

130 FERC ¶ 61,244  
UNITED STATES OF AMERICA  
FEDERAL ENERGY REGULATORY COMMISSION

Before Commissioners: Jon Wellinghoff, Chairman;  
Marc Spitzer, Philip D. Moeller,  
and John R. Norris.

Michigan Public Power Agency,  
Michigan South Central Power Agency, and  
Wolverine Power Supply Cooperative, Inc.

Docket No. EL09-58-001

v.

Midwest Independent Transmission  
System Operator, Inc.

ORDER DENYING REHEARING

(Issued March 26, 2010)

1. The Michigan Public Power Agency (MPPA), the Michigan South Central Power Agency (Michigan South Central), and Wolverine Power Supply Cooperative, Inc. (Wolverine) (collectively, Michigan Parties) request rehearing<sup>1</sup> of an order issued on September 18, 2009, in which the Commission denied relief requested in a complaint submitted by the Michigan Parties against Midwest Independent Transmission System Operator, Inc. (Midwest ISO).<sup>2</sup> In this order, we deny the Michigan Parties' request for rehearing.

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<sup>1</sup> Michigan Parties October 19, 2009 Request for Rehearing, Docket No. EL09-58-001 (Rehearing Request).

<sup>2</sup> *Midwest Indep. Transmission Sys. Operator, Inc.*, 128 FERC ¶ 61,268 (2009) (September 2009 Order).

## I. Background

### A. Michigan Parties' GFAs and Schedule 26

2. The Michigan Parties are transmission-owning members of Midwest ISO that serve a portion of their respective loads using Grandfathered Agreements (GFAs) carved out of Midwest ISO's energy markets under Midwest ISO's Open Access Transmission, Energy and Operating Reserve Markets Tariff (ASM Tariff or Tariff).<sup>3</sup> Each of these GFAs is associated with the Michigan Parties' joint ownership interests in transmission facilities that are part of the Michigan Electric Transmission Company's (METC) transmission system.<sup>4</sup> As part of these ownership interests, the Michigan Parties receive transmission service rights over the METC system, which are governed by ownership and operating agreements that predate the formation of Midwest ISO.

3. The Commission has, in the past, addressed the identification and categorization of transmission upgrades in Midwest ISO, and the allocation of costs for these projects on a regional and sub-regional basis, through the Regional Expansion Criteria and Benefits (RECB) provisions of Midwest ISO's Tariff.<sup>5</sup> Schedule 26 of the Tariff provides for the assessment of network upgrade charges under the Midwest ISO Transmission Expansion Plan, as calculated using a formula rate included in Attachment GG to the Tariff.<sup>6</sup>

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<sup>3</sup> The phrase "carved out" refers to a specific type of treatment of GFAs under the Tariff. Carved-out GFAs are not subject to the Tariff scheduling and settlement requirements and are financially exempt from many energy market charges. The treatment of GFAs is outlined in section 38.8 of the Tariff (ASM Tariff Sheet Nos. 656-74).

<sup>4</sup> Wolverine's ownership entitlements exist pursuant to GFA Nos. 254 and 255; MPPA's ownership entitlements exist pursuant to GFA Nos. 256 and 257; and Michigan South Central's ownership entitlements exist pursuant to GFA No. 266. *See* Attachment P (List of Grandfathered Agreements) of Midwest ISO's ASM Tariff.

<sup>5</sup> *See Midwest Indep. Transmission Sys. Operator, Inc.*, 114 FERC ¶ 61,106 (2006), *order on technical conference, reh'g and compliance*, 117 FERC ¶ 61,241 (2006), *order on reh'g*, 118 FERC ¶ 61,208 (2007); *Midwest Indep. Transmission Sys. Operator, Inc.*, 118 FERC ¶ 61,209 (2007), *order on reh'g and compliance*, 120 FERC ¶ 61,080 (2007), *order on reh'g and compliance*, 122 FERC ¶ 61,127 (2008).

<sup>6</sup> Attachment GG sets forth the formula for calculating charges associated with network upgrade projects whose costs are not already collected under Attachment N (Recovery of Costs Associated with New Facilities Resulting from Requests for Transmission Service) or Attachment X (Generator Interconnection Procedures).

Schedule 26 provides that GFAs “including the provision of transmission service, shall not be charged this Schedule 26.”<sup>7</sup>

## **B. Michigan Joint Zone**

4. The Michigan Joint Zone is a pricing zone established in the wake of Midwest ISO’s proposed creation of a new pricing zone for Wolverine’s transmission facilities, to take effect upon Wolverine becoming a member of Midwest ISO. The Commission rejected the Wolverine pricing zone, without prejudice to Midwest ISO filing to incorporate Wolverine into an existing pricing zone, and established settlement procedures to permit parties to develop a joint pricing zone that would include the transmission facilities of Wolverine and METC.<sup>8</sup>

5. In 2003, the parties to that proceeding filed, and the Commission conditionally approved, a settlement agreement establishing the Michigan Joint Zone under the Tariff.<sup>9</sup> A Michigan Joint Zone Revenue Allocation Agreement, also established by the parties as part of the settlement process, was filed to govern the relationship between the parties with respect to allocation of revenues and charges that Midwest ISO allocates to the Michigan Joint Zone. In 2006, the parties filed a Second Amended and Restated Settlement Agreement (Settlement Agreement) and a Second Revised Michigan Joint Zone Revenue Allocation Agreement (Revenue Allocation Agreement), which established a Michigan Joint Zone rate applicable to only non-ownership entitlement load and a Michigan Sub Zone rate applicable to all ownership entitlement load.<sup>10</sup>

## **II. June 2009 Complaint**

6. On June 4, 2009, the Michigan Parties filed a complaint alleging that Midwest ISO has been improperly assessing Schedule 26 charges to GFA load on the Midwest ISO system. They asked the Commission to issue an order finding that Midwest ISO violated

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<sup>7</sup> See Midwest ISO, FERC Electric Tariff, Fourth Revised Vol. No. 1, Original Sheet No. 2194.

<sup>8</sup> *Midwest Indep. Transmission Sys. Operator, Inc.*, 101 FERC ¶ 61,004, at P 20-21 (2002). Wolverine’s transmission system is connected with, and electrically surrounded by, METC’s transmission system.

<sup>9</sup> *Midwest Indep. Transmission Sys. Operator, Inc.*, 106 FERC ¶ 61,219 (2004) (March 2004 Order), *order on amended settlement agreement and requests for reh’g*, 112 FERC ¶ 61,351 (2005) (September 2005 Order).

<sup>10</sup> See September 2009 Order, 128 FERC ¶ 61,268 at P 4-5.

the terms of its Tariff by assessing Schedule 26 charges on the Michigan Parties' GFA load.<sup>11</sup> The Michigan Parties contended that the language of Schedule 26 exempts GFA load from Schedule 26 charges without any qualification, and that, while Midwest ISO recognized that Schedule 26 charges do not apply to GFA load, it nonetheless assessed such charges on the Michigan Parties' GFA load.

7. According to the Michigan Parties, Midwest ISO's assessment of Schedule 26 charges to GFA load violated the terms of its own Tariff. The Michigan Parties argued that, contrary to Midwest ISO's assertions that the Michigan Parties' GFA load should be allocated costs associated with RECB-eligible projects in other Midwest ISO pricing zones, the Michigan Parties' GFAs are no different than any other GFAs currently receiving the Schedule 26 exemption.

8. The Michigan Parties argued that its GFAs predate the existence of Midwest ISO and do not provide for transmission service over multiple transmission systems. According to the Michigan Parties, the March 2004 Order, the September 2005 Order and the Settlement Agreement do not provide for Schedule 26 charges and, therefore, the Michigan Parties are not liable for such charges. Finally, the Michigan Parties argued that, to the extent only their GFA load is being assessed Schedule 26 charges, such assessment constitutes a discriminatory rate practice in violation of section 205 of the Federal Power Act (FPA).<sup>12</sup>

### **III. September 2009 Order**

9. In the September 2009 Order, the Commission denied the relief requested in the Michigan Parties' complaint, and found that the Michigan Parties are appropriately assessed Schedule 26 charges for non-grandfathered transmission service used to serve their load.<sup>13</sup> The Commission found that the Michigan Parties' GFAs only apply to Wolverine's and MPPA's use of the METC transmission system within the Michigan Joint Zone, as associated with their joint ownership interest in the METC transmission facilities, and do not extend to the service Wolverine and MPPA use on their own respective transmission systems to serve their load.<sup>14</sup> The Commission stated that

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<sup>11</sup> *See id.* P 6-7.

<sup>12</sup> 16 U.S.C. § 824d(b) (2006).

<sup>13</sup> In the September 2009 Order, the Commission also denied Great River Energy's request that the Commission direct Midwest ISO to develop and implement a method to prevent the assessment of Schedule 26 charges on GFA load. *See* September 2009 Order, 128 FERC ¶ 61,268 at P 29.

<sup>14</sup> *Id.* P 27.

although there is a single Michigan Joint Zone, the Michigan Parties' own transmission facilities (i.e., non-METC facilities in the Michigan Joint Zone) are constituted into the separate Michigan Sub Zone over which they take non-grandfathered transmission service to serve their load. The Commission found that the Michigan Parties' use of the transmission facilities in the Michigan Sub Zone is not covered by their GFAs.<sup>15</sup>

10. The Commission observed that, in approving the Settlement Agreement, the Commission stated that “[t]he [GFAs] provide for transmission service over the METC transmission system, not for transmission service over the Wolverine and MPPA facilities used to transfer power to Wolverine’s and MPPA’s members.”<sup>16</sup> The Commission also noted that the Michigan Parties do not dispute their use of transmission service over the Wolverine and MPPA facilities to serve their load, including load served, in part, under the GFAs. Accordingly, the Commission found that, based on the Settlement Agreement, the March 2004 Order and the September 2005 Order, the Michigan Parties are subject to Schedule 26 charges for Wolverine’s and MPPA’s use of their respective transmission systems to serve their load not covered under any GFA, on the same basis that they pay for transmission service under Schedules 7, 8, or 9 of the Tariff for transmission service taken over their respective systems.<sup>17</sup>

#### **IV. October 2009 Request for Rehearing**

11. The Michigan Parties argue that the Commission’s findings overlook provisions in the Settlement Agreement addressing Schedule 26, language from Schedule 26 of the Tariff exempting carved-out GFAs, and the Michigan Parties’ discussion of these provisions in its complaint. The Michigan Parties contend that there is no mention of Schedule 26 in the provisions of the Settlement Agreement addressing the Michigan Sub Zone rate. They add that the Settlement Agreement states that GFA load will pay the Michigan Sub Zone rate only “for service under Schedules 7, 8, and 9 and the [Michigan] Sub Zone Schedule 1 Rate where applicable.”<sup>18</sup>

12. According to the Michigan Parties, Schedule 26 existed at the time section 3.3 of the Settlement Agreement was drafted, and the parties to the Settlement Agreement could have included a reference to Schedule 26 had they intended it to apply to the Michigan

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<sup>15</sup> *Id.*

<sup>16</sup> *Id.* P 28 (quoting March 2004 Order, 106 FERC ¶ 61,219 at P 19, *order on reh’g*, September 2005 Order, 112 FERC ¶ 61,351 at P 36).

<sup>17</sup> *Id.*

<sup>18</sup> Rehearing Request at 10 (quoting section 3.3 of the Settlement Agreement).

Parties' GFA load. Instead, the Michigan Parties contend that Schedule 26 is addressed in section 10.8 of the Settlement Agreement which, they state, does not distinguish between the Michigan Joint Zone and Michigan Sub Zone rates but instead provides that parties will be liable for Schedule 26 pursuant to the Tariff. The Michigan Parties conclude that, since the Tariff exempts GFA load from Schedule 26, Midwest ISO should not assess Schedule 26 charges on the Michigan Parties' GFA load, or on load served by any GFA under the Midwest ISO footprint.

13. The Michigan Parties further argue that the Commission, in the September 2009 Order, relies on a mischaracterization of the Michigan Sub Zone rate as a separate pricing zone under the Midwest ISO Tariff.<sup>19</sup> According to the Michigan Parties, the Settlement Agreement did not carve out a separate pricing zone under the Tariff, but instead noted that the Michigan Joint Zone is a single zone comprised of a two-part transmission rate.<sup>20</sup> The Michigan Parties add that the Michigan Sub Zone rate was created to carry out the Commission's directives in the March 2004 Order and the September 2005 Order that the Michigan Joint Zone transmission revenue requirement must be reduced to reflect the fact that the Michigan Parties' GFAs do not cover service over their own facilities in the Michigan Joint Zone.<sup>21</sup> Therefore, the Michigan Parties state that the Settlement Agreement was amended to include the Michigan Sub Zone rate so that the Michigan Parties would not receive a capacity offset for use of their own transmission facilities, which are included in the Michigan Joint Zone but which are not included in the Michigan Parties' ownership entitlements. The Michigan Parties argue that the Michigan Sub Zone rate is a cost allocation tool to properly account for this capacity offset, and is not a distinct Midwest ISO pricing zone under which Schedule 26 should separately apply.

14. Regarding this distinction, the Michigan Parties state that a new customer locating load on the Michigan Parties' transmission facilities would pay the entire Michigan Joint Zone rate, not just the Michigan Sub Zone rate component, and would also pay Schedule 26 charges because, as a Midwest ISO customer, the new customer would benefit from expansion projects over the Midwest ISO system. But the Michigan Parties contend that their GFA load is assessed only the Michigan Sub Zone rate to ensure that it pays its share of the costs of the Michigan Parties', and their members', own transmission facilities, which are not covered by the Michigan Parties' GFAs. According to the Michigan Parties, the Settlement Agreement provides that Schedule 26 charges are

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<sup>19</sup> *Id.* at 11 (citing September 2009 Order, 128 FERC ¶ 61,268 at P 17).

<sup>20</sup> *Id.*

<sup>21</sup> *Id.* at 13 (citing March 2004 Order, 106 FERC ¶ 61,219 at P 19).

assessed in accordance with the Midwest ISO Tariff without distinguishing between the Michigan Joint Zone and Michigan Sub Zone rates.<sup>22</sup>

15. Even if the Commission is correct that the Michigan Parties' GFA load is subject to Schedule 26 charges with respect to the use of their own transmission systems, the Michigan Parties claim that they should not be assessed Schedule 26 charges on transmission facilities of any third party. According to the Michigan Parties, by the terms of the Settlement Agreement, the Michigan Parties' GFA load is assessed Schedule 7, 8 and 9 charges based only on the cost of their own transmission systems, but is not assessed these charges with respect to the transmission systems of any third party.<sup>23</sup> Therefore, the Michigan Parties argue that their GFA load should bear its proportionate share of Schedule 26 charges associated with transmission projects on their own transmission systems and should not be assessed these charges with respect to transmission projects on any other systems.

16. The Michigan Parties argue that while the September 2009 Order held that the Michigan Parties' GFA load should be assessed Schedule 26 charges in the same manner it is assessed Schedule 7, 8 and 9 charges, the Commission improperly denied the Michigan Parties relief from assessment of Schedule 26 charges associated with transmission projects in other Midwest ISO pricing zones.<sup>24</sup>

17. Midwest ISO filed an answer to the Michigan Parties' rehearing request. The Michigan Parties filed an answer to Midwest ISO's answer.

## V. Discussion

18. Rule 713(d) of the Commission's Rules of Practice and Procedure, 18 C.F.R. § 385.713(d) (2009), prohibits an answer to a request for rehearing. Accordingly, we reject Midwest ISO's and the Michigan Parties' answers.

19. We deny the Michigan Parties' request for rehearing. None of the arguments presented on rehearing cast doubt on our finding that the Michigan Parties are appropriately assessed Schedule 26 charges for the non-grandfathered transmission service that they must use to serve their load. Instead, the arguments on rehearing tend to misunderstand the determinations in the September 2009 Order and sidestep the

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<sup>22</sup> *Id.*

<sup>23</sup> *Id.* at 14.

<sup>24</sup> *Id.* (citing September 2009 Order, 128 FERC ¶ 61, 268 at P 28).

Commission's reasoning. The Michigan Parties' assertion that the Commission found in favor of assessing Schedule 26 charges on the Michigan Parties' GFA load is erroneous and overlooks the findings in the September 2009 Order.

20. In the September 2009 Order, the Commission found that the service covered under the Michigan Parties' GFAs is associated with their joint ownership interest in METC's transmission facilities. The Commission explained that the Michigan Parties' GFAs only apply to Wolverine's and MPPA's use of the METC transmission system within the Michigan Joint Zone, and do not extend to the service Wolverine and MPPA use on their respective transmission systems to serve their load.<sup>25</sup> Therefore, only the Michigan Parties' use of the METC system has been granted GFA status. The Commission, in the September 2009 Order, went on to state that Schedule 26 prohibits GFAs from being assessed Schedule 26 charges.<sup>26</sup> Therefore, there are no grounds for the Michigan Parties' claim that the Commission found that the Michigan Parties' GFA load is subject to Schedule 26 charges.

21. The Michigan Parties' arguments on rehearing are falsely premised on the belief that only transmission service subject to GFA treatment is used to deliver to the Michigan Parties' load and, therefore, such load is exempt from Schedule 26 charges. This is not the case. As the Commission explained in the September 2009 Order, as well as in prior orders approving the Settlement Agreement, "[t]he [GFAs] provide for transmission service over the METC transmission system, not for transmission service over the Wolverine and MPPA facilities used to transfer power to Wolverine's and MPPA's members."<sup>27</sup> Therefore, as stated above, only the Michigan Parties' use of the METC system has been granted GFA status, not their use of their facilities outside of the METC

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<sup>25</sup> September 2009 Order, 128 FERC ¶ 61, 268 at P 27-28. Michigan South Central was not a party to the Settlement Agreement, nor was GFA No. 266 specifically addressed in the Commission discussion in the September 2009 Order. However, pursuant to GFA No. 266, Michigan South Central holds an undivided ownership interest in, and associated use rights over, the METC transmission facilities. See *Michigan South Central Power Agency v. Midwest Independent Transmission System Operator, Inc.*, 124 FERC ¶ 61,180, at P 3 (2008), *order on reh'g*, 127 FERC ¶ 61,287, at P 2 (2009). Michigan South Central is subject to Schedule 26 charges for any non-grandfathered use of facilities outside of the METC transmission system to serve its load.

<sup>26</sup> *Id.* P 29.

<sup>27</sup> See September 2009 Order, 128 FERC ¶ 61, 268 at P 28; see also March 2004 Order, 106 FERC ¶ 61,219 at P 19, *order on reh'g*, September 2005 Order, 112 FERC ¶ 61,351 at P 36.

transmission system to serve their load. We note that the Michigan Parties do not dispute that they use transmission service over their transmission facilities to serve their load, including load served, in part, under the GFAs.<sup>28</sup> For this reason, the Commission held that the Michigan Parties are subject to Schedule 26 charges for Wolverine's and MPPA's non-grandfathered use of their respective transmission systems to serve their load.

22. The Michigan Parties argue that since the Midwest ISO Tariff exempts GFA load from Schedule 26, Midwest ISO should not assess Schedule 26 charges on the Michigan Parties' GFA load, or on load served by any GFA in the Midwest ISO footprint. As stated above, the Michigan Parties' use of the METC system has been granted GFA status and is therefore exempt from Schedule 26. However the Michigan Parties' argument suggests that GFA treatment should extend to any non-grandfathered service to load served in part by grandfathered over the METC system. This is contrary to the terms of the Settlement Agreement, the March 2004 Order and the September 2005 Order, which provide that only the Michigan Parties' use of the METC facilities has been granted GFA status. The Michigan Parties are subject to Schedule 26 charges for their use of their transmission systems not covered under any GFA.<sup>29</sup>

23. The Michigan Parties further argue that the Commission's findings in the September 2009 Order rely on a mischaracterization of the Michigan Sub Zone rate as a separate pricing zone under the Midwest ISO Tariff. This argument betrays a fundamental misunderstanding of what the Commission did in the September 2009 Order. Contrary to the Michigan Parties' assertions, the Commission did not base its conclusion as to assessment of Schedule 26 charges to non-GFA load on a finding that the Michigan Sub Zone is a distinct pricing zone under the Midwest ISO Tariff. Rather, the Commission's findings are based on the language in the Settlement Agreement, the March 2004 Order, and the September 2005 Order establishing the Michigan Joint Zone which state that "[t]he [GFAs] provide for transmission service over the METC transmission system, not for transmission service over the Wolverine and MPPA facilities used to transfer power to Wolverine's and MPPA's members."<sup>30</sup>

24. In any event, the Michigan Parties' argument is not plausible. While the September 2009 Order states that the Michigan Parties' non-METC facilities (i.e., non-

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<sup>28</sup> See September 2009 Order, 128 FERC ¶ 61, 268 at P 28.

<sup>29</sup> See *id.*

<sup>30</sup> See *id.*; see also March 2004 Order, 106 FERC ¶ 61,219 at P 19, *order on reh'g*, September 2005 Order, 112 FERC ¶ 61,351 at P 36.

GFA) are constituted into the separate Michigan Sub Zone, the September 2009 Order specifically provides that “there is a single Joint Michigan Zone.”<sup>31</sup> Moreover, the Commission did not rely on the Midwest ISO’s characterization of the Michigan Sub Zone rate as wholly separate pricing zone, and made no findings as to the nature of the Michigan Sub Zone in the September 2009 Order. We therefore reject the Michigan Parties’ argument as immaterial to our findings in this proceeding.

25. Finally, we reject the Michigan Parties’ argument that the September 2009 Order improperly denied the Michigan Parties relief from assessment of Schedule 26 charges associated with transmission projects in other Midwest ISO pricing zones. As the Michigan Parties state in their request for rehearing, this argument rests entirely on the assertion that the Commission in the September 2009 Order found in favor of assessing Schedule 26 charges on the Michigan Parties’ GFA load. In fact, the Michigan Parties go so far as to assert that the September 2009 Order held that the Michigan Parties’ GFA load should be assessed Schedule 26 charges in the same manner as it is assessed Schedule 7, 8, and 9 charges. This is a misreading of the September 2009 Order, which held that “the Michigan Parties are subject to Schedule 26 charges for Wolverine’s and MPPA’s use of their respective transmission systems to serve their load not covered under any GFA, on the same basis that they pay for transmission service under Schedule 7, 8, or 9 of the Tariff for transmission service taken over their respective systems.”<sup>32</sup>

26. As we explained in the September 2009 Order, and again in this order, the Commission did not find in favor of assessing Schedule 26 charges on the Michigan Parties’ GFA load; rather, it concluded that the Michigan Parties’ GFAs do not extend to the service Wolverine and MPPA use on their respective transmission systems to serve their load. Therefore, as stated above, the Michigan Parties are subject to Schedule 26 charges for their use of their transmission systems to serve their load that is not provided under any GFA.

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<sup>31</sup> September 2009 Order, 128 FERC ¶ 61,268 at P 27.

<sup>32</sup> *Id.* P 28.

The Commission orders:

The Michigan Parties' 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.