

111 FERC ¶ 61,100
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, Inc. Docket No. ER04-1165-003

Tenaska Power Services Company Docket No. EL04-43-004

v.

Midwest Independent Transmission System Operator, Inc.

Cargill Power Markets, LLC Docket No. EL04-46-004

v.

Midwest Independent Transmission System Operator, Inc.

ORDER GRANTING IN PART AND DENYING IN PART REHEARING

(Issued April 19, 2005)

1. In this order, we grant in part and deny in part PSEG Energy Resources & Trade LLC's (PSEG) request for rehearing of an order issued on November 1, 2004,¹ in which the Commission accepted a compliance filing and proposed tariff revisions submitted by the Midwest Independent Transmission System Operator, Inc. (Midwest ISO).

Background

2. In 2003, PSEG submitted a one-year rollover request for transmission service under the Midwest ISO open access transmission tariff (OATT) beginning January 1, 2004 (Period 1 rollover request). PSEG submitted its second rollover request for service commencing January 1, 2005 (Period 2 rollover request), after the Midwest ISO awarded

¹ *Midwest Independent Transmission System Operator, Inc.*, 109 FERC ¶ 61,209 (2004) (November 1 Order).

it service for a one-year term, as a result of the Midwest ISO's initial processing of PSEG's first rollover request.

3. However, in response to complaints submitted by Tenaska Power Services Company (Tenaska) and Cargill Power Markets, LLC (Cargill) that the Midwest ISO had improperly processed requests for transmission service for calendar year 2004, the Commission directed the Midwest ISO to reprocess the transmission queue to reconsider Tenaska's and Cargill's requests, as well as other transmission service requests that were submitted from March through December 2003.² As a result of the Midwest ISO's reprocessing of the queue for service commencing January 1, 2004, PSEG was required to match a longer-term competing request in order to roll over its existing service, which extended the Period 1 rollover request from one year to 1.67 years, terminating on July 31, 2005.

4. In the November 1 Order, the Commission accepted a filing submitted by the Midwest ISO in compliance with the Complaint Rehearing Order. The Commission also accepted, as modified, proposed tariff revisions submitted by the Midwest ISO in Docket Nos. ER04-1165-000 and ER04-1165-001 to establish priorities among requests to roll over transmission service under existing agreements and competing requests for new service, and to establish a methodology for processing such requests. In the November 1 Order, the Commission also found that PSEG's Period 2 rollover request would have a duration commencing August 1, 2005 and extending through the remaining term of its Period 2 rollover request, *i.e.*, December 31, 2005.

Rehearing Request

5. On December 1, 2004, PSEG submitted a request for rehearing of the Commission's November 1 Order. PSEG first contends that the Commission erroneously determined in the November 1 Order that where a customer has two pending, concurrently submitted rollover requests covering different time periods, and the service period of the first-in-time request is extended due to the customer's matching the term of a competing request, the customer with the second rollover request must submit a new rollover request and take a new place in the queue in order to change the date on which the second rollover request commences. Second, PSEG argues that the Commission erroneously concluded in the November 1 Order that, in such a situation, the customer may not modify the duration of the second rollover request without submitting a new rollover request and taking a new position in the queue. Third, PSEG asserts that the

² *Tenaska Power Services Co. v. Midwest Independent Transmission System Operator, Inc., et al.*, 106 FERC ¶ 61,230 (March 8 Order), *reh'g denied*, 107 FERC ¶ 61,308 (2004) (Complaint Rehearing Order).

Commission erroneously held in the November 1 Order that the nomination of Financial Transmission Rights (FTRs) arising from such rollover requests is beyond the scope of the above-captioned proceedings. Finally, PSEG states that, if the Commission denies the foregoing requests for rehearing, the Commission also erred by failing to clarify whether PSEG may participate in “Tier I” of the Midwest ISO FTR nomination process.

Discussion

Commencement of Period 2 Rollover Request

6. PSEG requests rehearing of the Commission’s conclusion that, where a transmission customer submits two concurrent rollover requests and the first rollover request is extended due to competition with a prior-queued request for new service, the rollover customer must make a new request in order for its second rollover request to begin upon the expiration of the first rollover request. PSEG maintains that the second rollover request should automatically begin when the extended duration of the first rollover request ends.

7. We will deny PSEG’s rehearing request. In reaching our conclusion, we explained that allowing a term adjustment for previous rollover requests, without requiring the customer to re-submit its second rollover request, would not reflect an appropriate balancing of interests of existing and potential new customers. We analogized this to the requirement that customers modifying new service requests must submit such modifications as a new request.

8. PSEG, however, states that a rollover customer in this situation is unlike a customer that submits a request for new service, since a rollover customer relies on its rights under the Midwest ISO’s OATT when it submits its rollover request for the second sequential period. It states that a customer that submits two concurrent rollover requests for sequential time periods should not bear the risk that competing requests for new service will result in an extension of the rollover request for the first period.

9. We disagree. The right to roll over existing service reservations under section 2.2 of the Midwest ISO’s OATT simply gives the rollover customer a right of first refusal in the event that there are competing requests for new service, so that the rollover customer has the opportunity to continue taking service as long as it submits its rollover request at least 60 days before the end of its current contract term and agrees to accept a contract term at least equal to the competing request for new service. Other than providing that opportunity to continue to take service in the event that there are competing requests for new service, section 2.2 does not allow a rollover customer additional rights to modify its transmission service request as compared to the rights allowed a customer requesting new service. PSEG does not allege that the November 1 Order would deprive it of the opportunity to continue to take service as long as it agrees to accept a contract term at

least equal to the competing request for new service, nor could it. Rather, PSEG's concerns are obviously that, by taking a new place in the queue, it may be subject to competition with a request for new service with a longer term, so that it will be required to match a longer term as a result of the new queue position. However, this is simply the risk that the customer must bear when it seeks to submit concurrent rollover requests for sequential time periods instead of submitting a single rollover request for an extended time period.

Duration of Period 2 Rollover Request

10. PSEG requests rehearing of the Commission's conclusion that, when a customer submits two concurrent rollover requests and the first rollover request is extended due to competition, the rollover customer also must submit a new rollover request in order for its second rollover request to match the extended term of its first request. According to PSEG, a transmission customer in this situation should have the option to choose whether the request to renew the first rollover request will include the duration that the customer originally requested or the duration that the customer received by matching the longer-term request for new service. PSEG claims that a customer in this situation is unlike a customer requesting new service that has won the competition for a reservation. PSEG maintains that, "until the customer requesting new service wins the competition, that new customer has never maintained rollover rights arising from a request for new service that the Midwest ISO has not yet accepted." Thus, PSEG asserts that it should have the option to extend the term of its second rollover request, *i.e.*, for Period 2, to 1.67 years. It adds that this option would facilitate long-term transmission planning, consistent with the Commission's established policy goals, but would still allow sufficient flexibility to transmission customers.

11. We will deny PSEG's request for clarification that it should be able to extend the term of its second rollover request, *i.e.*, for Period 2, to 1.67 years. As we stated in the November 1 Order, contrary to PSEG's assertion, a new customer winning the competition in Period 1 would not have a right to choose between a shorter period and the period it was awarded when exercising its rollover rights for Period 2, nor would it have a right to modify a request for Period 2 without submitting a new request and taking a new place in the queue. PSEG is correct that it is distinguishable from a customer requesting new service because the latter does not have rollover rights until its request for new service in Period 1 is accepted. However, PSEG's argument still fails because it is based on the premise that section 2.2 of the Midwest ISO OATT allows a rollover customer the right to modify its transmission service request that is not allowed for a customer requesting new service (other than providing the rollover customer the opportunity to match a longer-term competing request and continue to take service in the event that there are competing requests for new service). As discussed above, section 2.2 of the Midwest ISO OATT does not confer such rights to a customer requesting to rollover of an existing service reservation. Nor are we persuaded that providing rollover customers

the additional flexibility that PSEG requests would facilitate transmission planning. Longer-term service reservations should facilitate long-term transmission planning better than shorter-term reservations that may result from PSEG's proposal.³ It is obvious that PSEG's concern is that, by taking a new place in the queue, it may be subject to competition with requests for new service with longer terms, so that it would be required to match a longer-term as a result of the new queue position in order to continue taking service. Thus, we find that PSEG has provided no sufficient justification as to why a customer with rollover service in Period 1 should be treated any differently from a new service customer in Period 1.

Nomination of FTRs for Period 2 Rollover Request

12. In its rehearing request, PSEG argues that, once a transmission customer has proposed to roll over its first rollover request, and chosen the duration of the request, the customer should have the ability to nominate FTRs based on the second rollover request. It argues that, although the above-captioned proceedings do not specifically address the FTR nomination process, the November 1 Order directly affects PSEG's rights to receive FTRs, since it alters the duration of its transmission service reservations. Finally, it asserts that, notwithstanding the Commission's decision that the FTR nomination process is beyond the scope of the above-captioned proceedings, the November 1 Order also directly affects PSEG's ability to participate in the FTR nomination process because it renders PSEG ineligible to participate in "Tier I" of the Midwest ISO's FTR nomination process, which is available only to those entities with service requests of one year or longer in duration, for its Period 2 rollover request for service commencing August 1, 2005, for a duration through December 31, 2005. According to PSEG, transmission customers with rights for terms of one year or longer have the first opportunity to

³ The Commission explained in Order No. 888-A that, absent the request that the customer match the contract term of a competing request, utilities could be forced to enter into shorter-term arrangements that could be detrimental from both an operational (*i.e.*, system planning) and a financial standpoint. The same principle holds here. *Promoting Wholesale Competition Through Open Access Non-Discriminatory Transmission Services by Public Utilities; Recovery of Stranded Costs by Public Utilities and Transmitting Utilities*, Order No. 888, 61 Fed. Reg. 21,540 (May 10, 1996), FERC Stats. & Regs., Regulations Preambles, January 1991 – June 1996 ¶ 31,036 (1996), *order on reh'g*, Order No. 888-A, 62 Fed. Reg. 12,274 (March 4, 1997), FERC Stats. & Regs., Regulations Preambles, July 1996-December 2001 ¶ 31,048 at 30,197-98 (1997), *order on reh'g*, Order No. 888-B, 81 FERC ¶ 61,248 (1997), *order on reh'g*, Order No. 888-C, 82 FERC ¶ 61,046 (1998), *aff'd in relevant part sub nom.*, *Transmission Access Policy Study Group, et al. v. FERC*, 225 F.3d 667 (D.C. Cir. 2002), *aff'd sub nom.*, *New York v. FERC*, 535 U.S. 1 (2002).

nominate FTRs for their service requests and may nominate a greater quantum of FTRs. Thus, if PSEG's rollover request for Period 2 now has a duration of five months, the Commission has precluded PSEG's participation in Tier I of Midwest ISO's FTR nomination process despite PSEG's original requested duration of one year.

13. We will deny rehearing with respect to PSEG's arguments concerning the nomination of FTRs. As we explained in the November 1 Order, this issue is beyond the scope of this proceeding. Midwest ISO's FTR allocation process was fully addressed in the proceeding involving its proposed Open Access Transmission and Energy Markets Tariff (TEMT), and there are no elements to Midwest ISO's proposal regarding the processing of rollover requests as accepted in this proceeding that warrant revisiting here the FTR allocation methodology approved in the orders addressing Midwest ISO's TEMT. PSEG has provided no new arguments that would warrant a different result. However, we will grant PSEG's rehearing request with respect to its Period 2 rollover rights under the FTR nomination process. In the November 1 Order, we recognized the unique situation faced by PSEG resulting from the reprocessing of the transmission queue directed by the Commission. Because it appeared that PSEG reasonably relied on Midwest ISO's initial processing of its Period 1 rollover request when it submitted its Period 2 rollover request, and the commencement date of its Period 2 rollover request had to be revised as a result of the reprocessing of the transmission queue, we found that PSEG's Period 2 rollover request would have a duration of five months, but again recognizing the unique situation PSEG was in, we found that PSEG would retain its rollover rights even though its service would be for less than one year. Similarly, we clarify that PSEG's Period 2 rollover request should be deemed, because of the unique circumstances involved, a service request of one year or longer in duration and thus eligible to participate in "Tier I" of the Midwest ISO's FTR nomination process.

The Commission orders:

PSEG's request for rehearing is hereby granted 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.