

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. ER03-265-001

ORDER DENYING REHEARING AND GRANTING CLARIFICATION

(Issued May 22, 2003)

1. In this order the Commission denies the Midwest ISO Transmission Owners' (Transmission Owners) request for rehearing and grants the Midwest Independent Transmission System Operator, Inc.'s (Midwest ISO) motion for clarification of the order issued on January 29, 2003 (January 29 Order).¹ This order benefits customers by assuring just and reasonable rates.

Background

2. On December 12, 2002, Midwest ISO filed proposed revisions to its Open Access Transmission Tariff (OATT) to revise charges for firm redirected service. The Midwest ISO proposed to charge the "higher of": (1) the transmission rate in effect for redirected service based on the service type and sink zone, or (2) the transmission rate for the initial firm service, prorated for the period of time the redirect is in effect.

3. The January 29 Order rejected Midwest ISO's proposal. The Commission held that while it had approved "higher of" rates for non-firm redirect service for Midwest ISO and for others, it had not approved "higher of" rates for firm redirect service. The Commission found that the rate on file for firm redirect service in Midwest ISO's OATT does not contemplate a "higher of" charge and that Midwest ISO had failed to explain why the rate methodology for non-firm service, where transmission customers retain their initial firm rights, should apply to firm service, where transmission customers lose their initial rights once redirect rights are accepted. In addition, the Commission found that the proposed

¹Midwest Independent Transmission System Operator, Inc., 102 FERC ¶ 61,069 (2003).

"higher of" rate for firm redirect service could result in over-recovery for transmission providers, and that Midwest ISO had not adequately explained the pro rata mechanism that it proposed to use to calculate the "higher of" rate. Also, the Commission found that although the Transmission Owners had expressed concern about potential abuse, they failed to explain how such abuse could occur or even what form it could take. Moreover, the Commission found that Midwest ISO failed to explain how a transmission customer taking firm redirect service maintains its initial flowgate rights. The Commission stated that any abuse of firm redirect service is limited by the characteristic of the service that requires reapplication for initial receipt and delivery points once firm redirect service is taken.

4. The Commission directed the Midwest ISO to: (1) make refunds within 60 days to any customer taking firm redirect service that was charged the "higher of" rate since the Midwest ISO Business Practices Manual language was changed (April 29, 2002); and (2) file with the Commission a refund report within 30 days after the refund is made.

Discussion

A. Transmission Owners' Request for Rehearing

Rejection of Filing

5. Transmission Owners argue that the Commission erred by rejecting Midwest ISO's proposal and that it should have at least set the proposal for hearing subject to refund. They assert that the Commission has rejected few filings and that when it has had questions, it has either issued deficiency letters to have its questions answered² or set the matter for hearing subject to refund.³ The Transmission Owners also argue that "rejection is appropriate only in the 'clear case of a filing that patently is either deficient in form or a substantive nullity,'"⁴ and that the Commission did not satisfy these requirements. Further, they assert that the Commission's finding that Midwest ISO had inadequately explained the pro rata mechanism to be used to calculate the "higher of" rate is not sufficient grounds for rejecting the proposal and ordering refunds.

²Citing, e.g., Aquila, Inc., 101 FERC ¶ 61,331 at P 3 (2002); WPS Westwood Generation, L.L.C., 101 FERC ¶ 61,290 at P 4 (2002).

³Citing, e.g., Midwest Independent Transmission System Operator, Inc., 98 FERC ¶ 61,188 (2002); Southern California Edison Co., 93 FERC ¶ 61,320 (2000).

⁴Transmission Owners at 5 (quoting *Municipal Light Boards v. FPC*, 450 F.2d 1341 (D.C. Cir. 1971)).

6. The Commission's regulations require public utilities that are proposing to change the provisions of a rate schedule filed with the Commission to file information which will adequately support their rate applications. In particular, Section 35.13 lists the statements and schedules public utilities are required to file.⁵ Midwest ISO's filing offered essentially no cost support for the proposed rate increase. Although it filed an answer attempting to support the proposed rate increase, Midwest ISO did not file any of the information necessary to support that rate.

7. In short, Midwest ISO's proposal lacked the information required for the Commission to make any determination but rejection. Thus, the Commission's rejection of Midwest ISO's proposal was appropriate.⁶ Moreover, we note that the Commission's rejection of Midwest ISO's proposal was without prejudice to Midwest ISO refiling an expanded proposal.

Potential Abuse

8. Transmission Owners argue that the Commission erred by not sufficiently taking into account the potential for abuse that the proposed revisions sought to prevent. They assert that whether or not a transmission customer taking firm redirect service maintains its initial flowgate right does not impact the determination of whether the potential for abuse exists and that the Commission has recognized this potential abuse in its acceptance of a similar provision for non-firm redirects.⁷ As an example, Transmission Owners state:

Suppose a customer seeks transmission from zone A to zone B. However, because the zonal rate in zone C is much lower than the zonal rate for zone B, the customer initially reserves transmission from zone A to zone C rather than from zone A to B. Under license plate pricing the customer would pay the zone C rate. Without the tariff change proposed by the Midwest ISO to

⁵18 C.F.R. § 35.13 (2002).

⁶See, e.g., PP&L, Inc., 95 FERC ¶ 61,160 at 61,519-20 (2001) (holding that the decision to reject, rather than issue a deficiency letter or set a matter for hearing, is based on the Commission's determination that a filing does not meet threshold filing requirements); Detroit Edison Co., 44 FERC ¶ 61,294 at 62,062 (1988) (summarily rejecting proposed rates, in part, because of no cost support).

⁷Citing Midwest Independent Transmission System Operator, Inc., 84 FERC ¶ 61,231 at 62,176 (1998); Southwest Power Pool, 82 FERC ¶ 61,267 at 62,056, order on reh'g, 85 FERC ¶ 61,031 (1998).

impose the "higher of" charge for redirecting firm transmission service, the customer could initially book the lower cost path (zone C) that it does not want and then, for the entire term, redirect on a firm basis the higher cost path (zone B) while only paying the price of the lower cost path.⁸

9. While we take seriously any allegations as to the potential for abuse, we find the Transmission Owners' understanding of firm redirect service to be incorrect. Our reading of the Midwest ISO protocols makes clear that the customer in the above example would lose the initial reservation (A to C) once a redirection on a firm basis is accepted by the Midwest ISO and would pay the price of the redirected path (A to B).⁹ In addition, Order No. 888 characterizes a firm redirect as a new service, thus a customer would pay the rate that corresponds to that service.¹⁰ As a result, we find that the Transmission Owners have failed to demonstrate that the Commission's rejection of the Midwest ISO proposal would lead to abuse because their argument is based on a misunderstanding of firm redirect service. Therefore, we deny the Transmission Owners' request for rehearing.

⁸Transmission Owners at 7-8.

⁹See Section 6.10 entitled Firm Redirect (i.e., Redirection of Firm Service on an Firm Basis) of the Midwest ISO Open Access Transmission Tariff Business Practices. With regard to loss of initial reservation, Section 6.10 of the Business Practices states: "If a customer desires to go back to the initial reservation after the redirect has been confirmed, this will be treated as a new request and will be granted if adequate ATC exists." (Version 9, page 24). With regard to payment for redirect service, Section 6.10 of the Business Practices states: "The transmission customer pays for all costs associated with the redirect service and does not pay for the initial service for the period of time and capacity that was redirected." (Version 9, page 23).

¹⁰See Pro Forma OATT, Section 22.2. With regard to pricing for firm redirect service, the pro forma OATT states: "any request by a transmission customer to modify Receipt and Delivery Points on a firm basis shall be treated as a new request for service . . . except that such transmission customer shall not be obligated to pay any additional deposit."

Over-recovery

10. Transmission Owners argue that the Commission erred by suggesting that the proposed revisions would result in over-recovery. They argue that Midwest ISO's customers would only pay once, under the Midwest ISO proposal, for the service they take. Transmission Owners explain that if a customer redirects, then that customer would pay the rate for the path it takes. They further explain that if another customer takes service over the original path, then it would pay for service as well. Transmission Owners argue that this outcome is no different than two customers making separate transmission reservations and that because two customers making two separate transmission reservations do not produce over-recovery issues, the same should hold true in the situation involving redirected service.

11. In the January 29 Order, the Commission pointed out that under Midwest ISO's proposed pricing method, if firm rights were resold on a redirecting customer's initial path, the redirecting customer might still pay the rate in the initial zone (if it was the higher rate) and a new customer using the resold firm rights would also pay the rate in that same zone resulting in the Transmission Provider recovering the cost of the same rights twice. The Commission found that the Midwest ISO had not explained how such potential over-recovery of costs would be eliminated or why such potential for over-recovery constitutes a just and reasonable rate.

12. As we explained above, we find the Transmission Owners' understanding of firm redirect transmission service under Midwest ISO's proposal to be incorrect. Transmission Owners suggest that application of Midwest ISO's pricing proposal is no different from two customers making separate transmission reservations and each paying for the reservation accordingly. However, in the Transmission Owners' example, two customers would pay the cost of different capacity on the transmission facility if making separate reservations. By contrast, in the Commission's example in the January 29 Order, the same cost of capacity (*i.e.*, the higher cost path) on the transmission facility could be charged for twice. We agree with the Transmission owners that customers would only pay once for the redirect service, but under the Midwest ISO's proposal, the amount a redirect customer pays (the "higher of" charge) when combined with the payment by another customer for the capacity released under redirect could amount to over-recovery of costs. The Midwest ISO did not explain how potential over-recovery of costs would be eliminated in its initial filing and Transmission Owners have not explained it in their rehearing request. Accordingly, we deny the Transmission Owners' request for rehearing.

B. Midwest ISO's Request for Clarification

13. As noted above, in the January 29 Order, the Commission directed the Midwest ISO to make refunds to any customer taking firm redirect service that was charged the "higher of" rate since April 29, 2002. Midwest ISO requests that the Commission clarify that the Transmission Owners are responsible for paying any required interest on the refund amounts. The Midwest ISO states that it is solely a conduit with respect to the charges at issue. It explains that it collects such charges from Transmission Customers and distributes to the Transmission Owners the revenues received. Midwest ISO states that the Transmission Owners received the revenues generated by the charges and benefitted from them.

14. We agree that Midwest ISO is acting as an agent for the Transmission Owners in collecting the charges at issue and disseminating the money to the Transmission Owners. Accordingly, we grant its request for clarification and find that the Transmission Owners are responsible to pay any required interest on the refund amounts.

The Commission orders:

- (A) Transmission Owner's request for rehearing is hereby denied.
- (B) Midwest ISO's request for clarification is hereby granted.

By the Commission.

(S E A L)

Magalie R. Salas,
Secretary.