

UNITED STATES OF AMERICA
FEDERAL ENERGY REGULATORY COMMISSION

Before Commissioners: Pat Wood, III, Chairman;
Nora Mead Brownell, Joseph T. Kelliher,
and Suedeem G. Kelly.

Midwest Independent Transmission System Operator, Docket No. ER05-273-001
Inc.

ORDER ON REHEARING

(Issued June 24, 2005)

1. On February 25, 2005, DTE Energy Trading, Inc. (DTET) submitted a request for rehearing of the Commission's January 28, 2005 Order in these proceedings.¹ Midwest Independent Transmission System Operator, Inc. (Midwest ISO) had filed proposed clarifying revisions to section 22.2 of its Open Access Transmission Tariff (OATT), pursuant to section 205 of the Federal Power Act,² regarding its charges when a firm point-to-point transmission service customer elects to redirect its service. In the January 28 Order, the Commission accepted the revised tariff sheets for filing and suspended them for a nominal period, to be effective January 30, 2005, subject to refund, and set them for hearing and settlement judge procedures. In this order, the Commission will dismiss DTET's rehearing request in part, and deny its rehearing request in part. This order benefits customers by further ensuring that Midwest ISO's rates for transmission service are consistent with Commission requirements.

¹ *Midwest Independent Transmission System Operator, Inc.*, 110 FERC ¶ 61,081 (2005) (January 28 Order).

² 16 U.S.C. § 824d (2000).

Background

2. Under section 22.1 of the Midwest ISO OATT,³ a firm point-to-point transmission service customer may request to redirect its scheduled transmission service on a non-firm basis over receipt and delivery points other than those originally reserved (Secondary Receipt and Delivery Points) without additional non-firm point-to-point transmission service charges (except as provided in section 22.1a), subject to certain conditions.⁴ Under the former section 22.2 of the Midwest ISO OATT, which was effective for the period prior to Midwest ISO's filing in this proceeding, if the customer requested to redirect service over a transmission path with a higher cost than the path the customer initially reserved, the customer would have to pay the additional costs (*i.e.*, the difference in the zonal rates) associated with the redirected path.

3. In its November 30, 2004 filing, Midwest ISO stated that its practice had been to charge redirecting customers the "higher of" the cost of its initial firm point-to-point service or the new non-firm point-to-point service it would receive, to prevent firm customers from "gaming" the transmission service reservation system by redirecting their firm reservations to acquire non-firm transmission service at discounted rates. However, Midwest ISO stated that some transmission customers expressed confusion as to the authority to charge this "higher of" rate. To resolve any ambiguity, Midwest ISO proposed to revise the then-existing language in section 22.2 of its OATT, and to add a new subsection (a), to clarify that a redirecting transmission customer will be liable for the additional costs associated with redirecting. The new subsection (a) proposed by Midwest ISO states:

- (a) During the time that the Transmission Customer is obtaining Non-Firm Transmission Service over Secondary Receipt or Deliver Points, the Transmission Customer shall be charged the higher of: (1) the rate associated with the original Firm reservation that was redirected; or (2) the rate for the Non-Firm Transmission

³ With the commencement of the Midwest ISO energy markets April 1, 2005, the Midwest ISO OATT is now called the Transmission and Energy Markets Tariff (TEMT).

⁴ The conditions in section 22.1 provide that redirected service is non-firm only and does not displace any firm or non-firm service already scheduled, that the total amount of firm and non-firm service provided to the redirecting customer shall not exceed the amount reserved in the initial Service Agreement, and that the non-firm service is subject to the requirements of Section II of the OATT, except as to transmission rates.

Service obtained over the Secondary Receipt or Delivery Points. Any portion of the original Firm reservation not redirected will be charged the original Firm reservation rate.

4. Several parties filed protests, arguing that the proposed charges in the revised tariff sheets were in excess of Midwest ISO's Commission-approved rates, that the revised language would unduly restrict firm customers' rights to redirect service, and that Midwest ISO's prior practice of charging the "higher of" the hourly non-firm rate or the originally reserved rate violated the filed rate doctrine, requiring refunds.

5. In the January 28 Order, the Commission accepted the revised tariff sheets and suspended them for a nominal period, to be effective January 30, 2005, subject to refund, and set them for hearing and settlement judge procedures. In setting the matters raised by the protesters for hearing, the Commission stated that the protests raised "important issues regarding whether Midwest ISO's proposed charges for redirect service conform to the Commission's policy on pricing of redirected transmission, and in fact whether the Midwest ISO's proposed revised tariff language results in charges in excess of its tariff rates."⁵ The Commission also noted that Midwest ISO had not provided a clear explanation or adequate cost support for its redirect pricing proposal. Finally, the Commission stated that arguments raised by protestors regarding Midwest ISO's past charges for redirect service and requests by the protestors for refund protection were best addressed in the context of a complaint filed in Docket No. EL05-55-000.⁶

Request for Rehearing

6. DTET argues in its request for rehearing that the Commission erred by ignoring the parties' filed rate doctrine arguments. Specifically, DTET contends that both the plain language and intent of former section 22 of the Midwest ISO OATT did not authorize Midwest ISO to charge the higher hourly non-firm rate for redirect service. As a result, DTET asserts, Midwest ISO's assessment of this charge constitutes a violation of the filed rate doctrine, requiring refunds. Furthermore, DTET argues that even assuming the language of former section 22 was simply not "sufficiently clear" regarding Midwest ISO's ability to charge the higher hourly non-firm rate, Midwest ISO still violated the filed rate doctrine, which prohibits "incomplete, overly broad or vague directives."⁷

⁵ January 28 Order at P 12.

⁶ *Id.* at n.8.

⁷ Request for Rehearing of DTET at 13.

DTET also asserts that deferring the filed rate doctrine claims to a separate complaint is unnecessary, contrary to earlier precedent, and administratively unworkable.

7. Additionally, DTET argues on rehearing that the Commission erred by not rejecting Midwest ISO's filing in light of its finding in the January 28 Order that the filing lacked "adequate cost support."⁸ According to DTET, the Commission's regulations require it to summarily reject Midwest ISO's filing as deficient given this finding.⁹

Discussion

8. The Commission will dismiss in part and deny in part the request for rehearing filed by DTET. With regard to DTET's argument that the Commission erred by not addressing the protestors filed rate doctrine claims and referring the requests for refund protection to Docket No. EL05-55-000, we will dismiss this portion of the rehearing request as moot. On April 18, 2005, the Commission issued orders in Docket No. EL05-55-000 and EL05-63-000 granting complaints filed by the City of Holland, Michigan (Holland) and DTET regarding Midwest ISO's practice of charging the higher hourly non-firm rate for non-firm redirect service taken by Holland and DTET under former section 22.1 of the Midwest ISO OATT.¹⁰ In those orders, the Commission found that this billing practice violated former section 22.2 of the Midwest ISO OATT, which only permitted Midwest ISO to assess additional charges based on "the difference between the zonal rates" of the initially reserved service and the redirected service.¹¹ The Commission ordered Midwest ISO to refund to Holland and DTET "the difference between the non-firm hourly rate assessed . . . for redirect service within the same pricing zone and the original firm transmission service rate contained in [Holland and DTET's]

⁸ *Id.* at P 12.

⁹ Request for Rehearing of DTET at 17, *citing* 18 C.F.R. § 35.5 (2004).

¹⁰ *City of Holland, Michigan v. Midwest Independent Transmission System Operator, Inc.*, 111 FERC ¶ 61,076 (2005); *DTE Energy Trading, Inc. v. Midwest Independent Transmission System Operator, Inc.*, 111 FERC ¶ 61,062 (2005).

¹¹ *City of Holland*, 111 FERC ¶ 61,076 at P 21; *DTE Energy Trading, Inc.*, 111 FERC ¶ 61,062 at P 25.

primary reservation.”¹² As a result of the Commission’s order in *DTE Energy Trading, Inc.*, DTET has already been granted the refund remedy it seeks in its rehearing request. Accordingly, we dismiss this portion of the rehearing request as moot.

9. Additionally, the Commission will deny DTET’s request for rehearing seeking summary rejection of Midwest ISO’s filing pursuant to section 35.5 of the Commission’s rules and regulations.¹³ Section 35.5 provides that the Commission “shall reject any material submitted for filing with the Commission which patently fails to substantially comply” with the applicable requirements of the Commission’s regulations. DTET asserts that because the Commission stated that Midwest ISO did not provide adequate cost support for its proposal, the Commission must reject Midwest ISO’s filing as being patently deficient. We disagree. The Commission made its statement in the context of discussing the necessity for setting Midwest ISO’s filing for hearing and settlement judge procedures, and as short hand for concluding that it could not summarily accept Midwest ISO’s filing. No party had argued, and there is no discussion in the January 28 Order concerning, whether Midwest ISO’s filing should be rejected because it failed to meet the threshold filing requirements set forth in the Commission’s regulations. The Commission did not, and indeed could not, given what was provided, find the filing patently deficient. To take a single phrase and imply from it that Midwest ISO’s filing “patently fails to substantially comply” with the Commission’s threshold filing requirements and that the Commission must therefore reject it, as DTET does, misreads the Commission’s intent and meaning. Accordingly, we reject DTET’s argument.

¹² *City of Holland*, 111 FERC ¶ 61,076 at ordering paragraph (B); *DTE Energy Trading, Inc.*, 111 FERC ¶ 61,062 at ordering paragraph (B). In addition, the Commission directed Midwest ISO to make similar refunds to all Midwest ISO OATT customers who were assess the higher hourly non-firm rate for redirect service under former section 22.2 of the Midwest ISO OATT. See *City of Holland*, 111 FERC ¶ 61,076 at ordering paragraph (C); *DTE Energy Trading, Inc.*, 111 FERC ¶ 61,062 at ordering paragraph (C).

¹³ 18 C.F.R. § 35.5 (2004).

The Commission orders:

The request for rehearing filed by DTET is hereby dismissed in part, and denied in part, as discussed in the body of this order.

By the Commission.

(S E A L)

Linda Mitry,
Deputy Secretary.