

152 FERC ¶ 61,155
UNITED STATES OF AMERICA
FEDERAL ENERGY REGULATORY COMMISSION

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

ITC Midwest LLC

Docket No. EL13-13-001

v.

American Transmission Company, LLC

ORDER ON REHEARING

(Issued August 27, 2015)

1. On March 11, 2013, American Transmission Company, LLC (American Transmission), by its corporate manager, ATC Management Inc., requested rehearing of the Commission's February 7, 2013 order granting the complaint filed by ITC Midwest LLC (ITC Midwest) in the above-captioned proceeding.¹ In this order, we deny rehearing of the Order on Complaint.

I. Background

2. ITC Midwest, a wholly-owned subsidiary of ITC Holdings Corp., owns more than 6,800 miles of transmission lines and 208 electric transmission substations in Iowa, Minnesota, Illinois, and Missouri, and maintains operating locations at Dubuque, Iowa City and Perry, Iowa, and at Albert Lea and Lakefield, Minnesota. ITC Midwest is a transmission owning member of Midcontinent Independent System Operator, Inc. (MISO) and a signatory of the Agreement of Transmission Facilities Owners to Organize the Midwest Independent Transmission System Operator, Inc., a Delaware Non-Stock Corporation (Transmission Owners Agreement).

3. American Transmission is a Wisconsin limited liability company that owns, controls, and operates more than 9,400 miles of transmission lines in the states of Wisconsin, Illinois, Minnesota, and Michigan. American Transmission is also a

¹ *ITC Midwest, LLC*, 142 FERC ¶ 61,096 (2013) (Order on Complaint).

transmission-owning member of MISO and a signatory to the Transmission Owners Agreement.

4. On October 24, 2012, ITC Midwest filed a complaint opposing American Transmission's claim that, due to proposed changes made to MISO's Transmission Expansion Plan (MTEP) for 2012 to a proposed 136 mile, 345 kV electric transmission line connecting American Transmission's Cardinal substation in southwestern Wisconsin with ITC Midwest's Dubuque substation in Iowa (Dubuque – Cardinal Line), American Transmission is now entitled to ownership and construction of the entirety of the facilities interconnecting American Transmission's Cardinal substation with the Montfort Substation. As part of MISO's quarterly update process, American Transmission proposed that the Dubuque – Cardinal Line be modified such that the Spring Green Substation be reclassified as the Montfort Substation, which is part of American Transmission's existing system, thereby changing the point of interconnection between American Transmission's and ITC Midwest's facilities for purposes of the Transmission Owners Agreement. ITC Midwest requested that the Commission find that American Transmission has not complied with (a) the MISO Open Access Transmission, Energy and Operating Reserve Markets Tariff (Tariff); (b) the Transmission Owners Agreement; and (c) the MISO designations for Multi-Value Project (MVP)² Project 5 (with the identification number 3127), also known as the Dubuque – Cardinal Line as specified in Appendix A of the 2011 MTEP. ITC Midwest also requested that the Commission direct American Transmission to enter into negotiations with ITC Midwest to develop final terms and conditions for the shared ownership and construction of the Dubuque – Cardinal Line in a manner that is compliant with the Tariff and the Transmission Owners Agreement.

5. ITC Midwest contended that the Transmission Owners Agreement and Tariff permit ITC Midwest to construct and own 50 percent of the Dubuque – Cardinal Line. ITC Midwest stated that the MISO Board of Directors (MISO Board) approved the Dubuque – Cardinal Line as an MVP on December 8, 2011 as part of the 2011 MTEP and designated both ITC Midwest and American Transmission as joint owners. ITC Midwest stated that American Transmission disputes MISO's designation and refuses to negotiate a joint development agreement with ITC Midwest, despite ITC Midwest's

² MVPs are a category of transmission projects that enable the reliable and economic delivery of energy in support of documented energy policy mandates or laws and/or address multiple economic issues affecting multiple transmission zones, and/or address at least one economic issue affecting multiple transmission zones and one reliability issue. *See Midwest Indep. Transmission Sys. Operator, Inc.*, 133 FERC ¶ 61,221 (2010), *order on reh'g*, 137 FERC ¶ 61,074 (2011).

attempts to coordinate activities with American Transmission. ITC Midwest asserted that American Transmission's activities are contrary to both the Transmission Owners Agreement and MISO's designation authority under its Tariff.

6. ITC Midwest argued that, based on the language of section VI of Appendix B of the Transmission Owners Agreement, both American Transmission and ITC Midwest have investment and ownership rights to participate on an equal basis in the 345 kV transmission projects that will interconnect American Transmission's Cardinal substation with ITC Midwest's substation in Dubuque. Appendix B, section VI of the Transmission Owners Agreement states as follows:

Ownership and the responsibilities to construct facilities which are connected between two (2) or more Owners' facilities belong equally to each Owner, unless such Owners otherwise agree, and the responsibility for maintaining such facilities belongs to the Owners of the facilities unless otherwise agreed by such Owners.³

7. On February 7, 2013, the Commission issued an order granting the complaint and directed American Transmission to enter into negotiations with ITC Midwest to develop final terms and conditions for the shared ownership and construction of the Dubuque – Cardinal Line in a manner that is compliant with the Tariff and Transmission Owners Agreement.⁴ In that order, the Commission stated that Appendix B, section VI of the Transmission Owners Agreement and Attachment FF, section V⁵ of the Tariff provide that MISO correctly designated ITC Midwest and American Transmission as joint owners of the Dubuque – Cardinal Line. Furthermore, the Commission stated that American Transmission's proposed changes to the Dubuque – Cardinal Line were

³ Transmission Owners Agreement at App. B § VI.

⁴ Order on Complaint, 142 FERC ¶ 61,096.

⁵ Section V of Attachment FF states:

For each project included in the recommended MTEP, the plan shall designate, based on the planning analysis performed by the Transmission Provider and based on input from participants, including, but not limited to any indication of a willingness to bear cost responsibility for the project; and any applicable provisions of the ISO Agreement, one or more Transmission Owners or other entities to construct, own and/or finance the recommended project.

rejected by MISO. Lastly, the Commission found that MISO correctly exercised its designation authority.⁶

II. Request for Rehearing

8. American Transmission argues that in its answer to the complaint, it presented a legal argument to the effect that the Commission's interpretation that the Transmission Owners Agreement acts as a right of first refusal (ROFR) is contrary to Order No. 1000⁷ and therefore unlawful. American Transmission states that throughout these proceedings, its basic contention regarding the ROFR has been that because the Commission has determined that ROFRs are unjust and unreasonable in Order No. 1000, section 206 of the Federal Power Act (FPA)⁸ and judicial precedent require that the Commission must provide a remedy in all cases where enforcement of the ROFR is sought. American Transmission states that in the Order on Complaint, the Commission responded to American Transmission's legal argument by referring to and adopting its rulings in the Xcel Order and Pioneer Order. American Transmission states that it sought rehearing of the Xcel Order and it renews herein its arguments respecting the ROFR in the Transmission Owners Agreement.

9. American Transmission states that the Order on Complaint denied American Transmission's claim as to the appropriate application of Appendix B, section VI of the Transmission Owners Agreement on the ground that MISO rejected American Transmission's proposed rerouting of the project. American Transmission argues that the record does not support a finding that MISO rejected American Transmission's proposed route change and the Commission did not base that ruling on any substantive rulings or determinations by MISO or the MISO Board, or the existing provisions of the MISO Tariff, as no such findings or determinations have been made. American Transmission argues that the question as to whether MISO had the authority to reject such a proposal,

⁶ Order on Complaint, 142 FERC ¶ 61,096 at P 41 (citing *Xcel Energy Servs. Inc. v. Am. Transmission Co., LLC*, 140 FERC ¶ 61,058 (2012) (Xcel Order); *Pioneer Transmission, LLC v. N. Ind. Pub. Serv. Co.*, 140 FERC ¶ 61,057 (2012) (Pioneer Order)).

⁷ *Transmission Planning and Cost Allocation by Transmission Owning and Operating Public Utilities*, Order No. 1000, FERC Stats. & Regs. ¶ 31,323 (2011), *order on reh'g*, Order No. 1000-A, 139 FERC ¶ 61,132, *order on reh'g and clarification*, Order No. 1000-B, 141 FERC ¶ 61,044 (2012), *aff'd sub nom. S.C. Pub. Serv. Auth. v. FERC*, 762 F.3d 41 (D.C. Cir. 2014).

⁸ 16 U.S.C. § 824e (2012).

as an initial matter, was squarely before the Commission and the Commission failed to address this argument in the Order on Complaint. American Transmission states that it continues to dispute that MISO has such authority under the MISO Tariff.

10. American Transmission asks the Commission to clarify that if a routing change ultimately is implemented, then the Pioneer Order requires that the Montfort substation be treated as part of American Transmission's existing system, so that the only portion of the Dubuque - Cardinal Line interconnecting the facilities of ITC Midwest and American Transmission (and thus the only portion that will be subject to Appendix B, section VI of the Transmission Owners Agreement) will be the segment from the Dubuque County Substation to the Montfort Substation.

III. Procedural Matters

11. On March 26, 2013, ITC Midwest filed an answer to American Transmission's request for rehearing. Rule 713(d) of the Commission's Rules of Practice and Procedure, 18 C.F.R. § 385.713(d) (2014), prohibits answers to requests for rehearing. We will, therefore, reject the answer filed by ITC Midwest.

IV. Commission Determination

12. We deny rehearing. American Transmission has not persuaded us to reverse our determination granting ITC Midwest's complaint.

13. With respect to American Transmission's FPA section 206 arguments, as we found in the order denying rehearing of the Xcel Order, although section 206 requires the Commission to provide a remedy, section 206(a) permits the Commission to order prospective relief only from the date that it finds an existing rate to be unjust and unreasonable.⁹ In this instance, the Commission found in Order No. 1000 that it is unjust and unreasonable to grant incumbent transmission providers a federal ROFR with respect to transmission facilities selected in a regional transmission plan for purposes of cost allocation and required the elimination of federal rights of first refusal on a prospective basis upon Commission acceptance of the compliance filings due on October 11, 2012. However, the Commission declined to interpret individual contracts in that general rulemaking proceeding and instead deferred issues related to specific contracts to compliance proceedings. Subsequent to Order No. 1000, in the Xcel Order, the Commission held, as American Transmission had argued, that the language in section VI of Appendix B to the MISO Transmission Owners Agreement acts to establish a ROFR.

⁹ *Xcel Energy Servs. Inc. v. Am. Transmission Co. LLC*, 147 FERC ¶ 61,089 (2014).

However, MISO's designation under the Transmission Owners Agreement of the project occurred in MTEP 2011, before the Commission made the determination that the language in section VI of Appendix B acted to create a ROFR. Accordingly, for the same reasons the Commission declined to grant rehearing of the Xcel Order, we decline to grant rehearing here.

14. American Transmission's argument to the contrary notwithstanding, the Commission did address whether MISO had the authority to reject American Transmission's proposed rerouting of the Dubuque – Cardinal Line. In the Order on Complaint, the Commission found that American Transmission's proposed changes to the Dubuque – Cardinal Line were rejected by MISO in the 2012 MTEP. By making that finding, the Commission implicitly found that MISO had authority to reject American Transmission's proposed rerouting of Dubuque – Cardinal Line. In any case, whether or not MISO had authority to reject American Transmission's proposed rerouting of the Dubuque – Cardinal Line has no bearing on the question before the Commission in the complaint – whether based on the language of section VI of Appendix B of the Transmission Owners Agreement, both ITC Midwest and American Transmission have investment and ownership rights to participate on an equal basis in the 345 kV transmission projects that will interconnect American Transmission's Cardinal substation with ITC Midwest's substation in Dubuque. We confirm again here that both parties have the right to participate on an equal basis in such projects.

15. American Transmission also states that the Commission did not base that ruling on any substantive rulings or determinations by MISO or the MISO Board. However, in the Order on Complaint, the Commission stated that Appendix A to the 2012 MTEP illustrates that the Dubuque – Cardinal Line is to pass through the Spring Green Substation as originally planned. The Commission noted that the 2012 MTEP was approved by the MISO Board on December 13, 2012. Thus, the Commission based its findings on the MISO Board's approval of the 2012 MTEP, which included the Dubuque – Cardinal Line as originally planned.

16. Finally, American Transmission asks the Commission to clarify that if a routing change ultimately is implemented, then the Pioneer Order requires that the Montfort substation be treated as part of American Transmission's existing system. American Transmission's request is both premature, and beyond the scope of rehearing of the underlying order, and therefore the Commission cannot pre-determine the hypothetical issue here.

The Commission orders:

American Transmission's request for rehearing is hereby denied, as discussed in the body of this order.

By the Commission.

(S E A L)

Nathaniel J. Davis, Sr.,
Deputy Secretary.