had raised this same argument in its request for clarification of the DTET Complaint Order and that the Commission granted DTET's requested clarification in the DTET Rehearing Order.[35]

19. The Commission also noted DTET's request that the Commission direct MISO to refund all amounts charged to DTET for non-firm redirect service where DTET redirected from one MISO-border sink (external interface sink) to another MISO-border sink. The Commission found that DTET's concern was addressed in the May 2006 Refund Report, and that MISO had made refunds for such transactions in accordance with the DTET Rehearing Order. Therefore, the Commission concluded that only the ancillary service issue remained to be addressed.[36]

20. The Commission found that MISO had not refunded amounts overcharged for ancillary services attendant to the redirect service in question. MISO stated that it did not refund amounts for ancillary services because the transmission service with which those

---

[32] *Id.*

[33] *Id*.

[34] Refund Reports Order, 123 FERC ¶ 61,187 at P 1.

[35] *Id*. P 17.

[36] *Id*. P 18.

ancillary services were associated was hourly non-firm service.[37] However, the Commission found that the proper charge for ancillary services provided in conjunction with redirect service was the rate for firm point-to-point service, just as redirecting customers should have been charged, for the duration of the redirect, the firm point-to-point rate in the redirected or primary zone (whichever was higher).[38]

21. The Commission added that Order No. 888 identified six ancillary services that the transmission provider must offer to transmission customers because they are needed to accomplish transmission service while maintaining reliability within and among control areas affected by the transmission service.[39] Therefore, the Commission concluded that:

> Because these ancillary services are necessary to accomplish transmission service, they are part of any transmission service, including redirect service, and should be priced consistent with the service being provided. Accordingly we will direct [MISO] to make refunds, with interest calculated under section 35.19a of the Commission's regulations, of all amounts overcharged for ancillary services associated with redirected service at issue in this proceeding, within 30 days of the date of this order.[40]

III. MISO's Request for Rehearing and Clarification

22. MISO argues that the Commission's attempt to modify its final orders violates the Federal Power Act (FPA) and is arbitrary, capricious, and otherwise not in accordance with the law.[41] MISO states that, pursuant to section 313(a) of the FPA[42] and applicable case law, in order for the Commission to correct an order, it must do so before the record on appeal has been filed with a court of appeals or the time for filing a petition for

---

[37] *Id.* P 19 (citing Answer and Motion for Expedited Consideration of Midwest Indep. Transmission Sys. Operator, Inc., Docket Nos. EL05-55-001 and EL05-63-001 (June 2, 2005) at 6-7).

[38] *Id.*

[39] Order No. 888, FERC Stats. & Regs. ¶ 31,036 at 31,705.

[40] Refund Reports Order, 123 FERC ¶ 61,187 at P 20.

[41] MISO Rehearing Request at 9-13.

[42] 16 U.S.C. § 825*l*(a) (2012).

judicial review has expired. MISO contends that the Refund Reports Order violates this statutory injunction by ordering refunds for ancillary service charges.

23. First, MISO asserts that by the time the Commission issued the Refund Reports Order, there were no rehearing requests outstanding in these proceedings.[43] Second, MISO alleges that the decisions issued in these proceedings prior to the Refund Reports Order are "final" for purposes of section 313 of the FPA.[44] Similarly, MISO contends that the refund decisions issued prior to the Refund Reports Order were not conditional and conclusively resolved the issues presented in those proceedings. Third, MISO states that the Refund Reports Order effectuates a substantial modification of the Commission's prior orders.[45] In addition, MISO asserts that the Refund Reports Order incorrectly asserts that ancillary services are part of transmission service, including redirect service. MISO states that ancillary services are separate identifiable services under the *pro forma* Tariff.

24. In addition, MISO argues that the Refund Reports Order is arbitrary and capricious because it seeks to either rewrite the prior orders or exploit their ambiguities, thereby depriving MISO and other affected parties of their statutory rehearing and judicial review rights. MISO claims that the Commission, as does any other administrative agency, owes to parties that conduct business before it a duty of clarity. MISO further alleges that, by modifying its prior refund directives and requiring MISO to refund ancillary service charges associated with non-firm redirects, the Commission has violated this duty. MISO again notes that none of the orders issued in these proceedings prior to the Refund Reports Order mentioned ancillary services. MISO notes that DTET sought formal rehearing on the issue, but the Commission did not address the issue in any of its rehearing orders.[46]

25. MISO asserts that the refunds ordered in the Refund Reports Order are inconsistent with the applicable precedent and the principles or reasoned decision making.[47] MISO states that, assuming *arguendo* that the Commission can surmount the legal deficiencies MISO raises elsewhere in its rehearing request, no refunds should be

---

[43] MISO Rehearing Request at 10.

[44] *Id*. at 10-11.

[45] *Id*. at 11-12.

[46] *Id*. at 13-16.

[47] *Id*. at 16-20.

ordered for the period prior to May 20, 2008. MISO contends that the Commission has discretion regarding the refund remedy and that the balances of equities in these proceedings strongly support directing prospective refunds only. In this regard MISO notes that: (1) the previous orders focused on section 22.2 of the Tariff, not ancillary service charges; (2) the retroactive resettlement of ancillary service charges ordered by the Commission may adversely affect a significant number of innocent market participants who are not parties to these proceedings; (3) the complainants failed to preserve their ancillary services arguments; (4) the effort will be time consuming and costly; and (5) MISO cannot benefit from any excessive charges because it is a non-profit "pass-through" entity. Furthermore, MISO argues that, in any event, section 206 of the FPA[48] bars refunds for periods preceding the complaint filing dates,[49] and that any such refunds awarded should be issued only to DTET and Holland, the original complainants.[50]

26. Finally, MISO argues that if any refunds are ordered, the Commission should clarify the applicable refund period and methodology.[51] Regarding the methodology, MISO assumes that, to the extent there are refunds, it is directed to use the same refund determination methodology as approved previously in these proceedings. Also, MISO requests that the Commission clarify that, to the extent customers were undercharged during certain hours, such undercharges: (1) will reduce the applicable refund by being netted against the overcharges in other hours in the refund period if the total overcharges exceed the total undercharges; or (2) result in a positive net charge if the total undercharges exceed the total overcharges.

---

[48] 16 U.S.C. § 824e(b) (2012).

[49] February 16, 2005 for DTET and January 14, 2005 for Holland.

[50] MISO Rehearing Request at 16. MISO points out that the prior orders focused only on section 22.2 of the Tariff and found that MISO had violated that provision. According to MISO, section 22.2 of the Tariff has nothing to do with ancillary services charges. MISO asserts that the Refund Reports Order did not identify the sections of the Tariff that MISO violated. Therefore, MISO claims that, viewed in the most favorable light, the Refund Reports Order is a policy determination that ancillary services pricing must mirror transmission pricing in the non-firm redirect context. *Id*. at 17-18.

[51] MISO Rehearing Request at 20-21.

IV. Discussion

A. Whether the Commission Decision Violated the FPA

27. MISO argues that the Commission's attempt to modify its final orders violates the FPA and is arbitrary, capricious, and otherwise not in accordance with the law.[52] MISO states that, pursuant to section 313(a) of the FPA and applicable case law, in order for the Commission to correct an order, it must do so before the record on appeal has been filed with a court of appeals or the time for filing a petition for judicial review has expired.

Commission Determination

28. MISO correctly argues that under section 313(a) of the FPA, the Commission must correct an order before the record on appeal has been filed with a court of appeals or the time for filing a petition for judicial review has expired.[53] However, MISO incorrectly concludes that, under the facts presented here, the Commission modified its order in violation of section 313(a) of the FPA.

29. MISO incorrectly conflates the provisions of section 313 governing when parties must seek rehearing, and when the Commission may act to change its orders. While section 313 of the FPA requires a party to file a timely request for rehearing with the Commission to preserve its right to pursue a judicial appeal, that statutory provision does not limit the authority of the agency with respect to pending orders. Rather, section 313(a) expressly allows the Commission to "at any time, upon responsible notice and in such manner as it shall deem proper, modify or set aside, in whole or in part, any finding or order made or issued by it under the provisions of this act," provided that the Commission acts prior to the filing of the record in a court of appeals.[54]

30. We disagree with MISO that the orders issued in these proceedings, prior to the Refunds Reports Order, were final. Since the Commission had directed MISO to file a refund report, any subsequent Commission order that addressed disputed issues would then be subject to rehearing. We note that on July 20, 2005, DTET filed comments on

---

[52] *Id.* at 9-13.

[53] 16 U.S.C. § 825*l*(a) (2012); *Pan Am. Petroleum Corp. v. Fed. Power Comm'n*, 322 F.2d 999, 1004 (D.C. Cir. 1963) ("The power to correct an order remains with the Commission until such time as the record on appeal has been filed with the court of appeals or the time for filing a petition for judicial review has expired.").

[54] 16 U.S.C. § 825*l*(a) (2012).

MISO's interim report on the status of refunds, in which it stated that the only issues still in dispute that would change the level of refunds related to the proper calculation of: (1) ancillary service charges assessed as part of customers' redirect service; and (2) redirect charges for "inter-zonal" changes in sink (delivery point). DTET also attached its May 18, 2005 request for clarification, MISO's June 2, 2005 answer, and DTET's June 6, 2005 motion for leave to file an answer and answer, all of which raised the ancillary charges issue. We also note that on September 26, 2005, DTET filed comments on the September 2005 Refund Report, and asked the Commission to direct MISO to refund the difference between the high-priced hourly ancillary service charges assessed in conjunction with firm point-to-point customers' redirected transactions and the ancillary service charges properly applicable to such transactions.[55] The Commission chose to address the ancillary service charges issue in conjunction with the refund report in the Refunds Report Order, rather than addressing it in the DTET Rehearing Order that was issued on November 29, 2005.

31. Therefore, upon receiving MISO's refund report, the Commission had the authority to address the ancillary services charges issue. In addition, given that the issue was raised in numerous pleadings in the record, including pleadings specifically related to MISO's refund report, we find that all parties involved had notice that the Commission could address the ancillary services issue. Indeed, MISO continued to raise the issue in its refund report filings.[56]

32. We therefore reject MISO's argument that section 313(a) of the FPA prohibited the Commission's modifications in the Refunds Report Order.

B. Whether the Refund Reports Order is Arbitrary and Capricious, and Whether the Refunds Ordered are Inconsistent with Precedent and Reasoned Decision Making

33. MISO argues that the Refund Reports Order is arbitrary and capricious because it seeks to either rewrite the prior orders or exploit their ambiguities, thereby depriving MISO and other affected parties of their statutory rehearing and judicial review rights.

34. MISO acknowledges that the Commission has discretion regarding the refund remedy, but that the balance of equities in these proceedings strongly supports directing prospective refunds only.

---

[55] *See supra* PP 12-13.

[56] *See, e.g.*, MISO September 2005 Refund Report at 6; MISO May 2006 Refund Report at 4.

Commission Determination

35. In the Refund Reports Order, the Commission noted that in Order No. 888, redirect service is part of the flexible transmission service provided to and paid for by point-to-point customers. In Order No. 888, the Commission identified six ancillary services that the transmission provider must offer to transmission customers because they are needed to accomplish transmission service while maintaining reliability within and among control areas affected by the transmission service.[57] The Commission stated that because these ancillary services were necessary to accomplish transmission service, they are part of any transmission service, including redirect service, and should be priced consistent with the service being provided. Accordingly, the Commission properly directed MISO to make refunds, with interest, of all amounts overcharged for ancillary services associated with redirected service at issue in these proceedings.[58]

36. In the Refund Reports Order, the Commission also properly addressed whether the correct charge for ancillary services provided in conjunction with redirect service was the rate for firm point-to-point service. The Commission found that because these ancillary services are necessary to accomplish transmission service, they are part of any transmission service, including redirect service, and should be priced consistent with the service being provided.[59]

37. We disagree with MISO that the equities require that we order prospective refunds only. The Commission's general policy is to order refunds for overcharges and for violations of the filed rate.[60] As the Commission finds here, the Commission's authority to direct refunds applies to a violation of the filed rate. In the Refund Reports Order, the Commission provided a full explanation for the decision to order refunds. The Commission stated that MISO had not refunded amounts overcharged for ancillary services attendant to the redirect service in question. MISO acknowledged that it charged DTET hourly ancillary services rates because the transmission service with which those

---

[57] *See* Order No. 888, FERC Stats. & Regs. ¶ 31,036 at 31,705. In its Tariff, MISO states that ancillary services are needed with transmission service to maintain reliability within and among the control areas affected by the transmission service. *See* MISO FERC Electric Tariff, Third Revised Volume No. 1, Original Sheet No. 145.

[58] Refund Reports Order, 123 FERC ¶ 61,187 at P 20.

[59] *Id.* P 19.

[60] *Corporation Commission of the State of Oklahoma v. American Electric Power Co., Inc.*, 130 FERC ¶ 61,120, at P 33 (2010).

ancillary services were associated was hourly non-firm service.[61] However, the Commission found that the proper charge for ancillary services provided in conjunction with redirect service was the rate for firm point-to-point service, just as redirecting customers should have been charged, for the duration of the redirect, the firm point-to-point rate in the redirected or primary zone (whichever was higher).[62]

C. Whether the Commission Should Clarify the Applicable Refund Period and Methodology

38. MISO requests that the Commission clarify the applicable refund period. MISO also states that it assumes, to the extent there are refunds, it is directed to use the same refund determination methodology as approved previously in these proceedings. Also, MISO further requests the Commission clarify that, to the extent customers were undercharged during certain hours, such undercharges: (1) will reduce the applicable refund by being netted against the overcharges in other hours in the refund period if the total overcharges exceed the total undercharges; or (2) result in a positive net charge if the total undercharges exceed the total overcharges.

Commission Determination

39. We clarify that the refund period is February 1, 2002 ending on January 31, 2009, consistent with the refunds previously provided and accepted in these proceedings. We also note that in clarifying the refund period, the Commission is not limited to section 206 as MISO suggests, but rather in addressing violations of the filed rate, we have the authority to go back to the date that the violation first occurred.[63] In addition, we direct MISO to use the same refund determination methodology as approved previously in these proceedings. We also clarify that any undercharges during certain hours: (1) will reduce the applicable refund by being netted against the overcharges in other hours in the refund period if the total overcharges exceed the total undercharges; or (2) result in a positive net charge if the total undercharges exceed the total overcharges.

---

[61] *See* MISO June 2, 2005 Answer at 6-7.

[62] Refund Reports Order, 123 FERC ¶ 61,187 at P 19.

[63] *See Corporation Commission of the State of Oklahoma v. American Electric Power Co., Inc.*, 125 FERC ¶ 61,237, at P 33 (2008).

The Commission orders:

(A) MISO's request for rehearing is hereby denied, as discussed in the body of this order.

(B) MISO's request for clarification is hereby granted, as discussed in the body of this order.

By the Commission.

(S E A L)

Nathaniel J. Davis, Sr.,
Deputy Secretary.