

UNITED STATES OF AMERICA
FEDERAL ENERGY REGULATORY COMMISSION

Before Commissioners: Pat Wood, III, Chairman;
William L. Massey, and Nora Mead Brownell.

Michigan Electric Transmission Company, LLC

Docket No. ER03-688-000

ORDER ACCEPTING AMENDMENT TO TRANSMISSION
AGREEMENT WITH CONDITIONS

(Issued May 19, 2003)

Introduction

1. In this order, we accept for filing an amendment to a Transmission Ownership and Operating Agreement (Operating Agreement) which will provide for the reimbursement of certain costs assessed under the Midwest Independent Transmission System Operator, Inc.'s (Midwest ISO) open access transmission tariff (OATT).
2. The Commission accepts the proposed amendment to the Operating Agreement on the condition that it be refiled removing certain provisions described below. The action taken here will allow the Michigan Electric Transmission Company, LLC (METC) to recover certain costs associated with the provision of transmission service to Michigan South Central Power Agency (MSCPA) that could not be recovered otherwise.

Background

3. 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. MSCPA is a Michigan municipal power agency that purchases transmission service for its members located within the METC pricing zone. The Operating Agreement is a grandfathered agreement under the Midwest ISO OATT, pursuant to which MSCPA acquired an interest in and use rights over the METC transmission system.

Filing

4. On March 31, 2003, METC proposed to amend the Operating Agreement by adding a new Article 20, "RTO and ITP Charges." Proposed new Article 20 is intended to allow for the payment by MSCPA of certain charges assessed to METC. Specifically, the proposal provides for the reimbursement of three cost recovery adders assessed to METC by the Midwest ISO, under Schedules 10, 16 and 17¹ of the Midwest ISO OATT. In addition, Article 20 would provide for reimbursement by MSCPA for other similar charges, assessments or fees under the Midwest ISO OATT, or any other applicable OATT that may be accepted by the Commission in the future. METC explains that the automatic inclusion of such future charges proposed in new Article 20 would avoid the administrative burden of duplicate filings to reflect future amended Regional Transmission Organization or Independent Transmission Provider charges.

5. Proposed new Article 20 specifically excludes zonal or other transmission rates contained in the applicable OATT from those charges to be reimbursed to METC by MSCPA.

6. METC states that under Section 9.10 of the Operating Agreement, it has the right to make a unilateral rate filing under Section 205 of the Federal Power Act, 16 U.S.C. § 824d (2000), to collect these costs from MSCPA as they are costs of providing service to MSCPA. METC states it has attempted to negotiate this matter with MSCPA, but has been unsuccessful, and therefore, requests that the Commission accept the amendment so as to allow it to recover these costs.²

7. METC requests an effective date of April 1, 2003 for the proposed amendment to the Operating Agreement and requests waiver of the Commission's prior notice requirement in order to allow an effective date of April 1, 2003.

Notice of Filing and Responsive Pleadings

¹Schedule 10 - ISO Cost Recovery Adder; Schedule 16 - Financial Transmission Rights Administrative Service Cost Recovery Adder; Schedule 17 - Energy Market Support Administrative Service Cost Recovery Adder.

²METC asserts that the Commission has recently approved a similar proposal regarding passthrough of ISO costs in Louisville Gas and Electric Co., 101 FERC ¶ 61,182 (2002).

8. Notice of the filing was published in the Federal Register, 68 FR 17795 (2002), with interventions, comments and protests due on or before April 21, 2003. MSCPA filed a timely protest.

9. MSCPA is not opposed to the reimbursement of charges assessed to METC by the Midwest ISO under Schedules 10, 16 and 17 of the Midwest ISO OATT. However, MSCPA is concerned that the proposal would further obligate MSCPA to reimburse METC for "any similar charges, assessments or fees under any applicable OATT imposed on METC in connection with the MSCPA Capacity Entitlements." MSCPA protests METC's proposed inclusion of such open-ended authorization to seek reimbursement for future, unknown and unidentified charges, assessments or fees.

10. METC on April 29, 2003 filed an answer to the protest. With respect to METC's answer, Rule 213(a)(2) of the Commission's Rules of Practice and Procedure, 18 C.F.R. § 385.213(a)(2) (2002), prohibits the filing of an answer to a protest unless otherwise permitted by decisional authority. We are not persuaded to allow the proposed answer and, accordingly, will reject it.

Discussion

11. Pursuant to Rule 214 of the Commission's Rules of Practice and Procedure, 18 C.F.R. § 385.214 (2002), the timely, unopposed motion to intervene serves to make MSCPA a party to this proceeding.

12. We will conditionally accept the proposed amendment to the Operating Agreement, to be effective April 1, 2003,³ as requested. The costs to be recovered in proposed new Article 20 relating to the referenced Midwest ISO schedules reflect the passthrough of cost recovery adders that have been accepted by the Commission. Further, MSCPA has not objected to paying these costs.

13. We agree with MSCPA that the automatic inclusion of future, similar charges, as proposed in new Article 20 is premature and may result in charges to MSCPA that, for example, improperly duplicate or add charges for ownership rights and use rights for which MSCPA has already prepaid. Therefore, this open-ended language which would further obligate MSCPA to reimburse METC for "any similar charges, assessments or fees under any applicable OATT imposed on METC in connection with the MSCPA Capacity Entitlements" must be removed. In addition, references to the collection of similar charges

³See, e.g., Central Hudson Gas & Electric Corp., 60 FERC ¶ 61,106 (1992), order on reh'g, 61 FERC ¶ 61,089 (1992).

imposed by other RTO's or ITP's must be removed as premature. All parties would be better served by dealing with any such new charges once the nature of such charges are known to each party. Any administrative burden of duplicate filings to reflect future RTO or ITP charges is outweighed by the interest in avoiding duplicate or unreasonable charges. In sum, therefore, under the Operating Agreement, if and when METC identifies new charges, fees or assessments that should be subject to reimbursement by MSCPA, it can then raise such matters with MSCPA at that time, or make an appropriate filing with the Commission at that time.

The Commission orders:

(A) METC's proposed amendment to the Operating Agreement is hereby conditionally accepted for filing, subject to the compliance filing directed in Ordering Paragraph (B) below, to become effective April 1, 2003, as discussed in the body of this order. Waiver of the prior notice requirement is hereby granted to permit an effective date of April 1, 2003.

(B) Within 15 days of the date of this order, METC shall make a compliance filing modifying the proposed amendment in accordance with the discussion in the body of this order.

By the Commission.

(S E A L)

Magalie R. Salas,
Secretary.