120 FERC ¶ 61,220
UNITED STATES OF AMERICA
FEDERAL ENERGY REGULATORY COMMISSION

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

International Transmission Company
Michigan Electric Transmission Company, LLC
Midwest Independent Transmission System
Operator, Inc.

Docket No. ER07-1141-000

ORDER ACCEPTING PROPOSED TARIFF SHEETS

(Issued September 7, 2007)

1. In this order, we accept for filing the proposed tariff sheets submitted by International Transmission Company (ITC), Michigan Electric Transmission Company, LLC (METC) and the Midwest Independent Transmission System Operator, Inc. (Midwest ISO). The filing proposes to allocate the cost of network upgrades needed to accommodate generation interconnections to the transmission systems owned by ITC and METC. ITC and METC propose to reimburse generators for all the costs of the upgrades under certain circumstances. We accept the tariff sheets, to become effective July 11, 2007, as requested.

Background

2. ITC and METC are operating subsidiaries of ITC Holdings Corp., a publicly-traded company that engages in the construction, operation, and ownership of transmission facilities. ITC, METC and Midwest ISO propose to modify the Midwest ISO's Open Access Transmission and Energy Markets Tariff (Tariff) to include a new section III.A.2.d.3 in Attachment FF.[1] This new section would authorize ITC and METC to reimburse certain customers interconnecting to the ITC and METC transmission system for 100% of the cost of any network upgrades related to those interconnections.[2]

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[1] See the transmittal letter submitted by ITC, METC, and Midwest ISO on July 10, 2007 (ITC and METC Filing).

[2] ITC and METC Filing at Attachment FF Section III.A.2.d.3 Original Sheet No. 1849.01.

3. The cost of network upgrades for new or upgraded generator interconnection are funded initially by the generator. The Tariff then provides that half of the cost funded by the generator can be reimbursed under certain circumstances. The affected transmission owners pay for the remaining network upgrade costs that are not reimbursed, resulting in a 50/50 allocation between transmission owners and generators.[3]

4. For generators interconnecting to ITC or METC, this 50/50 allocation would be replaced with a 100% allocation to ITC and METC under the proposed new section III.A.2.d.3. ITC and METC would reimburse eligible interconnection customers all of the funds they pay to ITC and METC for the network upgrades. Interconnection customers would be eligible for this reimbursement if ITC or METC will be a signatory to the Attachment R or X interconnection agreement of the Tariff, and if they otherwise comply with the eligibility requirements of Attachment FF.[4]

5. ITC and METC propose to allocate all the incremental costs of its proposed tariff sheets to ITC and METC, to be recovered under its Attachment O formula rate.[5] This means that 50% of the costs would be allocated entirely to ITC and METC for recovery from their customers, and 50% would continue to be allocated to affected transmission owners pursuant to the existing tests in Attachment FF.

6. ITC and METC propose an effective date of July 11, 2007, one day after the filing.

Notice of Filing and Responsive Pleadings

7. Notice of the filing was published in the *Federal Register*, 72 Fed. Reg. 41,067 (2007), with interventions and protests due on or before July 31, 2007. In response to the filing, timely notices of intervention and motions to intervene were submitted by the Michigan Public Service Commission (Michigan Commission), Detroit Edison Company (Detroit Edison), Consumers Energy Company (Consumers), Michigan Public Power Agency (MPPA), Wisconsin Electric Power Company (Wisconsin Electric), the Midwest

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[3] The Commission accepted these parts of the Midwest ISO Tariff as the product of the Regional Expansion Criteria and Benefits (RECB) Task Force. *Midwest Independent Transmission System Operator, Inc.*, 114 FERC ¶ 61,106 (RECB I Order), *order on reh'g,* 117 FERC ¶ 61,241 (2006) (RECB I Rehearing Order).

[4] ITC and METC Filing at 4.

[5] *Id*.

ISO Transmission Owners[6] (Midwest ISO TOs), John Deere Renewables, LLC (Deere), Noble Environmental Power (Noble), Wolverine Supply Cooperative, Inc. (Wolverine), the American Wind Energy Association and Wind on the Wires (jointly referred to as American Wind), American Transmission Company (ATC), Electric Power Supply Association (EPSA), LS Power Associates, LP (LSPA), and Dominion Resources Services, Inc. (Dominion). Jennifer M. Granholm, the Governor of Michigan, also submitted a letter to the Commission in reference to this proceeding. Other letters were received from Patricia L. Birkholz of the Michigan State Senate and Jeff Mayes, State Representative. The motions to intervene of Dominion and LSPA also included motions to intervene out-of-time. PPM Energy, Inc. (PPM) filed comments and a motion to intervene out of time. Protests and comments were submitted by Detroit Edison, Consumers, and MPPA. Comments were included in the interventions of the Michigan Commission, Deere, Midwest ISO TOs, Noble, ATC, Wolverine, American Wind, and EPSA.

8. ITC and METC filed an answer on August 15, 2007 (ITC and METC Response). And in response to the Michigan Commission, Detroit Edison filed an answer on August 15, 2007.

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[6] The Midwest ISO Transmission Owners are: Ameren Services Company, as agent for Union Electric Company d/b/a AmerenUE, Central Illinois Public Service Company d/b/a AmerenCIPS, Central Illinois Light Co. d/b/a AmerenCILCO, and Illinois Power Company d/b/a AmerenIP; Alliant Energy Corporate Services, Inc. on behalf of its operating company affiliate Interstate Power and Light Company (f/k/a IES Utilities Inc. and Interstate Power Company); City Water, Light & Power (Springfield, IL); Duke Energy Shared Services for Duke Energy Ohio, Inc., Duke Energy Indiana, Inc., and Duke Energy Kentucky, Inc.; Great River Energy; Hoosier Energy Rural Electric Cooperative, Inc.; Indiana Municipal Power Agency; Indianapolis Power & Light Company; Michigan Public Power Agency; Minnesota Power (and its subsidiary Superior Water, L&P); Montana-Dakota Utilities Co.; Northern Indiana Public Service Company; Northern States Power Company, a Minnesota corporation, and Northern States Power Company, a Wisconsin corporation, subsidiaries of Xcel Energy Inc.; Northwestern Wisconsin Electric Company; Otter Tail Power Company; Southern Illinois Power Cooperative; Southern Indiana Gas & Electric Company (d/b/a Vectren Energy Delivery of Indiana); Southern Minnesota Municipal Power Agency; and Wabash Valley Power Association, Inc.

Discussion

A. Procedural Matters

9. Pursuant to Rule 214 of the Commission's Rules of Practice and Procedure,[7] the timely, unopposed motions 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[8] prohibits an answer to a protest unless otherwise ordered by the decisional authority. We will accept the answers of ITC and METC and Detroit Edison because they have provided information that assisted us in our decision-making process. We will also accept the late-filed interventions of Dominion, LSPA, and PPM given their interest in this proceeding, the early stage of the proceeding, and the absence of undue prejudice or delay.

B. Subsidy and Seam Issues

1. Positions of the Parties

10. Interconnection customers would be eligible for 100% reimbursement under the ITC and METC policy under the same terms that interconnection customers are eligible for 50% reimbursement under Attachment FF of the Midwest ISO Tariff. That is, customers would be eligible if they have a contract of at least one year to serve Midwest ISO network customers, or if the associated generating facility is designated a network resource at the time of commercial operation.

11. The Michigan Commission and Governor of Michigan generally support the filing. However, they do not believe the tariff sheets are just and reasonable without certain changes. They share the concerns of Detroit Edison, Consumers, and MPPA that the principle of cost causation will be violated if the ITC and METC proposal is adopted, arguing that if a new generator exports power outside the ITC and METC region, then ratepayers who ultimately pay the costs of the network upgrades may not receive all the benefits of those upgrades.[9] To encourage better cost allocation, the Michigan Commission suggests that the 100% reimbursement level should only be available to generators designated as network resources in the Midwest ISO for a minimum term,

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[7] 18 C.F.R. § 385.214 (2007).

[8] 18 C.F.R. § 385.213(a)(2) (2007).

[9] Intervention of Michigan Commission at 10, Protest of Detroit Edison at 6-7, Protest of Consumers at 13, Protest of MPPA at 9.

such as ten years.[10] To resolve the issue, the Michigan Commission proposes a technical conference or a deferred hearing with settlement judge procedures.

12. The Michigan Commission and Consumers contend that 100% reimbursement would encourage poor decisions on the siting of generators, especially considering the seams within the State of Michigan between Midwest ISO and PJM Interconnection, L.L.C. (PJM).[11] Since ITC and METC would fully reimburse generators, and since PJM does not permit any reimbursement, generators would be encouraged to interconnect with ITC and METC even if network upgrades would otherwise make such an interconnection uneconomical.[12]

13. In their answer, ITC and METC point out that their proposal relates only to network upgrades, not to facilities that solely benefit the interconnection customer. Those costs will continue to be directly assigned to the customer. ITC and METC assert that by definition, network upgrades are for the general benefit of all users of the transmission system. ITC and METC further point out that even if a power plant is interconnected to ITC or METC, but power from that plant is sold outside the region, the increase in power supplies creates a more competitive market.

2. Commission Determination

14. Similar arguments involving subsidy issues were raised in the Order No. 2003 proceeding. In Order No. 2003 the Commission found that a 100% reimbursement policy for network upgrades is just and reasonable.[13] We likewise find that the proposal of ITC and METC to adopt a 100% reimbursement policy is just and reasonable. As long-recognized by the courts, different rate proposals can be just and reasonable; there is no one correct method for calculating rates.[14]

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[10] Michigan Commission at 10.

[11] Michigan Commission at 9, Consumers at 4-5.

[12] Consumers at 4-6.

[13] *Standardization of Generator Interconnection Agreements and Procedures*, Order No. 2003, FERC Stats. & Regs. ¶ 31,146 at P 694 (2003) (Order No. 2003), *order on reh'g*, Order No. 2003-A, FERC Stats. & Regs. ¶ 31,160 (Order No. 2003-A), *order on reh'g*, Order No. 2003-B, FERC Stats. & Regs. ¶ 31,171 (2004) (Order No. 2003-B), *order on reh'g*, Order No. 2003-C, FERC Stats. & Regs. ¶ 31,190 (2005), *aff'd sub nom. Nat'l Ass'n of Regulatory Util. Comm'rs v. FERC*, 475 F.3d 1277 (D.C. Cir. 2007).

[14] *See Mobil Oil Exploration & Producing Southeast, Inc. v. United Distribution Co.*, 498 U.S. 211, 224 (1991); *FPC v. Hope Natural Gas Co.*, 320 U.S. 591, 602 (1944).

15. With respect to the subsidy and seam concerns of intervenors that generators interconnected with ITC and METC may serve load outside the region, a network upgrade is considered part of the interconnected transmission system, benefiting all customers.

16. As stated in Order No. 2003-A, our approach to interconnection pricing looks beyond the entity that purchases power from the new generator, and considers the reliability and competitive benefits from a stronger transmission infrastructure. This approach was fully supported by the court in *Entergy Services*, which said "[t]he Commission's rationale for crediting network upgrades, based on a less cramped view of what constitutes a 'benefit,' reflects its policy determination that a competitive transmission system, with barriers to entry removed or reduced, is in the public interest."[15]

17. While this is the Commission's general view, the Commission will consider alternate proposals. In Order No. 2003-B, we addressed the subsidy arguments by allowing transmission customers (and transmission providers) to propose a different cost allocation in a particular case if they could show that 100% reimbursement would lead to an improper subsidy.[16] Consistent with that approach, if a transmission customer of ITC or METC believes that it can show an improper subsidy if it is allocated costs of a particular network upgrade, it may file a complaint with the Commission and we will consider the merits of that claim.

18. The Commission further finds that the proposal of ITC and METC to adopt the same eligibility criteria used by the Midwest ISO in Attachment FF would also be just and reasonable. When the Commission approved the Midwest ISO's reimbursement policy contained in Attachment FF, we determined that interconnecting generators may be required to have "a contract of at least one year to serve Midwest ISO Network Customers or that the Generating Facility be designated as a Network Resource, at the time of Commercial Operation."[17] This requirement addressed concerns that interconnection customers would locate in the Midwest ISO because the Midwest ISO's cost allocation policy for network upgrades was more favorable than that of adjacent transmission providers, like PJM, where similar projects are 100% directly assigned to the interconnection customer.[18] Moreover, the cost of network upgrades is not the

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[15] *Entergy Services, Inc. v. FERC*, 319 F.3d 536, 543-44 (D.C. Cir. 2003); Order No. 2003-A at P 584.

[16] Order No. 2003-B at P 56.

[17] RECB I Order at P62.

[18] *Id.* at P63.

primary factor in deciding where to locate a power plant. As we previously stated, "[f]or the majority of projects requiring generator interconnection, the network upgrade costs associated with generator interconnection are likely to be only a small percentage of the overall project costs and, thus, not determinative of whether the project will be built."[19] The Commission finds that, on balance, the criteria accepted for the Midwest ISO's reimbursement policy is sufficient for the purposes of ensuring that interconnection customers do not interconnect with ITC and METC solely for the purpose of receiving better cost treatment.

C. Cap on Reimbursements to Generators

1. Positions of the Parties

19. The Michigan Commission contends that 100% reimbursement could encourage generators to locate their plants inefficiently, since they would be indifferent to how the location of their facility impacts the need for network upgrades.[20] The Michigan Commission points to the proposal of ATC in Docket No. ER07-1144, where ATC proposed a reimbursement limit of $400/kW of network upgrade costs in proportion to generation capacity added that can be recovered at 100%, with costs above that cap reimbursed according to the 50/50 arrangement in the existing Attachment FF. While the Michigan Commission supports the concept of a cap, it argues that ATC's $400/kW cap has not been shown to be just and reasonable, given that it exceeds historical costs for network upgrades. The Michigan Commission supports a technical conference or settlement judge procedures to determine the optimal cap.

20. In their answer, ITC and METC see no need for additional safeguards or eligibility criteria. If it appears in the future that additional safeguards are needed, ITC and METC would be willing to consider those changes prospectively.

2. Commission Determination

21. We see no need at this time to impose a cap on ITC and METC to ensure that the costs of a network upgrade do not become excessive. The Midwest ISO's transmission planning process is the forum that provides information and opportunity for comment on

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[19] RECB I Rehearing Order at P 82.

[20] Michigan Commission at 9-10.

transmission upgrades – it is a transparent process administered by an independent entity charged with ensuring cost-effective planning.[21]

22. Moreover, the $400/kW that was proposed by ATC is an arbitrary figure, no better or worse, as a general matter, than some other value. It does not recognize that interconnection costs can vary based on many factors, and are not strictly proportional to the ratio of dollars invested per kilowatt of generation capacity. Transmission customers who can show that certain transmission costs are excessive have rights to relief under section 206 of the FPA.

D. Other Issues

1. The Need to Encourage Renewable Generation

23. ITC and METC state that new generation in Michigan is needed and should be encouraged, especially renewable resources.[22] The Governor of Michigan and the Michigan Commission support the encouragement of new generation, particularly renewables. ATC, Wolverine, American Wind, PPM, Deere, Noble, and EPSA also support the ITC and METC proposal as encouraging needed generation in the region.

24. Because many states have adopted renewable portfolio standards, Consumers argues that Michigan's efforts to establish such a standard do not justify special treatment that differs from the remainder of the Midwest ISO.[23] The MPPA notes that the State of Michigan's generation needs are not unique, and that ITC's and METC's proposal is not limited to the development of renewable energy in Michigan.[24] Detroit Edison claims that the new wind interconnection policy adopted by the California Independent System Operator is better than the ITC and METC proposal, and notes that the Midwest ISO itself may soon be proposing a policy similar to the policy that was adopted in California.[25]

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[21] RECB I Order at P69 and the Midwest ISO Transmission Owners Agreement, Appendix B (Planning Framework), Section VI (Development of the Midwest ISO Transmission Plan).

[22] ITC and METC Filing at 5-6.

[23] Consumers at 11.

[24] MPPA at 7-8.

[25] Detroit Edison at 9-12.

25. The Commission recognizes that the ITC and METC proposal is not restricted to renewable generation. We find that the ITC and METC proposal is supported by the widely-recognized need for new generation in their pricing zones, and is a reasonable approach to serving that need.[26]

2. Authority of ITC and METC to Make Their Proposal

26. ITC and METC contend that their proposal is permitted by Attachment FF of Midwest ISO's Tariff. Attachment FF allows a market participant that is also a transmission owner to elect to assume cost responsibility for certain network upgrades.[27] ITC and METC recognize that although they are transmission owners, they are not market participants. Nevertheless, ITC and METC assert that the intent of this tariff provision is to permit a transmission owner to assume full cost responsibility, as long as the transmission owner meets the same standards required of market participants. That is, any assumption of cost responsibility must be made on a consistent and non-discriminatory basis.

27. Detroit Edison and Consumers claim that ITC and METC lack authority under the tariff to make the filing, since even ITC and METC recognize that they are not market participants.[28] These intervenors further contend that ITC and METC are not really proposing to assume any cost responsibility under Attachment FF; rather, they want to reallocate costs that are now allocated to generators. They conclude that Midwest ISO customers located in ITC's or METC's pricing zones would be assuming cost responsibility, not ITC and METC.

28. No party disputes that both ITC and METC are not market participants under the tariff. Nevertheless, ITC and METC are correct that they are the type of entity that Attachment FF intended to permit the assumption of cost responsibility. For this reason, we find that ITC and METC have authority under the Midwest ISO Tariff to make their filing. We note that even if ITC and METC lacked that authority, we would grant ITC and METC any necessary waivers to allow them to exercise that authority.

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[26] ITC and METC also claim that interconnecting generators face a larger tax burden for the costs of their network upgrades when interconnecting with ITC and METC than when interconnecting with transmission owners who organized under a different legal form. The Commission has not relied on this tax burden for its findings in this order.

[27] ITC and METC Filing at 3.

[28] Detroit Edison at 5, fn. 5; Consumers at 9-11.

29. The intervenors also allege that the tariff was intentionally structured to allow only market participants to assume additional costs for network upgrades. Detroit Edison alleges that transmission-owning market participants are state regulated, which would suggest state support for any market participant proposing to assume greater costs for network upgrades.[29] ITC and METC are independent transmission owners and their formula rates authorize them to recover their costs for network upgrades. And in Order No. 2003, the Commission afforded independent transmission providers more, not less, flexibility to deviate from the Commission's pricing policy.[30] In addition, intervenors representing the generators such as EPSA, Noble, Deere, PPM, and American Wind support the proposal.

30. Similar to state-regulated utilities, ITC and METC can recover their legitimate costs in rates. While intervenors are correct that they will be paying new costs in rates, the question of whether those costs constitute an improper subsidy to others is addressed in the section of this order concerning subsidy and seam issues.

3. Need to Clarify the ITC and METC Proposal

31. Consumers points out that Wolverine and MPPA also own transmission in the Midwest ISO. It argues that it is unclear how much reimbursement would be received by a generator interconnected to ITC or METC if that generator also required network upgrades in the service territories of Wolverine or MPPA.[31] MPPA argues that certain parts of the proposed tariff are ambiguous, with respect to which baseline reliability projects are excluded from reimbursement and on how the terms "reimbursable costs" and "other provisions" are defined.[32]

32. In their answer, ITC and METC acknowledge that "reimbursable costs" is not defined in the Tariff, but state that it is defined in interconnection agreements. The reference to "other provisions" in the tariff is designed to clarify that if any reimbursed costs would have been subject to sub-regional cost allocation under existing Attachment FF, those costs will continue to be subject to sub-regional cost allocation in the same amount. ITC and METC assert that Consumers is correct that this policy would not apply to network upgrades costs in Wolverine or MPPA. With respect to baseline reliability projects, ITC and METC assert that all generator interconnection projects other than

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[29] Detroit Edison at 5, n. 5.

[30] See Order No. 2003-A at P 48, 587, 691.

[31] Consumers at 6.

[32] MPPA at 9-10.

baseline reliability projects are subject to its proposed tariff sheets, just as such projects are subject to the 50/50 sharing under existing Attachment FF.

33. The Commission accepts the points of clarification made by ITC and METC in their answer, and finds no reason to require any revision to the tariff sheets.

4. Effect on the RECB Orders

34. The Midwest ISO TOs ask that the Commission ensure that the 100% reimbursement proposal does not affect the regional 50/50 cost sharing approach adopted through the RECB process. They say that the Commission should not reverse its course for the remainder of the Midwest ISO rate zones.[33] The Midwest ISO TOs contend that, unlike ITC and METC, vertically integrated transmission owners would face significant challenges in funding a 100% reimbursement methodology, especially with respect to achieving cost recovery before state regulatory commissions.

35. The Commission finds that the ITC and METC proposal will not undercut the regional 50/50 cost sharing approach adopted through the RECB process, and we are not requiring in this order that any other transmission owner offer 100% reimbursement.

5. Upcoming Filings in the Midwest ISO to Remove Barriers to Efficient Transmission Investment

36. The Michigan Commission and Detroit Edison claim that the ITC and METC proposal is premature, given that the Midwest ISO will be proposing new cost recovery arrangements for regional generation needs, as illustrated by a proposal of Midwest ISO on regionally planned generator interconnection issued on its website on June 29, 2007. The Midwest ISO apparently intends to address similar issues related to transmission investment throughout the Midwest ISO, and these intervenors argue that approving the ITC and METC proposal at this time would make the proposed tariff sheets subject to reconsideration and modification.[34]

37. Since the Commission in this order has ruled on the merits of ITC's and METC's filing, the argument that the filing is premature has now been rendered moot.

[33] Midwest ISO TOs at 5-6.

[34] Michigan Commission at 10-11, Detroit Edison at 13-14.

The Commission orders:

The tariff sheets of ITC and METC are accepted, effective July 11, 2007, as discussed in the body of this order.

By the Commission.

(S E A L)

Nathaniel J. Davis, Sr.
Acting Deputy Secretary.