

UNITED STATES OF AMERICA
FEDERAL ENERGY REGULATORY COMMISSION

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

Michigan Electric Transmission Company, LLC Docket Nos. ER04-139-000,
ER04-139-001, and
ER04-315-000

ORDER ACCEPTING AMENDMENTS TO TRANSMISSION AGREEMENTS
AND ACCEPTING COST REIMBURSEMENT AGREEMENTS

(Issued February 12, 2004)

Introduction

1. In this order, we accept for filing amendments to Transmission Ownership and Operating Agreements (Operating Agreements) that will allow the Michigan Electric Transmission Company, LLC (METC) to pass through certain regional transmission organization (RTO) charges established under Schedule 18 of the Midwest Independent Transmission System Operator, Inc.'s (Midwest ISO) open access transmission tariff (OATT) that are associated with the provision of transmission service to Wolverine Power Supply Cooperative, Inc. (Wolverine). We also accept for filing Cost Reimbursement Agreements (CRA) between METC and Michigan Public Power Agency (MPPA) and Michigan South Central Power Agency (MSCPA) (collectively, the Michigan Agencies) to pass through certain RTO charges established under Schedule 18 of the Midwest ISO OATT that are associated with the provision of transmission service to the Michigan Agencies.

Background

2. METC is a transmission-owning member of the Midwest ISO, with transmission facilities located in the lower peninsula of Michigan. Transmission service is provided pursuant to the rates, terms, and conditions of the Midwest ISO OATT.

3. Wolverine is a Michigan corporation that purchases transmission service for its members located within the METC pricing zone of the Midwest ISO. MPPA and MSCPA are Michigan municipal power agencies that purchase transmission service for their members located within the METC pricing zone of the Midwest ISO. The Operating Agreements amended here are grandfathered agreements under the Midwest ISO OATT, pursuant to which Wolverine, MPPA, and MSCPA acquired an ownership interest in certain discreet transmission facilities in the METC transmission system and, in consideration for such ownership interest, receive use rights over the METC transmission system.

Original Filing

4. On October 31, 2003, METC proposed to amend certain Operating Agreements¹ revising Article 20 (Article 21 in the Wolverine Operating Agreement), “RTO Charges,” in order to pass through amounts assessed under Schedule 18 of the Midwest ISO OATT

¹ METC’s filing in Docket No. ER04-139-000 addressed the following five Operating Agreements:

- Project I Operating Agreement Between Consumers Power Company and MSCPA, dated November 20, 1980;
- Campbell Unit No. 3 Operating Agreement Between Consumers Power Company and Northern Michigan Electric Cooperative, Inc. and Wolverine Electric Cooperative, Inc. (as of January 1, 1983 merger, Wolverine Power Supply, Inc.), dated August 15, 1980;
- Campbell Unit No. 3 Operating Agreement Between Consumers Power Company and MPPA, dated October 1, 1979;
- Belle River Operating Agreement Between Consumers Power Company and MPPA, dated December 1, 1982; and
- Wolverine Operating Agreement Between Consumers Power Company and Wolverine Power Supply Cooperative, Inc., dated July 27, 1992.

based on the customers' load.² (It is not in dispute that the Operating Agreements permit METC the right to propose rate changes.³)

5. METC requested an effective date of November 1, 2003, and requested waiver of the Commission's 60-day prior notice requirement in order to allow this effective date. METC requested waiver of the Commission's 60-day prior notice requirement because the Midwest ISO would start assessing these charges commencing November 1, 2003, and METC had no means to recover these costs except by passing them through to the customers on whose behalf METC incurred the charges.

Notice of Original Filing and Responsive Pleadings

6. Notice of the original October 31 filing was published in the Federal Register, 68 Fed. Reg. 64,885 (2003), with interventions and protests due on or before November 21, 2003. The Michigan Agencies and Wolverine filed timely protests. The Detroit Edison Company (Detroit Edison) filed a timely intervention.

7. The Michigan Agencies were not opposed to passing through to the Michigan Agencies Schedule 18 charges assessed to METC by the Midwest ISO, if there was a need to do so. The Michigan Agencies requested that we hold this proceeding in abeyance pending the filing of an offer of settlement in Docket No. ER03-580-000, which the Michigan Agencies believed was likely to occur in the not distant future and which would eliminate those charges. The Michigan Agencies further believed that there were other ways for METC to avoid experiencing trapped costs occasioned by Schedule 18 charges assessed to METC by the Midwest ISO without implicating the grandfathered Operating Agreements with the Michigan Agencies. The Michigan Agencies stated that the best way to achieve both objectives—namely, avoiding trapped costs without

² Schedule 18, Sub-Regional Rate Adjustment (SRA), is designed to collect lost revenues for the current Midwest ISO transmission owners and the GridAmerica Companies related to the elimination of rate pancaking for transactions between the footprint of the existing Midwest ISO transmission owners and the footprint of the GridAmerica Companies. See Midwest Independent Transmission System Operator, Inc., 103 FERC ¶ 61,090 at P 8-9 (2003). The SRA is presently at issue in Docket No. ER03-580-000, where parties are engaged in settlement discussions.

³ See Wolverine Campbell Unit No. 3 Agreement at 9.11; Wolverine July 27, 1992 Agreement at 9.8.

implicating the grandfathered Operating Agreements with the Michigan Agencies—can be better determined after the terms of any settlement are final and known.

8. The Michigan Agencies also contended that grandfathered contracts are not supposed to be implicated in lost revenue calculations, and, therefore, Schedule 18 should not apply to the Operating Agreements anyway, rendering METC's request moot.

9. Wolverine is opposed to passing through to it Schedule 18 charges assessed to METC by the Midwest ISO. Wolverine states that METC should not be allowed to pass through such Schedule 18 charges because METC has not shown that the Midwest ISO assesses or will assess to METC Schedule 18 charges related to the Operating Agreements with Wolverine. Nor has METC shown, Wolverine states, that the Commission has approved any charges assessed by the Midwest ISO related to the Operating Agreements with Wolverine.

10. Wolverine contends that it is improper for METC to assess charges to Wolverine, because the contracts are transmission facility ownership and operating agreements, not transmission service agreements. Wolverine argues that the Ownership Agreements do not involve METC's provision of transmission service to Wolverine.

11. Wolverine also states that Wolverine already pays its appropriate share of Schedule 18 charges directly to the Midwest ISO as a network customer under the Midwest ISO OATT. Wolverine contends that if it were required to pay any Schedule 18 charges related to the Operating Agreements, Wolverine should pay the Midwest ISO directly. Wolverine argues that METC's proposal to invoice Wolverine for Schedule 18 charges amounts to double-charging.

12. On December 8, 2003, METC filed an answer to the protests in Docket No. ER04-139-000. On December 23, 2003, Wolverine filed an answer to METC's answer in the same docket.

Subsequent Filings

13. On December 19, 2003, METC submitted a notice to partially withdraw its October 31 filing as a result of agreements (the CRAs) reached between METC and the Michigan Agencies.⁴ On the same date METC submitted the CRAs for acceptance in

⁴ METC's filing in Docket No. ER04-139-000 thereafter addressed only the following two Operating Agreements with Wolverine:

Docket No. ER04-315-000, and requested waiver of the Commission's 60-day prior notice requirement in order to allow an effective date of October 1, 2003 the date that the Schedule 18 of the Midwest ISO OATT (whose costs will be passed through the CRAs) became effective.

14. Notices of the subsequent December 19 filings were published in the Federal Register, 69 Fed. Reg. 1,582 (2004) (Docket No. ER04-139-001), and 69 Fed. Reg. 2,134 (2004) (Docket No. ER04-315-000), with interventions and protests due on or before January 9, 2004. None were submitted.

Discussion

15. Pursuant to Rule 214 of the Commission's Rules of Practice and Procedure, 18 C.F.R. § 385.214 (2003), the timely motions to intervene of the Michigan Agencies, Wolverine, and Detroit Edison make them parties to Docket No. ER04-139-000. Answers to protests are prohibited by Rule 213(a)(2) of the Commission's Rules of Practice and Procedure, 18 C.F.R. § 385.213(a)(2) (2003), unless otherwise ordered by the decisional authority. We find that good cause exists in this case to allow METC's response to the protests of the Michigan Agencies and Wolverine, and Wolverine's response to METC, as they provide additional information that assists the Commission in the decision-making process.

16. These proceedings involve amendments to Operating Agreements between METC and Wolverine, and uncontested CRAs between METC and MPPA and between METC and MSCPA, to allow pass-through of charges assessed to METC under Schedule 18 of the Midwest ISO OATT. We accept these amendments to the METC/Wolverine Operating Agreements, effective November 1, 2003, as requested, and both CRAs, effective October 1, 2003, as requested, as they reflect the cost of providing service over the METC transmission system.

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- Campbell Unit No. 3 Operating Agreement Between Consumers Power Company and Northern Michigan Electric Cooperative, Inc. and Wolverine Electric Cooperative, Inc. (as of January 1, 1983 merger, Wolverine Power Supply, Inc.), dated August 15, 1980 (Wolverine Campbell Unit No. 3 Agreement); and
 - Wolverine Operating Agreement Between Consumers Power Company and Wolverine Power Supply Cooperative, Inc., dated July 27, 1992 (Wolverine July 27, 1992 Agreement).

17. We reject the arguments that these Operating Agreements cannot be amended to pass through the Schedule 18 charges assessed to METC because they are grandfathered contracts and because they are not transmission service agreements.⁵ As we said in Michigan Electric, “[w]e reject Wolverine’s arguments that it should not be required to reimburse METC for RTO charges because the Operating Agreements are not transmission service agreements. We find that the Operating Agreements clearly involve the delivery of transmission service.”⁶

18. We reject Wolverine’s contention that reimbursing METC for Schedule 18 charges while being invoiced directly from the Midwest ISO for Schedule 18 charges will result in double-charging. Charges to Wolverine from the Midwest ISO and from METC address Wolverine’s distinct loads. The former is associated with load that is served through Wolverine’s capacity entitlement under Wolverine’s network service agreement under the Midwest ISO OATT, which Wolverine acknowledges excludes its load served through its 120 MW capacity entitlement under its Operating Agreements with METC; the latter is associated with load that is served through Wolverine’s capacity entitlement under its Operating Agreements. Wolverine thus may be assessed two separate Schedule 18 charges from the Midwest ISO and METC, respectively, but this does not amount to double-charging; rather, it would represent separate charges for separate and distinct services.

19. We also reject Wolverine’s argument that it should be charged directly by the Midwest ISO for Schedule 18 charges associated with load served through its capacity entitlements. Section 37.34 of the Midwest ISO OATT specifically provides that “transmission owning members will have to take transmission service under the Midwest ISO (OATT) for their use of the Midwest ISO transmission system to serve bundled load and grandfathered agreement customers.” Currently, METC is the Midwest ISO OATT customer with respect to Wolverine’s load served under the Operating Agreements, not Wolverine, and, therefore, METC would incur any charges from the Midwest ISO for such service. We also note that METC would pass through charges to Wolverine only to the extent that the Midwest ISO charges METC for service associated with Wolverine’s load under the METC/Wolverine Operating Agreements.

⁵ See Michigan Electric Transmission Co., LLC, 104 FERC ¶ 61,236 at P 11, 16 (2003) (Michigan Electric), reh’g denied, 106 FERC ¶ 61,236 (2004).

⁶ Id. at P 16.

The Commission orders:

(A) METC's proposed amendments to METC/Wolverine Operating Agreements are hereby accepted, effective November 1, 2003. Waiver of the prior notice requirement is hereby granted.

(B) The executed CRA between METC and MPPA and the executed CRA between METC and MSCPA are hereby accepted, effective October 1, 2003. Waiver of the prior notice requirement is hereby granted.

By the Commission.

(S E A L)

Magalie R. Salas,
Secretary.