

157 FERC ¶ 61,098
UNITED STATES OF AMERICA
FEDERAL ENERGY REGULATORY COMMISSION

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

MDU Resources Group, Inc.

Docket No. ER16-866-001

ORDER DENYING REHEARING

(Issued November 14, 2016)

1. In an April 21, 2016 order,¹ the Commission denied Montana-Dakota Utilities Co.'s (Montana-Dakota) request for waiver of Schedule 12 of the Southwest Power Pool, Inc. (SPP) Open Access Transmission Tariff (SPP Tariff) under which SPP is obligated to collect, and Montana-Dakota is obligated to pay, the annual charges paid to the Commission (Annual Charges) under section 382.201 of the Commission's regulations.² That provision provides for Annual Charges to be assessed to public utilities for administration of the Commission's electric regulatory program.³

2. On May 21, 2016, Montana-Dakota, a division of the MDU Resources Group, Inc., sought rehearing of the April Order, arguing that the Commission erred by denying the requested waiver. As explained below, we disagree and deny Montana-Dakota's request for rehearing.

I. Background

3. Order No. 641 established the Commission's current policy on Annual Charges and provided that annual charges will be assessed to public utilities that provide

¹ *MDU Resources Group, Inc.*, 155 FERC ¶ 61,081 (2016) (April Order).

² 18 C.F.R. § 382.201 (2016).

³ 18 C.F.R. § 382.201(a) (2016).

transmission service based on the volume of electricity they transmit.⁴ As public utilities that provide transmission service in interstate commerce, Midcontinent Independent System Operator, Inc. (MISO) and SPP are subject to the Annual Charges.⁵ Schedule 10-FERC of the MISO Open Access Transmission, Energy and Operating Reserve Tariff (MISO Tariff) and Schedule 12 of the SPP Tariff establish the formula by which MISO and SPP, respectively, recover their obligations to the Commission for the Annual Charges.

4. Montana-Dakota is a public utility that provides natural gas and electric service to customers in the states of Montana, North Dakota, South Dakota, and Wyoming. In its request for waiver, Montana-Dakota explained that it has historically developed and shared transmission facilities with Western Area Power Administration – Upper Great Plains Region (Western-UGP) and Basin Electric Power Cooperative (Basin) and, as a result, Montana-Dakota’s transmission system is heavily integrated with Western-UGP, Basin, and Heartland Consumers Power District (Heartland) (collectively, the Integrated System).⁶ Montana-Dakota also explained that it is a transmission owner in MISO, and,

⁴ *Revision of Annual Charges Assessed to Public Utilities*, Order No. 641, FERC Stats. & Regs. ¶ 31,109 (2000), *reh’g denied*, Order No. 641-A, 94 FERC ¶ 61,290 (2001) (Order No. 641).

⁵ 18 C.F.R. § 382.201(c) (2016). Section 382.201(c) of the Commission’s regulations provides as follows:

(c) *Reporting requirement.* (1) For purposes of computing annual charges, as of January 1, 2002, a public utility, as defined in § 382.201(b), that provides transmission service must submit under oath to the Office of the Secretary by April 30 of each year an original and conformed copies of the following information (designated as FERC Reporting Requirement No. 582 (FERC-582)): The total megawatt-hours of transmission of electric energy in interstate commerce, which for purposes of computing the annual charges and for purposes of this reporting requirement, will be measured by the sum of the megawatt-hours of all unbundled transmission (including MWh delivered in wheeling transactions and MWh delivered in exchange transactions) and the megawatt-hours of all bundled wholesale power sales (to the extent these latter megawatt-hours were not separately reported as unbundled transmission.)

⁶ April Order, 155 FERC ¶ 61,081 at P 2.

as a result of the integration of Western-UGP and Basin into SPP,⁷ it is now necessary for Montana-Dakota to receive Network Integration Transmission Service (NITS) from SPP, subjecting Montana-Dakota customers to NITS from two Regional Transmission Organizations (RTOs) in order to serve the same customer load in MISO.

5. Montana-Dakota argued that, in these circumstances, SPP's Annual Charge is duplicative of the MISO Annual Charge paid by Montana-Dakota and thus sought a waiver of SPP's obligation to collect, and Montana-Dakota's obligation to pay, the SPP Annual Charge. In the April Order, the Commission denied Montana-Dakota's request for waiver, finding that Montana-Dakota had not made the requisite showing of good cause necessary to grant the requested waiver. On rehearing, Montana-Dakota argues that the Commission erred in determining that: (1) Montana-Dakota is properly assessed Annual Charges under both the SPP Tariff and MISO Tariff and failed to demonstrate that a concrete problem would be remedied by granting the requested waiver;⁸ and (2) third parties would be harmed if the requested waiver is granted.⁹

II. Commission Determination

6. The Commission has granted waivers of tariff provisions where: (1) the applicant acted in good faith; (2) the waiver is of limited scope; (3) the waiver addresses a concrete problem; and (4) the waiver does not result in undesirable consequences, such as harming third parties.¹⁰

⁷ On May 19, 2016, the Commission approved a partial settlement (Partial Settlement) that resolved all issues raised by Montana-Dakota arising out of the integration of Western-UGP, Basin, and Heartland into SPP. *Sw. Power Pool, Inc.*, 155 FERC ¶ 61,168 (2016). The Partial Settlement provided that "[Montana-Dakota] may seek a waiver of the applicability of Schedule 12 [Annual Charges] to the extent such [Annual Charges] are duplicative of those otherwise paid by [Montana-Dakota]. The Settling Parties agree not to oppose such waiver request." Southwest Power Pool, Inc., Joint Offer of Partial Settlement, Docket Nos. ER14-2850-006 and ER14-2851-006, at Article 4.6 (filed Dec. 10, 2015).

⁸ Montana-Dakota Request for Rehearing at 5-8.

⁹ *Id.* at 8.

¹⁰ April Order, 155 FERC ¶ 61,081 at P 11 (citing *Midcontinent Indep. Sys. Operator, Inc.*, 154 FERC ¶ 61,059 at P 14; *Calpine Energy Serv., L.P.*, 154 FERC ¶ 61,082, at P 12 (2016); *N.Y. Power Auth.*, 152 FERC ¶ 61,058, at P 22 (2015)).

7. On rehearing, Montana-Dakota states that its waiver request properly focused on “the concrete problem of duplicative charges that occur not as a result of the proper operation of SPP and MISO’s Tariff, but rather due to the fact that Montana-Dakota has agreed through the Partial Settlement to take NITS from both SPP and MISO to serve the same Network Load.” According to Montana-Dakota this problem arises, not from “taking ‘service sequentially over different facilities under two different tariffs’ as the Commission suggests,” but instead “arises because Montana-Dakota is required to take the same service (i.e., NITS) under both Tariffs to serve its Network Load.”¹¹ Noting that the charges under Schedule 12 of the SPP Tariff and under Schedule 10-FERC of the MISO Tariff are both on a dollar-per-megawatt-hour basis, Montana-Dakota adds that, because its load is listed as taking NITS in both SPP and MISO, the “sum of the megawatt-hours” for NITS is two times the megawatt-hours needed to serve the load.¹² Montana-Dakota asserts that the NITS are not split between the two RTOs because Montana-Dakota’s entire load continues to reside in the MISO Balancing Authority. Montana-Dakota concludes that the Annual Charges would ultimately be double collected from that load.

8. We find that Montana-Dakota has again failed in its attempt to define the assessment of Annual Charges to it under the SPP and MISO Tariffs as duplicative. Under the Commission’s regulations, a public utility that provides transmission service must submit the total megawatt-hours of transmission of electric energy in interstate commerce measured by the sum of the megawatt-hours of all unbundled transmission and the megawatt-hours of all bundled wholesale power sales, for purposes of computing the Annual Charges.¹³ In Order No. 641, the Commission clarified that if two or more different public utilities, such as two or more RTO public utilities or two or more

¹¹ Montana-Dakota Request for Rehearing at 6-7 (citing April Order, 155 FERC ¶ 61,081 at P 16).

¹² *Id* at 7 (citing 18 C.F.R. § 382.201(a) (2016)). Section 382.201(a) provides as follows:

(a) Determination of costs to be assessed to public utilities. The adjusted costs of administration of the electric regulatory program, excluding the costs of regulating the Power Marketing Agencies, will be assessed to public utilities that provide transmission service (measured, as discussed in paragraph (c) of this section, by the sum of the megawatt-hours of all unbundled transmission and the megawatt-hours of all bundled wholesale power sales (to the extent these latter megawatt-hours were not separately reported as unbundled transmission)).

¹³ 18 C.F.R. § 382.201(c) (2016).

individual public utilities, transmit electric energy sequentially, each RTO public utility or individual public utility will be assessed an Annual Charge based on its respective transmission of such electric energy.¹⁴

9. As the Commission explained in the April Order, SPP now provides the service that Montana-Dakota previously received over the Integrated System.¹⁵ Because there are two jurisdictional public utilities – SPP and MISO – each providing service sequentially over different facilities under two different tariffs, each are subject to Annual Charge assessments for the service that they provide, and Montana-Dakota is required to pay for the Annual Charges associated with the service it receives under each RTO’s tariff.¹⁶ This does not constitute duplicate charges or “double counting,” as discussed in Order No. 641 and the April Order.¹⁷

10. Our analysis is not changed by the fact that the service each RTO provides is the same (i.e., NITS) and is separately assessed the Annual Charges based on the same MWh of load. The NITS that SPP provides is separate and distinct from the NITS that MISO provides. SPP and MISO provide NITS to Montana-Dakota for the use of each of their transmission facilities under their respective tariffs to transmit the energy needed to serve Montana-Dakota’s load. By definition, such sequential transmission services involve transmission of the *same* energy to serve the *same* load. Customers requiring sequential transmission services to serve their loads generally rely on a combination of NITS and Point-to-Point Transmission Service (PTP), taking NITS from the transmission provider with which the load is directly connected, and PTP to deliver the output of resources over the facilities of neighboring transmission providers. However, the Commission’s *pro forma* Open Access Transmission Tariff (OATT) explicitly provides the option to use

¹⁴ Order No. 641, FERC Stats. & Regs. ¶ 31,109 at 31,855 n.70.

¹⁵ April Order, 155 FERC ¶ 61,081 at P 16.

¹⁶ *Id.* P 17.

¹⁷ *Id.* P 13 (citing Order No. 641, FERC Stats. & Regs. ¶ 31,109 at 31,843 (the Commission stated that “it was concerned that the assessment of annual charges could result in a ‘double counting’ of transactions – by counting a single transaction both to the transmission-owning public utility and to the ISO or RTO public utility”)).

NITS instead of PTP for the latter transmission.¹⁸ And Montana-Dakota and others have found it beneficial to do so.¹⁹ The fact that such sequential NITS is assessed Annual Charges based on the same designated network load simply reflects that the transmission customer has the *same* flexible use of *both* transmission providers' transmission facilities to serve the *same* designated network load.

11. Furthermore, the fact that Montana-Dakota is “not aware of any other transmission customer that is taking NITS to serve the same Network Load from two RTOs”²⁰ and that it “agreed through the Partial Settlement to take NITS from both SPP and MISO to serve the same Network Load”²¹ does not justify treating Montana-Dakota differently from other customers that may take transmission service under multiple tariffs to service their loads.²²

12. Because Montana-Dakota has failed to demonstrate in the first instance that a concrete problem in need of a remedy exists, the Commission need not address Montana-Dakota's claim that the Commission erred in concluding that third parties would be harmed if the requested waiver is granted.²³

¹⁸ *Preventing Undue Discrimination and Preference in Transmission Service*, Order No. 890, FERC Stats. & Regs. ¶ 31,241, app. C § 31.3 (*pro forma* OATT), “Network Load Not Physically Connected with the Transmission Provider;” *Order on reh'g*, Order No. 890-A, FERC Stats. & Regs. ¶ 31,261 (2007), *order on reh'g*, Order No. 890-B, 123 FERC ¶ 61,299 (2008), *order on reh'g*, Order No. 890-C, 126 FERC ¶ 61,228, *order on clarification*, Order No. 890-D, 129 FERC ¶ 61,126 (2009). *See also* SPP Tariff § 31.4, Delivery Points Not Physically Interconnected with the Transmission Provider.

¹⁹ *Midcontinent Indep. Sys. Operator, Inc.*, 146 FERC ¶ 61,094; *Sw. Power Pool, Inc.*, 148 FERC ¶ 61,013 (2014).

²⁰ Montana-Dakota Request for Rehearing at 6.

²¹ *Id.*

²² The Partial Settlement is silent on the outcome of the Annual Charges issue.

²³ Montana-Dakota Request for Rehearing at 8.

The Commission orders:

Montana-Dakota'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.