

UNITED STATES OF AMERICA
FEDERAL ENERGY REGULATORY COMMISSION

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

Midwest Independent Transmission System
Operator, Inc.

Docket No. ER03-574-000

ORDER DENYING AUTHORIZATION

(Issued May 22, 2003)

1. This order denies Midwest Independent Transmission System Operator, Inc.'s (Midwest ISO) request for authorization to reimburse Consumers Energy Company (Consumers) for costs Consumers claims to have incurred in seeking to establish the Alliance Regional Transmission Organization (Alliance RTO). This order protects customers from paying costs not properly recovered from such customers.

Background

A. Consumers

2. Consumers is a public utility that provides electric service to residential, commercial and industrial customers in the Lower Peninsula of the State of Michigan. On January 10, 2001, the Commission authorized Consumers to transfer ownership and control of its transmission facilities to a wholly-owned subsidiary, Michigan Electric Transmission Company (METC).¹ On November 13, 2001, Consumers filed an application requesting authorization to sell and transfer its transmission facilities to a newly formed subsidiary of Trans-Elect,² Michigan Electric Transmission Company, LLC (Michigan Transco). On February 13, 2002, the Commission conditionally authorized the sale, with financial incentives.³ On March 29, 2002, on rehearing the Commission reaffirmed its

¹Consumers Energy Co., 94 FERC ¶ 61,018 (2001).

²Trans-Elect is a for-profit electric transmission company; it is not affiliated with Consumers.

³Trans-Elect, Inc., 98 FERC ¶ 61,142 (2002).

previous decision.⁴ On April 12, 2002, the Commission conditionally authorized the transfer of operational control of Michigan Transco's transmission facilities to the Midwest ISO.⁵ On May 1, 2002, Consumers closed on the sale and sold METC to Michigan Transco.

3. Prior to the May 1 purchase, Consumers was a member of the Alliance Companies and was involved in the development of the Alliance RTO. Consumers is now a firm transmission customer of Michigan Transco, a transmission-owning member of the Midwest ISO.

B. Reimbursement of Costs for GridAmerica Companies

4. On December 20, 2001, the Commission found that the Alliance RTO lacked sufficient scope to exist as a stand-alone RTO.⁶ As a result, the Commission encouraged the Alliance Companies to bring their business model into the Midwest ISO as an independent transmission company (ITC).⁷ The Commission added that it would consider proposals for recovery of Alliance RTO-related prudently incurred costs.⁸

5. Subsequently, in response to a petition for declaratory order seeking guidance on various outstanding issues, on April 25, 2002, the Commission issued an order that addressed those issues and stated that: "[W]e intend to allow recovery of all costs prudently incurred by any Alliance GridCo participant to establish an RTO once it is a member of an RTO. We will address the verification of such costs when their recovery is sought."⁹

6. On December 19, 2002, the Commission reiterated its intention to allow recovery of costs prudently incurred in the establishment of the Alliance RTO and permitted the payment of such costs to several former Alliance Companies (GridAmerica Companies)

⁴Trans-Elect, Inc., 98 FERC ¶ 61,368 (2002).

⁵Trans-Elect, Inc., 99 FERC ¶ 61,068 (2002).

⁶Alliance Companies, *et al.*, 97 FERC ¶ 61,327 (2001) (December 20 Order).

⁷*Id.* at 62,531.

⁸*Id.*

⁹Alliance Companies, *et al.*, 99 FERC ¶ 61,105 at 61,442 (2002) (April 25 Order).

who were directly transferring control of their transmission facilities to the Midwest ISO through an ITC.¹⁰

The Filing

7. On February 27, 2003, Midwest ISO filed a request for authorization to reimburse Consumers approximately \$8.3 million, under Schedule 10 of the Midwest ISO Open Access Transmission Tariff, for costs Consumers claims to have incurred in seeking to establish the now defunct Alliance RTO.¹¹

8. Midwest ISO's request is based on the Commission's December 19 Order. Midwest ISO states that Consumers believes it should be entitled to recover its claimed Alliance RTO-related costs as the GridAmerica Companies have because: (1) Consumers' former assets are a part of the grid operated by the Midwest ISO; (2) Consumers is one of the largest customers of the Midwest ISO and supports the activities of the Midwest ISO through its Schedule 10 payments; (3) Consumers' former transmission facilities provide essential connectivity to the Midwest ISO and to customers in the state of Michigan; and (5) equity considerations favor such a result since the inclusion of METC's transmission facilities in the Midwest ISO resulted in a significant increase in the billing units of the Midwest ISO's Schedule 10 and a subsequent reduction in the amount of the charge assessed to all Midwest ISO customers.

Notice of Filing and Responsive Pleadings

9. Notice of Midwest ISO's filing was published in the Federal Register, 68 Fed. Reg. 11829 (2003), with protests and interventions due on or before March 20, 2003. Midwest ISO Transmission Owners (Transmission Owners), Wabash Valley Power Association, Inc. (WVPA), Midwest Affected Parties,¹² and Multiple Transmission Dependent Utilities

¹⁰Ameren Services Co., 101 FERC ¶ 61,320 at P 143 (2002) (December 19 Order). The Commission, however, required the parties to "file a breakdown of these costs to be filed in sufficient detail to allow the Commission to determine whether all costs being collected are actual costs that were prudently incurred, including a breakdown of legal costs associated with the Illinois Power settlement" Id.

¹¹Midwest ISO states that although it is submitting this filing, it is not taking a position on whether the Commission should grant the request.

¹²Wisconsin Electric Power Company, Wisconsin Public Service Company, Upper Peninsula Power Company, Coalition of Midwest Transmission Customers, Industrial

(continued...)

(Multiple TDUs) filed timely motions to intervene and protests. Consumers, Trans-Elect, Inc., and Michigan Transco filed timely motions to intervene and comments in support of Midwest ISO's filing.

10. Consumers and Midwest ISO filed a joint answer to the protests.

11. WVPA argues that it is inequitable to allow Consumers to recover Alliance RTO development costs when it was not the entity that elected to place the former Consumers transmission assets under the control of the Midwest ISO. The Midwest Affected Parties state that Consumers should have recouped its costs in the transfer sale to Michigan Transco.

12. Transmission Owners and WVPA argue that authorization of Midwest ISO's request violates cost causation principles because costs specifically incurred on Consumers' behalf and for Consumers' benefit will be allocated throughout the Midwest ISO region through Schedule 10.¹³ Midwest Affected Parties argue that any reimbursement for these costs should be recovered through customers in the Michigan Transco pricing zone because it was Michigan Transco's decision to transfer the assets to the Midwest ISO.

13. Multiple TDUs state that, in light of the new information provided in this filing, the Alliance RTO cost recovery should be reconsidered and that costs incurred after the December 20 Order be automatically disallowed.

14. All protestors argue that Consumers has not presented sufficient information to conclude that the amounts at issue were prudently incurred.

¹²(...continued)
Energy Users-Ohio.

¹³Citing, e.g., Kentucky Utilities. Co., Opinion No. 432, 85 FERC ¶ 61,274 at 62,111 (1998) (quoting Northern States Power Co., Opinion No. 383, 64 FERC ¶ 61,324 at 63,379 (1993), reh'g denied, 74 FERC ¶ 61,105 (1996)).

Discussion

A. Procedural Matters

15. Pursuant to Rule 214 of the Commission's Rules of Practice and Procedure, 18 C.F.R. § 385.214 (2002), the timely, unopposed motions to intervene serve to make the entities that filed them parties to this proceeding.

16. Rule 213(a)(2) of the Commission's Rules of Practice and Procedure, 18 C.F.R. § 385.213(a)(2) (2002), generally prohibits an answer to a protest, unless otherwise permitted by the decisional authority. We are not persuaded to allow Consumers' and Midwest ISO's joint answer and, accordingly, will reject the answer.

B. Analysis

17. In the April 25 Order, which forms the basis of Consumers' argument for recovery of Alliance RTO start-up costs, the Commission clarified that it intended to allow recovery of all costs prudently incurred by an Alliance RTO member to establish an RTO once a company is a member of an RTO. As explained above, however, by the time the April 25 Order had been issued, Consumers had already transferred its transmission facilities to its affiliate METC and received authorization for the further transfer from METC to Michigan Transco. Through these various voluntary transfers to METC and then to Michigan Transco, Consumers had already been adequately compensated.

18. The April 25 Order was issued before Consumers closed on the deal it proposed and the Commission approved, i.e., the sale of METC to Michigan Transco. Consumers nevertheless closed, and also did not seek clarification of the April 25 Order.

19. In any event, the Commission's April 25 Order indicates that a proposal to recover costs associated with Alliance RTO development activities should be part of a participant's proposal when it places transmission facilities in an RTO. Consumers did not join an RTO as a transmission owner; it had already sold its transmission facilities to Michigan Transco.

20. Accordingly, we will deny Midwest ISO's request for authorization to reimburse Consumers for costs claimed to have been incurred in seeking to establish the Alliance RTO.

The Commission orders:

Midwest ISO's request is hereby denied.

By the Commission.

(S E A L)

Magalie R. Salas,
Secretary.